

Effective: from 1 July 2024

BUSINESS FUEL CARDS MERCHANT TERMS AND CONDITIONS

IMPORTANT: The Merchant must read these Terms and Conditions carefully. By signing below, the Merchant agrees to be bound by these Terms and Conditions (and the Merchant Agreement).

1. DEFINITIONS

“Account” means an account opened by BFC in the name of the Account Holder.

“Account Holder” means a person, company, corporation, firm or association who has entered into an Agreement (as defined in the Account Holder and Card User Terms and Conditions, a copy of which can be found here: <https://www.fleetcard.com.au/terms-conditions/>).

“Authorised Supplies” means fuel and vehicle-related goods and services (including but not limited to petrol, diesel, lead replacement petrol, engine oil, electricity and other vehicle-related goods and services that BFC may determine from time to time).

“BFC” means Business Fuel Cards Pty Ltd (ACN 161 721 106), its successors or assignees or related companies.

“Business Day” means a day other than a Saturday or Sunday on which trading banks are open for normal business in Victoria.

“Card” means any Account identification item (including, without limitation, cards, digital tokens, radio frequency identifications, or other Cards) made available by BFC to the Account Holder for use by Card Users from time to time.

“Card User” means each person authorised by the Account Holder to hold and use a Card.

“Change of Ownership Fee” means the fee charged by BFC for setting up the details of the new owner of an existing site within BFC’s systems, which is to be paid by the Merchant to BFC in accordance with clause 6, where the fee is:

- (a) described in the Merchant Information;
- (b) described in the Special Conditions (if any); or
- (c) as otherwise notified by BFC to the Merchant on or around the date of the Merchant Agreement or as varied in accordance with clause 3.

“Claim” means a demand, action or proceeding of any nature, whether actual or threatened.

“Electronic System” means any system for:

- (a) the electronic transfer of funds; or
- (b) the electronic recording of debits to the Account of a Card User at the point of sale, including the system known as FleetCard Pay, which BFC has approved for use in conjunction with Cards, so long as that approval has not been withdrawn by BFC.

“Electronic System Voucher” means any record of the use of a Card produced by an Electronic System at the Merchant’s Site.

“EULA” means the relevant Terminal Supplier’s End User Licence Agreement Terms, as amended from time to time.

“GST” has the meaning set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“Loss” means any liability, cost, expense, loss, damage, or outgoing. In relation to a Claim, Loss includes amounts payable on the Claim and (whether or not the Claim is successful) legal and other professional costs and disbursements on a full indemnity basis.

“Merchant Agreement” means the Merchant Agreement incorporating:

- (a) the Merchant Information;
- (b) these Merchant Terms and Conditions; and
- (c) any Special Conditions,

each as amended from time to time in accordance with the Merchant Agreement.

“Merchant Discount Rate” means the discount (if any) off the price of Authorised Supplies sold by the Merchant to BFC (including GST) and paid via a deduction from Valid Charges for Authorised Supplies in accordance with clause 6 where the rate is:

- (a) described in the Merchant Information;
- (b) described in the Special Conditions (if any); or
- (c) as otherwise notified by BFC to the Merchant on or around the date of the Merchant Agreement or as varied in accordance with clause 3.

“Merchant Information” means the merchant information on pages 1 and 2 in front of these Merchant Terms and Conditions.

“Merchant Set-Up Fee” means the fee charged by BFC for setting up the details of the Merchant within BFC’s systems, which is to be paid by the Merchant to BFC in accordance with clause 6 where the fee is:

- (a) described in the Merchant Information;
- (b) described in the Special Conditions (if any); or
- (c) as otherwise notified by BFC to the Merchant on or around the date of the Merchant Agreement or as varied in accordance with clause 3.

“Personal Information” means personal information within the meaning of the Privacy Requirements, where collected, generated, or held by or on behalf of the Merchant in connection with the Merchant Agreement.

“PPSA” means *Personal Property Security Act 2009* (Cth), and includes any successor or functionally equivalent replacement of such law.

