

DA Fleet Management Services Application

DA FLEET FACILITY STANDARD TERMS AND CONDITIONS

1. Acceptance of Application

1.1 DA Fleet Management Services "DA" may accept or decline an Application (at its sole discretion) by a written or email notice to the Customer after the receipt of the correctly completed Application and all supporting information that may be requested.

1.2 If DA accepts an Application, DA agrees to provide the Customer with the Goods, Services and/or Facilities on these Standard Terms and Conditions.

1.3 In consideration of DA providing the Customer with the Goods, Services and/or Facilities, the Customer agrees to be bound by these Standard Terms and Conditions (except where DA and the Customer are parties to a separate agreement for the supply of:

- (a) Bulk Facility;
- (b) Fuel Card Facility; or
- (c) Bulk Facility and Fuel Card Facility in addition to being a signatory to the Application, in which case, that separate agreement will constitute the agreement between DA and the Customer for:
 - (a) Bulk Facility
 - (b) Fuel Card Facility; or
 - (c) both the Bulk and Fuel Card Facility as the case may be, and these Standard Terms and Conditions (or the relevant section of these Standard Terms and Conditions) will not apply.

1.4 These Standard Terms and Conditions include the Application, the Direct Debit Service Agreement and the Deed of Guarantee Indemnity and Charge.

1.5 By the Customer accepting and taking up the Goods, Services and/or Facilities whereby the Account enters into default each director associated with the Customer agrees to personally guarantee the Account and be jointly and severally liable for clauses including but not limited to; 6.3 and 6.5.

2. Term

These Standard Terms and Conditions commence when DA accepts the Customer's Application and continue until terminated in accordance with clause 9.

3. Credit Limit

3.1 The Customer must not exceed its Credit Limit.

3.2 DA may refuse to supply Goods, Services and/or Facilities to the Customer in excess of the Customer's Credit Limit.

If a Transaction at any time results in the Customer exceeding its Credit Limit ("Credit Limit Exceedance"), the Customer must:

- (a) pay DA the amount of the Credit Limit Exceedance immediately in full; and
- (b) if the Customer is not able to pay in accordance with sub clause (a), immediately return any Products which are capable of being returned in their original condition to DA or the Merchant.
- (c) if the Customer is not able to pay in accordance with sub clause (a), DA may cancel any facility or policy provided.

4. Invoices

DA will issue the Customer with a tax invoice for the Goods, Services and/or Facilities.

5. Payment

5.1 DA will issue a tax invoice to the Customer for all Goods, Services and/or Facilities made during the previous billing period and all fees, charges and moneys otherwise due and payable to DA.

5.2 The Customer must pay the full amount of the tax invoice by the "Due Date".

5.3 The payment will be effected by direct debit from the Customer's nominated bank account (unless a different payment method is agreed in advance in writing between the Customer and DA) in accordance with the direct debit form in the Application. The Customer agrees to be bound by the Direct Debit Service Agreement.

5.4 If the Due Date falls on a non-business day, the payment must be made:

- (a) if the payment is effected by direct debit, on the first business day after the Due Date; and
- (b) if the payment is effected by any other payment method, on the business day preceding the Due Date.

5.5 The Customer must make all payments in full without deduction or set-off.

5.6 The Customer must notify DA of any dispute of any amount of an invoice within 14 days from the date of the receipt of the tax invoice. Unless the Customer disputes the amount within 7 days, the amount shall be taken to be accepted by the Customer, due and payable to DA and not open to dispute or challenge.

5.7 To the extent permitted by law, all money received by DA from the Customer will be applied in the manner and order determined by DA.

6. Default

6.1 The payment is made on the date when DA receives cleared funds into its nominated bank account.

6.2 The Customer is in default if the full payment of the tax invoice is not made by or on the Due Date or if the payment subsequently dishonours.

6.3 If the Customer is in default, the Customer/directors agree to be jointly and severally liable, in addition to any other right DA may have, DA may, at its discretion:

- (a) charge the Customer exception fees as advertised on www.driveradvantage.com.au or other amounts as determined by DA and interest on the overdue amount as determined by DA from the Due Date until DA receives the payment in full; and/or
- (b) immediately and without prior notice suspend the provision of the Goods, Services and/or Facilities until the payment is made in full; and/or
- (c) review and adjust the Customer's Credit Limit as DA considers appropriate; and/or;

(d) terminate the provision of all Goods, Services and/or Facilities to the Customer immediately without prior notice.

6.4 DA will endeavour to notify the Customer prior to the suspension or termination of the all Goods, Services and/or Facilities if the Customer is in default, however, DA reserves the right to suspend or terminate the all Goods, Services and/or Facilities immediately and without prior notice if DA forms a view that its actions in that respect are justified in the circumstances.

