

## TERMS OF CREDIT

### Definitions

- 1.1 "Application" means the attached credit application form.
- 1.2 "Agreement" means the Application and these terms of credit.
- 1.3 "Buyer" means the applicant named in the Application.
- 1.4 "Equipment" means any equipment provided by ILS to the Buyer pursuant to this Agreement.
- 1.5 "ILS" means Industrial Lubricants and Services Limited.
- 1.6 "Products" and "ILS Products" means all petroleum products, fuels, oils, industrial lubricants, chemicals and solvents supplied by ILS and all inventory supplied by ILS and any of the above and any other goods that may be described in any invoice rendered by ILS to the Buyer.

### Acceptance

- 2.1 ILS may decline or accept the Application in its absolute discretion. If accepted, the Application and these terms of credit form the Agreement between the Buyer and ILS.
- 2.2 ILS may also suspend or cancel any credit entitlement with effect from the date of notification in writing to the Buyer.
- 2.3 The Buyer will, if required by ILS, arrange for their liability to be guaranteed by third persons or secured by securities on terms satisfactory to ILS. ILS may impose this requirement at any time and suspend the Buyer's entitlement to credit and/or withhold delivery of any Products to the Buyer pending its fulfilment to the satisfaction of ILS.
- 2.4 Where ILS supplies the Buyer prior to finalization of credit application approval, such supply shall be deemed to be covered by the Terms & Conditions herein.

### Price

3.1 The price payable for the Products is as notified in writing by ILS to the Buyer from time to time. The Buyer acknowledges the prices charged by ILS pursuant to this Agreement may be varied by ILS based on changes in wholesale crude oil prices, currency or exchange rates, the oil market generally, or the volume of products purchased by the Buyer. ILS will always endeavour to give the Buyer a minimum of 30 days notice to accept price changes. Unless agreed in additional T&Cs between parties the Buyer has the right to not accept price increases and ILS the right not to supply.

3.2 In addition to the price of the Products, the Buyer is liable to pay any applicable taxes and levies and, for delivery of Products, any delivery charge ILS may levy depending on the quantity of Products delivered, distance travelled to effect delivery to the Buyer and the date month following delivery of the Products or within such other period as may be specified in the invoice rendered by ILS.

### Payment

- 4.1 All payments by the Buyer to ILS under this Agreement will be made without deduction or set-off, counterclaims or any other cause whatsoever.
- 4.2 Payment will be due by the Buyer to ILS by the 20<sup>th</sup> day of the month following delivery of the Products or within such other period as may be specified in the invoice rendered by ILS.
- 4.3 If any payment under this Agreement is not made in accordance with these terms, the Buyer will, in addition to the unpaid amount, be liable to ILS for simple interest on the unpaid amount up to 1.5% per month calculated daily until the unpaid amount is settled in full and all costs and expenses, including collection costs and legal costs on a solicitor and client basis, incurred by ILS in attempting to recover any unpaid amount or otherwise incurred as a result of the non-payment.
- 4.4 To the extent permitted by law, all money received by ILS from the Buyer will be applied in the manner and order determined by ILS.

### Supply

- 5.1 ILS agrees to supply the Products in accordance with this Agreement.
- 5.2 ILS warrants that the Products supplied will be of merchantable quality. No other warranty, expressed or implied, is given by ILS.
- 5.3 ILS will be relieved of all liability in respect of any claims relating to the quality of the Products if such claims are not made by the Buyer within 14 days of the delivery of those Products by ILS to the Buyer. To the extent permitted by law, ILS limits its liability to the replacement or the replacement cost of the relevant Products.
- 5.4 The Buyer must make available safe and unrestricted access for delivery at the site nominated for delivery in the Application or as otherwise agreed by ILS and provide not less than 3 working days prior notice of their delivery requirements. ILS will use reasonable endeavours to deliver the Products ordered to the Buyer's site within three working days after receipt of the Buyer's order (excluding the day the order was received).
- 5.5 Delivery of the Products is made and risk will pass to the Buyer (a) for liquid Products delivered by hose connection, when they pass into the permanent hose connection at the filling point at the Buyer's site and

(b) for packed or other Products, upon the removal of such Products from the delivery vehicle at the Buyer's site.