“Privacy Requirements” means the *Privacy Act 1988* (Cth), the National Privacy Principles or the Australian Privacy Principles in the *Privacy Act 1988* (Cth) and any other requirement (to the extent applicable to either party) under law or industry code relating to privacy, data protection, surveillance, security, direct marketing or the handling of Personal Information, and any reasonable direction from BFC in relation to those matters, and includes any successor or functionally equivalent replacement of such laws or principles.

“Processing Date” means each Tuesday during the term of the Merchant Agreement (provided that day is a Business Day) or such other day or days of the week as BFC may from time to time specify by notice in writing to the Merchant.

“Processing Period” means the period commencing at 9.00am on any Processing Date and expiring at 9.00am on the next Processing Date.

“Rebate” means a reduction in the amount required to be paid by BFC to the Merchant in relation to Valid Charges for Authorised Supplies and paid in accordance with clause 6 where the reduction amount is:

- (a) described in the Merchant Information;
- (b) described in the Special Conditions (if any); or

- (c) as otherwise agreed in writing between the Merchant and BFC from time to time.

“Selected Payment Date” means the payment frequency as advised to the Merchant once the Merchant's application has been accepted.

“Site” means the Merchant's physical address:

- (a) described in the Merchant Information;
- (b) described in the Special Conditions (if any); or
- (c) any other site where the Merchant has been approved by BFC to install Terminals and/or operate the Electronic System.

“Small Business” means a Merchant who is party to this Merchant Agreement, where this Merchant Agreement is considered a "small business contract" as defined by section 12BF of the *Australian Securities and Investments Commission Act 2001* (Cth).

“Special Conditions” means any terms and conditions that BFC and the Merchant have agreed, in writing, form part of the Merchant Agreement.

“Terminal” means the terminal or terminals described in the Merchant Information or the Special Conditions (if any) of the Merchant Agreement and any other terminal hardware, together with any preinstalled software and any cables and other telecommunications equipment supplied for use with the terminal hardware, supplied by BFC to the Merchant for use with the Electronic System.

“Terminal Refurbishment Fee” means the fee, charged by BFC to the Merchant, to refurbish a Terminal back to a condition that would enable it to be supplied to another third party.

“Terminal Supplier Services” has the meaning given to that term in clause 10.3.

“Transaction” means an individual sale where Authorised Supplies are supplied to a Card User.

“Valid Card” means a Card, which, on the date Authorised Supplies are provided to the Card User, has not expired, and either:

- (a) the Card serial number of which does not appear on a list of Cards that BFC has determined to be invalid, as provided by BFC from time to time; or
- (b) which has been verified by the Merchant at the point of sale using the Electronic System installed at the Merchant's Site(s) and operated by the Merchant in accordance with the instructions given by BFC to the Merchant from time to time; or
- (c) if the Merchant, for any reason, does not use an Electronic System, has been verified by the Merchant at the point of sale with BFC by telephone.

“Valid Charge” has the meaning given to it under clause 4.

2. ACCEPTANCE OF THESE TERMS AND CONDITIONS (AND THE MERCHANT AGREEMENT)

2.1 The parties acknowledge and agree that the Merchant Agreement is a contract between the Merchant and BFC.

2.2 The parties agree that upon the initiation by a Card User of a Transaction:

- (a) the Merchant will sell Authorised Supplies that are the subject of the Transaction to BFC:
 - (i) on the same terms and conditions; and
 - (ii) for the same price (or less),

that the Merchant would apply to cash sales at the point of sale minus the Rebate (if applicable) and the Merchant Discount Rate in accordance with clause 6;

- (b) immediately following the sale of the Authorised Supplies by the Merchant to BFC under clause 2.2(a), BFC will sell those same Authorised Supplies to the Account Holder related to the Card User;
- (c) immediately following the sale of Authorised Supplies by BFC to an Account Holder under clause 2.2(b), the Merchant will deliver those Authorised Supplies on behalf of BFC to the Card User.