6.5 If the Customer is in default, the Customer will be liable to DA on a full indemnity basis for the following:

- (a) the unpaid amount; and
- (b) any new amount in respect of any purchases and/or fees incurred on the Account after the date of the latest tax invoice issued to the Customer;
- (c) any exception or interest on the unpaid amount and any new amount charged to the Customer under clause 6.3(a);
- (d) if direct debit or other payment method is dishonoured, the Dishonour Fee; and
- (e) all costs and expenses, including full legal and administrative costs incurred by DA in attempting to enforce payment or otherwise incurred as a result of the default. All such amounts are debt incurred by the Customer to DA and must be paid within 3 business days after the receipt of a tax invoice from DA. However, the Customer agrees that if a tax invoice has previously been issued for any amount (such as an invoice for the unpaid amount), such invoice does not need to be reissued under this clause and that amount becomes immediately due and payable on the date of default.

7. Security

7.1 For the purposes of securing payment of all moneys due and payable to DA by the Customer arising from the use of the Goods, Services and/or Facilities, the Customer:

- (a) agrees to deliver to DA, within 7 days of written demand, a mortgage in respect of the Customer's Property in a form acceptable to DA together with any documents required to obtain registration of the mortgage;
- (b) charges to DA all its Property (wherever situated) to secure its obligations under this Deed and authorises and consents to DA lodging a caveat and/or PPSR registration (in a form and subject to any conditions as DA sees fit) upon the title to the Property in DA's absolute discretion; and
- (c) irrevocably appoints DA and persons nominated by DA separately as the attorney of the Customer with power to sign and lodge such caveat, PPSR registration or other similar document to give effect to these provisions.

8. Risk

Risk in the Goods, Services and/or Facilities will pass to the Customer when the Goods, Services and/or Facilities have been taken up or utilized by the Customer.

9. Termination

9.1 The innocent party may terminate these Standard Terms and Conditions immediately by notice in writing to the other party if:

- (a) the other party commits a material breach of any obligation under these Standard Terms and Conditions and fails to remedy the breach within 14 days after notice from the innocent party to remedy the breach;
- (b) the other party breaches any obligation under these Standard Terms and Conditions and the breach cannot be remedied;
- (c) the other party goes into liquidation, receivership, administration, bankruptcy, enters an arrangement or compromise with its creditors, has any form of insolvency administrator appointed to it or to any of its property or cannot pay its debts when they are due.

9.2 DA may terminate these Standard Terms and Conditions immediately without prior notice if:

- (a) the Customer is in default, in accordance with clause 6.3(d); or
- (b) the Customer, in DA's reasonable opinion, represents credit risk to DA or may not be able to pay moneys owing or which may become owing by the Customer to DA as the payments become due; or
- (c) (where the Customer is a partnership), one or more partners become a bankrupt or the partnership is dissolved;
- (d) the Customer dies; or

9.3 Either party may terminate these Standard Terms and Conditions at any time by giving the other party 30 days written notice.

10. Effects of Termination

10.1 On termination of these Standard Terms and Conditions:

- (a) without limiting in any way clause 6.5, all money owing to DA by the Customer immediately become due and payable without prejudice to any other right of DA;
- (b) a party may take such action as it is entitled to take by law, and, for the purposes of the recovery; and
- (c) any right accrued prior to the termination remains unaffected.

11. Limitation of Liability

11.1 DA will not, under any circumstances, be liable to the Customer, whether directly or indirectly for:

- (a) the act or omission of the Merchants, the provision of or the quality or standard of the Goods, Services and/or Facilities provided by any Merchant;
- (b) any fault with any automatic or electronic facility used in connection with or to process the Facility;
- (c) any fault with any Goods, Services and/or Facilities;
- (d) any third party claim arising out of supply of Goods, Services and/or Facilities or the performance or nonperformance of any obligations under these Standard Terms and Conditions.

11.2 All express or implied guarantees, warranties, representations, or other terms and

conditions relating to these Standard Terms and Conditions not contained in these Standard Terms and Conditions are excluded to the maximum extent permitted by law.

11.3 Nothing in these Standard Terms and Conditions excludes, restricts or modifies any right or remedy or any guarantee, warranty or other term or condition implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances.

11.4 If any guarantee, warranty, term or condition is implied or imposed in relation to these Standard Terms and Conditions under the Australian Consumer Law or any other applicable legislation and cannot be excluded (a Non Excludable Provision) and DA is able to limit the Customer's remedy for breach of the Non Excludable Provision, the liability of DA for breach of the Non-Excludable Provision is limited to one or more of the following at DA's option:

- (a) replacement of the defective Goods, Services and/or Facilities or the supply of equivalent Goods, Services and/or Facilities; or
- (b) payment of the cost of replacing the defective Goods, Services and/or Facilities or of acquiring equivalent Goods, Services and/or Facilities.