5.6 ILS will provide to the Buyer at the time of delivery or as soon as practicable after delivery, a delivery docket specifying the type, quantity and price of the Products delivered.

5.7 Title in the Products will remain with ILS until all money owing by the Buyer to ILS under this Agreement or any other agreement (including interest and other costs pursuant to clause 4.3) has been paid in full. The Buyer will keep such Products clearly identifiable as the property of ILS until such time as they may be mixed with other products in the ordinary course of business. This provision is inserted solely for the benefit of ILS and does not entitle the Buyer to return or require the return of any Products which have not been paid for.

5.8 Until title in the Products passes to the Buyer, the Buyer will keep the Products free of security interests (as defined in the PPSA) other than in favour of ILS.

### Compliance

6.1 The Buyer agrees to comply with all legislation and guidelines, including guidelines and manuals issued by ILS, relating to the storage and dispensing of Products. ILS may cease delivery if ILS considers that there are concerns as to the degree of compliance with such legislation, guidelines or manuals.

6.2 The Buyer is responsible for obtaining all licences and consents necessary for the storage, dispensing or other dealings with the Products.

6.3 The Buyer will allow ILS access to any site where ILS Products are delivered, stored or dispensed upon reasonable notice so that ILS can ensure compliance with this agreement.

6.4 The Buyer acknowledges it indemnifies ILS, pursuant to clause 9, for any liability it may suffer directly or indirectly as a result of the Buyer's storage, dispensing or dealing with the Products.

6.5 The Buyer will not sell, or part with possession of, the Products other than in the ordinary course of business of the Buyer.

### Breach and Termination

7.1 The Buyer may terminate this Agreement on 14 days written notice to ILS. For the avoidance of doubt this termination right is in substitution for any right of cancellation under the Contractual Remedies Act 1979.

7.2 ILS may terminate this Agreement without notice if the Buyer breaches this Agreement. In any other case ILS may terminate this Agreement on 14 days written notice to the Buyer.

7.3 In the event of any breach of this Agreement by the Buyer, ILS may take such action as it is entitled to take by law and, for the purpose of recovery of its Products, enter any site where they are stored or where they are reasonably thought to be stored and may take possession of them and the Buyer shall co-operate with ILS to provide or procure such access as ILS requires.

### Liability

8.1 ILS will not be liable to the Buyer for any loss or damage arising, whether directly or indirectly, out of the terms of this Agreement or the performance or non-performance by ILS of any obligation under this Agreement (unless otherwise stated in this Agreement). Where ILS has any liability, then to the extent permitted by law, ILS limits its liability to the replacement or replacement cost of the relevant Products.

### Indemnity

9.1 The Buyer agrees to indemnify ILS, its officers, employees and agents against any claims or losses incurred by ILS arising out of or in connection with the supply of goods or services in accordance with this Agreement (other than by reason of ILS's negligence). This obligation continues after termination or expiry of this Agreement.

### Miscellaneous

10.1 ILS is not liable for any delay in or failure to supply or other default under this Agreement resulting from any event beyond ILS's reasonable control.

10.2 Should any part or provision of this Agreement be held invalid or unenforceable, such invalid or unenforceable part or provision will be deemed severed from this Agreement and will not affect the validity or enforceability of the remainder of this Agreement.

10.3 This Agreement is personal to the Buyer and may not be assigned.

10.4 ILS may assign this Agreement to any third party.

10.5 ILS may unilaterally change any of the terms or conditions of this Agreement by giving the Buyer 14 days written notice.

10.6 All notices or other communications by ILS will be sent to the Buyer's last known postal address.

10.7 All notices or other communications to ILS should be sent to ILS at PO Box 259347 Botany, Manukau 2141 Auckland.