2.3 The Merchant acknowledges and agrees that:

- (a) all Authorised Supplies supplied to a Card User using a Valid Card are:
 - (i) sold to the Account Holder by BFC; and
 - (ii) delivered to the Card User by the Merchant on behalf of BFC;
- (b) no charge or penalty (of any sort) shall be imposed by the Merchant against or on the Card User or Account Holder either directly or indirectly;
- (c) it shall not make any representations or give any warranties to the Card User or Account Holder with respect to the Authorised Supplies, except as expressly authorised by BFC in writing;
- (d) the prices of Authorised Supplies that are publicly displayed at the Site shall:
 - (i) accurately reflect the unit price of the displayed Authorised Supplies; and
 - (ii) be the same price applied in the calculation of the Valid Charge; and
- (e) except as expressly provided for in this Merchant Agreement, neither the Merchant nor any of its respective directors, officers, employees, agents, or representatives, shall have any authority to act for, represent, or bind BFC in any way. This includes, but is not limited to, entering into any contracts, incurring any liability, or making any commitments or representations on behalf of BFC.

3. VARIATIONS TO THESE TERMS AND CONDITIONS (AND THE MERCHANT AGREEMENT)

3.1 Subject to clauses 3.3 and 3.4, BFC reserves the right to:

- (a) vary the Merchant Agreement at any time for one or more of the following reasons
 - (i) to comply with any change or anticipated change in any relevant law, code of practice, guidance or general banking practice;
 - (ii) to reflect any decision of a court, ombudsman or regulator;
 - (iii) to reflect a change in BFC's systems or procedures, including for security reasons;
 - (iv) to respond to changes in the cost of providing the services;
 - (v) discontinue a product in which case BFC may change the terms of the Merchant Agreement to reflect a different product with similar features to the discontinued product; or
 - (vi) to make the Merchant Agreement clearer or to add features; or
 - (vii) to protect its legitimate business interests,

where:

- (b) subject to clause 3.1(c), BFC will give at least five (5) Business Days' notice in writing (including by electronic means) before the change takes effect, or such longer period as required by law;

- (c) where the Merchant is a Small Business and the change is adverse to the Merchant, BFC will give at least 20 (twenty) Business Days' notice in writing (including by electronic means) before the change takes effect.
- 3.2 BFC is not obliged to give the Merchant advance notice if an immediate change to the Merchant Agreement is deemed necessary for the security of BFC systems or any Merchant accounts.
- 3.3 If the Merchant is unhappy with an adverse change that BFC has made to the Merchant Agreement, the Merchant may close the account before the change takes effect without penalty.
- 3.4 If the Merchant gives notice within the above notice period terminating the Merchant Agreement, the Merchant shall not be bound by the notice of variation for the remaining term of the Merchant Agreement.

4. VALID CHARGES

A charge is a “**Valid Charge**”, in respect of which BFC will make payment to a Merchant, only if:

- (a) it is incurred by use of a Valid Card; and
- (b) it relates to Authorised Supplies in respect of a Card used, and either:
 - (i) a Valid Card has been used in an Electronic System to effect a purchase of Authorised Supplies, and that Electronic System has indicated to the Merchant at the point of sale (in such manner as may be specified by BFC from time to time) that BFC has accepted responsibility for payment for those Authorised Supplies; or
 - (ii) if the Merchant for any reason does not use an Electronic System to process a Valid Card, the Merchant has obtained the prior authorisation of BFC for the use of the Valid Card to effect a purchase of Authorised Supplies by telephone, and BFC has provided a receipt to the Merchant in respect of such authorisation, and
- (c) where a Valid Card contains details of a vehicle, the Authorised Supplies are provided only in respect of that vehicle.