11.5 Subject to DA's obligations under the Non-Excludable Provisions, and to the maximum extent permitted by law, the maximum aggregate liability of DA for all claims under or relating to these Standard Terms and Conditions or supply of Products and/or Services whether in contract, tort (including without limitation negligence), in equity, under statute, or on any other basis, is limited to an amount equal to the annual Fee.

11.6 Subject to DA's obligations under the Non-Excludable Provisions, and to the maximum extent permitted by law, DA is not liable for and no measure of damages will, under any circumstances, include:

- (a) special, indirect, consequential, incidental or punitive damages; or
- (b) damages for loss of profits, revenue, goodwill, or anticipated savings, whether in contract, tort (including negligence) in equity, under statute, or on any other basis, whether or not such loss or damage was foreseeable.

12. Indemnity

12.1 The Customer shall indemnify and hold DA harmless against any claim, liability, cost or expense arising directly or indirectly out of:

- (a) a breach by the Customer of any provision of these Standard Terms and Conditions; storage, handling and dispensing of any Goods, Services and/or Facilities at the Customer's site or other premises;
- (b) misuse, whether innocent or willful, by the Customer of any Goods, Services and/or Facilities.

13. GST

(a) Subject as may otherwise be expressly stated, and subject to the provisions set out below, if any supply made under or in connection with these Standard Terms and Conditions by one party ('Supplier') to the other party ('Acquirer'), is subject to GST, the payment for that supply will be increased by an amount equal to the GST payable.

(b) Subject as may otherwise be expressly stated, and subject to the provisions set out below;

if any supply made under or in connection with these Standard Terms and Conditions by one party ('Supplier') to the other party ('Acquirer'), is subject to GST, the payment for that supply will be increased by an amount equal to the GST payable.

(c) The Acquirer will not be obligated to make any payment for either the supply referred to in paragraph (a)

(d) or on account of the GST referred to in paragraph (a)

(e) until the Supplier has issued a tax invoice to the Acquirer for the supply to which the payment relates.

(f) If a payment made by one party to the other party is a reimbursement or indemnification of a cost, expense, loss or liability incurred by that other party, the payment shall be reduced by an amount for which that party is entitled to an input tax credit.

(g) Words or expressions used, which are defined in A New Tax System (Goods and Services Tax) Act 1999, have the same meaning.

14. Privacy Notice and Agreement

Privacy Agreement set out in the Application is expressly incorporated into these Standard Terms and Conditions.

15. Notices

15.1 Except as specified in clause 22.2, all notices must be in writing and must be delivered, mailed or sent by facsimile or e-mail:

- (a) to DA, using the Contact Details in clause 18; and
- (b) to the Customer, using the Customer's contact details as nominated in the Application or as otherwise advised by the Customer in writing.

15.2 The notice will be deemed served when, if delivered, on delivery; if sent by mail, two business days after the date on which the notice was posted; and if sent by facsimile, on confirmation of the successful transmission of all pages and, if sent by e-mail, on the receipt of the e-mail by the recipient's computer network.

16. Force Majeure

16.1 DA will not be responsible for failure or for any losses resulting out of the failure to supply or deliver any Goods, Services and/or Facilities caused by force majeure, including:

- (a) partial or total interruption of transport, fires, strikes, differences with workmen, armed conflict, interference of civil or military authority;
- (b) curtailment, failure or cessation of supplies of crude oil or any other products from DA's existing, future or contemplated sources of supply;

(c) any breakdown of plant, machinery or equipment owned or operated by DA necessary for the production of Goods, Services and/or Facilities or any planned or unplanned shutdown of any refinery owned or operated by DA;

(d) Court orders, Government policy or orders including price controls, levies, premiums or surcharges, requirement, request or allocation program;

16.2 If for any such cause DA is unable to supply any of the Goods, Services and/or Facilities its obligations under these Standard Terms and Conditions shall be deemed suspended for the period of inability. In the event of a shortage of such Goods, Services and/or Facilities DA may, without being deemed to be in breach of these Standard Terms and Conditions ration or apportion its available supplies among such of its Customers as it may, in its absolute direction, deem desirable during the period or periods of shortage.

17. Miscellaneous

17.1 The Customer must notify DA in writing of any change in the Customer's contact details or other details within 2 business days of any such change.

17.2 DA may:

(a) vary any material provision of these Standard Terms and Conditions at any time by giving not less than 30 days prior written notice (where it is reasonably necessary to protect DA's legitimate business interests); and

(b) make minor variations to these Standard Terms and Conditions at any time without giving the Customer prior notice. Any new version of the varied Standard Terms and conditions will be available on DA's public website for the Customer's information.