5. OBLIGATIONS OF THE MERCHANT

The Merchant shall:

- (a) Subject to clauses 4 and 7, honour all Valid Cards presented by Card Users and permit a Card User holding a Valid Card to charge Authorised Supplies to an Account using the Valid Card.
- (b) Establish and operate a fair policy for the exchange or return of goods.
- (c) Not demand payment from a Card User in respect of purchases charged to an Account using a Valid Card.
- (d) Accept payment by BFC in accordance with the Merchant Agreement in full satisfaction of the amount payable in respect of Authorised Supplies delivered to Card Users using a Valid Card.
- (e) If requested by a Card User, provide them with a Transaction record being an Electronic System Voucher or, if the Merchant for any reason does not use an Electronic System to process a Card, another form of Transaction record authorised by BFC.
- (f) Pay the installation, rental and other charges payable for any Terminal supplied to the Merchant by BFC in accordance with clause 10.

- (g) Obtain authorisations in accordance with clause 7, and not reveal to Card Users any requirement for authorisation.
- (h) Accept full responsibility for, and where directed by BFC settle directly, or assist BFC to settle, with a Card User involved, all complaints, actions or demands of any nature relating to Authorised Supplies provided by the Merchant, and the Merchant must indemnify BFC against any Loss suffered or incurred in connection with any Claim against BFC arising in connection with all such complaints, actions or demands, except to the extent that the Loss is caused by BFC's fraud, negligence or wilful misconduct (including that of BFC's officers, employees, contractors or agents).
- (i) Display insignia and maintain material relating to the Card for use by customers of the Merchant, and include in any advertising relating to the Merchants business reference to the Card with a frequency and of a size and prominence at least equal to the reference in that advertising to the Merchant's acceptance of any other charge or credit card.
- (j) Use reasonable care to detect fraudulent use of Cards and Terminals, and promptly notify BFC of any actual or suspected fraudulent use of Cards or Terminals.
- (k) Not issue a tax invoice to a Card User in respect of any Authorised Supplies charged to a Valid Card.
- (l) Process any refunds for the return of any Authorised Supplies purchased using a Card to that Card and not provide cash refunds for any Authorised Supplies purchased using a Card.

6. DEDUCTIONS FROM VALID CHARGES AND PAYMENTS TO AND FROM MERCHANTS

- 6.1 Each Valid Charge will be subject to a Rebate (if applicable) and the Merchant Discount Rate. Subject to the terms of the Merchant Agreement, BFC shall, on receipt of any request for payment of a Valid Charge, pay the Merchant the full amount of that Valid Charge:
- (a) less any Rebate (if applicable) on that Valid Charge; and
 - (b) less the Merchant Discount Rate on that Valid Charge.
- 6.2 Any payment made by BFC in accordance with clause 14 shall be made by BFC and accepted by the Merchant in full satisfaction of all liability (if any) of BFC for payment of the amount charged.
- 6.3 If any date for payment to the Merchant is not a Business Day, payment shall be made on the next Business Day.
- 6.4 BFC may make payment without notice to the Merchant by direct credit to the bank account specified by the Merchant.
- 6.5 The Merchant is required to pay the Merchant Set-Up Fee and a Change of Ownership Fee to BFC. BFC will issue the Merchant with a consolidated tax invoice that will set out:
- (a) which of those fees are owed to BFC by the Merchant;
 - (b) when those are due and payable; and
 - (c) how those fees can be paid.

Without limiting the obligations of the Merchant under this clause 6.5, BFC shall be entitled to set-off and deduct the Merchant Set-Up Fee and the Change of Ownership Fee against and from any amount payable by BFC to the Merchant.

7. AUTHORISATION PROCEDURES

- 7.1 BFC may notify the Merchant of charge limits. Charge limits may be specified by the identity of a Card User, or a type of Authorised Supplies, or otherwise.

- 7.2 If the amount charged in any 24-hour period exceeds a charge limit specified by BFC, or if the Merchant for any reason does not use an Electronic System to process a Valid Card, the Merchant must obtain prior authorisation from BFC, which will not be unreasonably withheld. The Merchant may do so by telephoning BFC. If authorisation is granted, a receipt will be given by BFC to the Merchant.

8. CARD NOT PRESENT TRANSACTIONS

Where a Card User receiving Authorised Supplies purchased by an Account Holder is not present (e.g. telephone, internet or mail order transactions) or where the Merchant elects to manually key transactions or (despite the prohibition in clause 5(l)) provides any refund in cash for any Authorised Supplies delivered using a Card, the Merchant shall indemnify BFC for the face value of the charge if the charge is disputed by the Card User, or otherwise deemed not to be a Valid Charge, except to the extent caused by BFC's fraud, negligence or wilful misconduct (including that of BFC's officers, employees, contractors or agents).

9. BFC MAY DECLINE PAYMENT

- 9.1 BFC may, acting reasonably, decline to make payment in respect of any charge, which is not a Valid Charge, and in respect of any Valid Charge in respect of which the Merchant has not complied strictly with the terms of the Merchant Agreement (including, without limitation, the obligation in clause 5(l) not to provide cash refunds).
- 9.2 If BFC notifies the Merchant that any charge falls within clause 9.1 after BFC has made payment to the Merchant in respect of that charge, BFC may require the Merchant to reimburse BFC the amount paid or may deduct that payment from further payments to be made to the Merchant.

10. TERMINAL RENTAL

- 10.1 The provisions of this clause 10 shall apply to the rental of any Terminals by the Merchant from BFC.
- 10.2 The Merchant agrees to rent the Terminal from BFC, subject to clause 13.2, for the term of 36 months or such other term as the parties shall specify in the Merchant Information or otherwise agree in writing commencing on the date of delivery of the Terminal to the relevant Site. The Merchant shall pay all applicable delivery fees, establishment fees and rental fees for any Terminal at the Site(s) at BFC's then-applicable rates.
- 10.3 By accepting and/or using a Terminal, the Merchant agrees to the terms of the relevant Terminal supplier's EULA. The Merchant acknowledges that the supplier has the discretion to refuse to provide its solutions, products or technical support ("**Terminal Supplier Services**") to any potential end user and that the hire of the Terminal shall end, and BFC shall have no liability whatsoever to the Merchant in connection with the rental of the Terminal, if the supplier of the relevant Terminal refuses to provide, or terminates, the Terminal Supplier Services or the EULA, except to the extent that the liability is caused by BFC's fraud, negligence or wilful misconduct (including that of BFC's officers, employees, contractors or agents).
- 10.4 The Terminal will only be used, unless otherwise agreed in writing, for the purpose of permitting a Card User to receive Authorised Supplies purchased by an Account Holder using a Valid Card in accordance with the terms of the Merchant Agreement and the EULA.
- 10.5 Terminal(s) delivered to the Site(s) are to be self-installed by or for the Merchant with telephone support available from BFC during BFC's usual business hours. Should onsite support be required, additional fees and charges may apply. The Merchant must provide BFC (and its contractors and personnel), upon reasonable request, with access to the Site(s) for any reason related to the Terminals, including, without limitation, if the Merchant fails to

return the Terminal in accordance with clause 10.9. The Merchant warrants that it is the owner of the Site(s) or has the legal right to provide access. The Merchant must notify and provide BFC with any security, health and safety or other relevant policies or procedures for the Site(s) before its access.