17.3 These Standard Terms and Conditions will be governed by the laws of the State or Territory where DA has its registered office or such other State or Territory as DA in its sole discretion determines.

17.4 DA may assign and/or subcontract its rights and obligations under these Standard Terms and Conditions without notice at any time.

17.5 The Customer may not assign or otherwise dispose of its rights and obligations under these Standard Terms and Conditions without prior written consent from DA.

17.6 Any waiver by DA of any rights under these Standard Terms and Conditions will not constitute a general waiver of those or other rights.

DA FLEET FACILITY

These Standard Terms and Conditions apply to the DA Fleet Facility.

18. Contact Details

The Customer may contact DA using these contact details:

Fuel Card Support: 1300 722 460

Fuel Card Online: www.driveradvantage.com.au

Address: PO Box 833 Drummoyne NSW 2047

E-mail: admin@driveradvantage.com.au

19. Purchases

19.1 DA agrees to provide the Customer with the Goods, Services and/or Facilities for the purposes as described in a supply or facility agreement.

19.2 The Customer agrees that the Goods, Services and/or Facilities must be used by the Customer wholly or predominantly for business purposes.

19.3 In addition to the price for Products and Services, the Customer must pay:

(a) any duties, taxes, government charges, levies and other imposts presently or in the future being levied by any government or regulatory authority on any of the Products or Services, or the price of any of the Products or Services, in the amounts applicable from time to time;

(b) any costs incurred by DA in order to comply with the present and/or future requirements of any government or regulatory authority, including any requirements relating to pollution, carbon, emissions and greenhouse gases (including reporting requirements, the holding of permits and the holding of off-set credits), to the extent such costs increase the cost of any Products or Services or the cost of production or delivery of any of the Products or Services;

(c) a Program Fee, as agreed between the Customer and DA;

(d) a Transaction Fee, as agreed between the Customer and DA;

(e) postage or courier fees relating to the issuance of new or replacement cards;

(f) any Surcharge; and

(g) GST, where applicable.

DEFINITIONS

Definitions apply to the Fleet Management Services Facility.

"Account" means the account opened by DA for the Customer to operate a Fleet Management offered facility;

"Application" means a credit application provided by DA which the Customer must complete to make an application to DA for the supply of Products and Services on credit;

"DA" means DA Fleet Management Services Pty. Ltd. A.B.N. 34 608 470 757, its subsidiaries, related or associated companies;

"DA Program Fees" means amounts payable monthly under the Account for account activation, program fees, rate lock fees and card issuance fees;

"Credit Limit" means the amount notified to the Customer by DA from time to time as the maximum amount allowed for purchases of Products and Services by the Customer on its Account;

"Customer" means the "Applicant" in the Application and all Directors of the Applicant; "Deed of Guarantee, Indemnity and Charge" means this document signed by the Customer on behalf of all directors;

"Direct Debit Service Agreement" means the agreement regarding the direct debit method of payment;

"Dishonour Fee" is a fee DA charges when the Customer's payment is dishonoured by the Customer's financial institution;

"Due Date" means the date, as agreed between the Customer and DA, by or on which the amount of the tax invoice must be paid in full, or,

if no date has been agreed, the 7th day of the month following the month in which purchases have been made;

"Goods, Services and/or Facilities" means any Goods, Services and/or Facilities described in an offer and provided by DA Fleet to the Customer.

"GST" means Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999;

"Laws" means the requirements of all statutes, rules, regulations, proclamations, awards, ordinances, bylaws or Australian Standards, present or future, and whether state, federal or otherwise;

"PPSR" means the Personal Property Securities Register;

"Property" means all property of the Customer, wherever situated, including without limitation all real and personal property, business and trading assets, stock, choses in action, goodwill and uncalled capital and called but unpaid capital from time to time;

"Purchase Limit" means a daily and/or monthly dollar, volume or transaction type limit;

"Services" means vehicle maintenance, repairs and other services which may be provided by the Merchant to the Customer;

"Surcharge" means a fee determined by the Merchant from time to time and charged by the Merchant to the Customer;

"Transaction" means a purchase transaction for which a Card is used by a Cardholder to purchase Products and/or Services; "Transaction Fee" means an additional amount (fee) (inclusive of GST) paid by the Customer each time the Customer makes a Transaction, as notified by DA to the Customer, except where otherwise agreed between DA and the Customer.

INTERPRETATION

Unless the context requires otherwise, the singular includes the plural and vice versa, reference to a gender includes all genders, reference to "person" includes a natural person, company, body corporate or other form of legal entity, and reference to "including" and "includes" is to read as if followed by "without limitation".