- 10.6 The Merchant agrees to inform BFC as soon as practicable of any material security or other issue arising from the use of the Terminal of which it becomes aware.
- 10.7 BFC will make a unique “log-in” and “password” available to the Merchant for a web portal (as and when available) for fall-back processing by entering the Transaction details online when the Terminal is offline or otherwise unavailable.
- 10.8 All consumables required for the operation of Terminals are to be provided by the Merchant at the Merchant’s own cost.
- 10.9 The Merchant must, at the Merchant’s cost, return the Terminal to BFC or to the relevant supplier of the Terminal, as BFC shall reasonably direct, in good working order and condition (fair wear and tear excepted) within five (5) Business Days of the expiry of the rental term or earlier termination of the Merchant Agreement in accordance with this clause 10.
- 10.10 BFC or its licensors retain legal and beneficial title in the Terminal and associated intellectual property at all times and the Merchant may not modify, destroy, damage or dispose of the Terminals without the consent of BFC, which will not be unreasonably withheld. If any Terminal is lost, damaged or destroyed or ceases to operate, the Merchant must promptly notify BFC, and the Merchant will be responsible for any reasonable costs that BFC incur to repair or replace the Terminal.
- 10.11 The Merchant will bear the risk of, be responsible for, and must promptly notify BFC of all Loss (including theft) of or damage to the Terminal from the time that they are first delivered to the Site(s) until the time that they are delivered back to BFC or, at BFC’ direction, the relevant supplier of the Terminal. The Merchant will hold reasonable insurance to cover key business risks during the term of the Merchant Agreement.
- 10.12 The Merchant shall indemnify BFC and its employees, agents and contractors in respect of all liabilities, costs and expenses, claims or demands incurred by BFC or any third party arising from any of the Merchant’s acts or omissions or negligence related to or arising out of the use of the Terminals by the Merchant, its employees, agents and contractors and any breach by the Merchant, or its employees, agents and contractors, of the EULA, except to the extent caused by BFC’s fraud, negligence or wilful misconduct (including that of BFC’s officers, employees, contractors or agents).
- 10.13 Notwithstanding any other term of the Merchant Agreement, BFC may terminate the rental and require the immediate return of Terminals if it reasonably suspects that:
 - (a) the Terminals may be used for an unlawful purpose;
 - (b) the Terminals may be used in breach of the Merchant Agreement;
 - (c) the Terminals may be used in breach of the EULA or
 - (d) damage to the Terminals is likely to occur,and in the event of such termination the provisions of clause 13.2 shall apply.

11. PPSA

- 11.1 The Merchant:
 - (a) grants BFC a security interest in the Terminals to secure the payment (including the Terminal Rental) and performance obligations of the Merchant in connection with the Terminals;
 - (b) acknowledges the Merchant Agreement constitutes a security agreement for the purposes of the PPSA; and

- (c) will provide BFC with all information reasonably required for BFC to register a financing statement under the PPSA.

11.2 To the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (i) BFC need not comply with sections 95, 121(4), 125, 130, 132(3)(d), 132(4) or 135; and
 - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, BFC need not comply with sections 132 and 137(3);
- (c) the Merchant agrees not to exercise its rights to make any request of BFC under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure.

12. PRIVACY

12.1 The Merchant must, in respect of Personal Information:

- (a) comply with the Privacy Requirements, including in relation to data security and data quality;
- (b) only use and disclose Personal Information to the extent necessary for the purposes of the Merchant Agreement;
- (c) promptly notify BFC of any actual, apparent or anticipated breach or inability to comply with this clause 12, or misuse or loss of, interference with or unauthorised access to, modification of or disclosure of Personal Information;
- (d) give BFC or its nominee or any relevant regulatory authority access to all Site(s), personnel and materials of the Merchant to assess the Merchant's compliance with all or any part of this clause 12; and
- (e) ensure that any person who is authorised by the Merchant to have access to any Personal Information complies and agrees to comply with equivalent obligations to the Merchant's obligations in this clause 12.

12.2 The Merchant must protect the confidentiality and security of Electronic System Vouchers and Card details in accordance with the Privacy Requirements, even where those are not Personal Information.

12.3 This clause 12 survives termination or expiry of the Merchant Agreement.

13. TERM

13.1 This Merchant Agreement shall terminate upon the expiration of 20 (twenty) Business Days' notice of termination given by either party to the other.

13.2 The rental of Terminals may be terminated by either party on 20 (twenty) Business Days' notice provided that:

- (a) where the Merchant terminates any Terminal rental before the expiry of the then-current term; or
- (b) where BFC terminates the Terminal rental in accordance with clause 10.13, and if the Merchant is:
 - (c) not a Small Business, the following shall be payable by the Merchant immediately upon giving such notice:

- (i) any applicable terminal return fee specified in the Merchant Information or Special Conditions; and
 - (ii) the rental fees for the remainder of that term;
- (d) a Small Business, the following shall be payable by the Merchant immediately upon giving such notice:
- (i) any applicable terminal return fee specified in the Merchant Information or Special Conditions; and
 - (ii) the lower of:
 - (aa) the Terminal Refurbishment Fee; and
 - (bb) the rental fees for the remainder of that term.

13.3 If the Merchant Agreement is terminated, both parties shall remain liable for obligations arising up to the date of termination.

13.4 Notwithstanding any other provisions of the Merchant Agreement, the termination or expiration of the Merchant Agreement is without prejudice to the accrued rights of the parties under it.

14. PROCESSING

- 14.1 On each Processing Date, BFC will process requests for the payment of Valid Charges which have been received by it in the Processing Period. BFC's determination as to when such requests are received (and whether they are received prior to 9.00am on the relevant Processing Date) shall be final and binding on the Merchant.
- 14.2 Each Valid Charge processed on a Processing Date shall, subject to the other terms of the Merchant Agreement, be paid by BFC on the Selected Payment Date. Acting reasonably (and with notice to the Merchant) in reimbursing any such charge and in order to protect its legitimate business interests, BFC shall be entitled to deduct the relevant Merchant Discount Rate and Rebate (as applicable).
- 14.3 In order to protect its legitimate business interests and acting reasonably (with notice to the Merchant), BFC shall be entitled to deduct from any sum due and owing to the Merchant any installation fees, rental or other charges payable to BFC in connection with Terminals.
- 14.4 Subject to clause 3, from time to time, by notice to the Merchant in the manner specified in clause 3.1, the rates of the Merchant Discount Rate and/or Rebate, as well as the Change of Ownership Fee and the Merchant Set-Up Fee, advised to the Merchant may be altered.

15. STATIONERY OR OTHER EQUIPMENT

All stationery or other equipment supplied by BFC to the Merchant shall remain the property of BFC and shall be returned upon termination of the Merchant Agreement.

16. NO LIABILITY

BFC shall be under no liability to the Merchant for any default or failure to perform its obligations under the Merchant Agreement, if such default or failure is due to circumstances beyond the reasonable control of BFC (and except to the extent caused by the fraud, negligence or wilful misconduct of BFC or of its officers, employees, contractors or agents).

17. FORCE MAJEURE

BFC shall be under no liability to the Merchant for failure to perform its obligations outlined in the Merchant Agreement if such failure is due to conditions beyond the reasonable control of BFC, its agents, subcontractors or employees.

18. WAIVER

A failure to exercise, a delay in exercising, or a partial exercise of a right created under or arising from a breach of the Merchant Agreement or on the occurrence of a termination event does not result in a waiver of that right.

19. ASSIGNMENT

- 19.1 BFC may, without the consent of the Merchant by notice to the Merchant, assign, transfer, subcontract, or otherwise deal with all or any part of its rights or obligations under the Merchant Agreement to any person.
- 19.2 The Merchant may not assign or transfer any of its rights or obligations under the Merchant Agreement without the consent, in writing, of BFC, which will not be unreasonably withheld. Any change in the effective management or control of the Merchant shall be deemed to be an assignment for the purposes of this clause 19.2.
- 19.3 If the Merchant assigns its rights under the Merchant Agreement, and BFC either inadvertently or otherwise makes a payment in respect of any changes to the assignor instead of the assignee or vice versa, any dispute concerning entitlement to the receipt of such payment shall be settled directly between the assignor and the assignee without recourse to BFC.

20. NOTICES

- 20.1 All communications between the parties shall be given in legible writing in English and be deemed to have been given by the sender and received by the addressee:
- (a) if delivered in person, when delivered to the addressee;
 - (b) if posted, seven (7) Business Days from and including the date of posting to the addressee, provided that the notice is addressed to the last known business address of the other party;
 - (c) if emailed, on the next Business Day after the day on which notice is sent to the last known electronic address of the other party;
 - (d) where published on the website 10 (ten) Business Days after publication, provided that any notice received after 5.00pm on a Business Day or on a day that is not a Business Day will be deemed to have been received on the next Business Day.
- 20.2 The Merchant must notify BFC of any change to its name, registered office or principal place of business, address details, or of any change in its directors or officers as soon as possible upon a change being effected.

21. GOVERNING LAW AND JURISDICTION

This Merchant Agreement is governed by the laws of Victoria. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

22. UNENFORCEABLE PROVISION

A provision of, or the application of a provision of, the Merchant Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction. Where a clause in the Merchant Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the Merchant Agreement.

23. FURTHER ASSURANCES

The Merchant will, when requested by BFC, promptly do, sign and deliver everything reasonably required to give full effect to these terms and conditions and the transactions contemplated by the Merchant Agreement.

24. SPECIAL CONDITIONS

Special Conditions (if any) are part of and incorporated into the Merchant Agreement. If there is any inconsistency between these terms and conditions and the Special Conditions, the Special Conditions will prevail to the extent of the inconsistency.

25. GST

- (a) Any reference in this clause 25 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), including any successor or functionally equivalent replacement of such law, is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with the Merchant Agreement does not include an amount on account of GST payable or notionally payable in respect of the supply (being “**GST Exclusive Consideration**”) except as provided under this clause 25.
- (c) Any amount referred to in the Merchant Agreement (other than an amount referred to in clause 25(i)) which is relevant in determining payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST-exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (“**First Party**”) under or in connection with the Merchant Agreement, the consideration to be provided by the other party (the “**Second Party**”) under the Merchant Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The Second Party must pay the additional amount payable under clause 25(d) to the First Party at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) Unless clause 25(g) applies, the First Party must issue a tax invoice to the Second Party at or before the time of payment of the consideration for the supply as increased on account of GST under clause 25(d) or at such other time as the parties agree.
- (g) The parties agree that BFC will issue the Merchant with a recipient-created tax invoice (“**RCTI**”) or, if applicable, a recipient-created adjustment note (“**RCAN**”) in accordance with the following terms and conditions:
 - (i) the taxable supplies to be referenced within the RCTI or RCAN are Authorised Supplies sold by the Merchant to BFC;

- (ii) at the time each RCTI or RCAN is issued, a Merchant Agreement, documenting the RCTI arrangements between BFC and the Merchant (such as those set out in this clause 25(g)) will be current;
 - (iii) each party acknowledges that the other party is registered for GST when it enters into the Merchant Agreement, documenting the RCTI arrangements between BFC and the Merchant;
 - (iv) BFC will issue the Merchant with a RCTI or a RCAN in respect of the Authorised Supplies noted in clause 25(g)(i);
 - (v) the Merchant will not issue tax invoices or adjustment notes in respect of the Authorised Supplies noted in clause 25(g)(i);
 - (vi) the Merchant will notify BFC if it ceases to be registered for GST within 10 (ten) Business Days of the registration ceasing; and
 - (vii) BFC will notify the Merchant if it ceases to be registered for GST within 10 (ten) Business Days of the registration ceasing.
- (h) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with the Merchant Agreement, the First Party must determine the net GST in relation to the supply (taking into account any adjustment), and if the net GST differs from the amount previously paid under clause 25(e), the amount of the difference must be paid by, refunded to or credited to the Second Party, as applicable. The entitlement to be paid, refunded, or credited the amount of the difference is subject to the First Party issuing an adjustment note to the Second Party unless clause 25(g) applies and a RCAN is issued.
- (i) If one of the parties to the Merchant Agreement is entitled to be reimbursed or indemnified for a Loss incurred in connection with the Merchant Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that Loss and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 25(d).



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