

**Effective:** from 1 July 2024

## **BUSINESS FUEL CARDS**

### **ACCOUNT HOLDER AND CARD USER TERMS AND CONDITIONS**

**IMPORTANT:** The Account Holder must read, and procure that each Card User reads, these Terms and Conditions carefully. By accepting or using Cards issued by BFC, the Account Holder and each Card User agree to be bound by these Terms and Conditions.

#### **1 DEFINITIONS**

**“Account”** means the account opened by BFC in the name of the Account Holder under the Agreement in respect of which transactions between BFC and a Card User are debited and payments made by the Account Holder to BFC are credited.

**“Account Holder”** means a person, company, corporation, firm or association who, by applying for a Card, has entered into the Agreement.

**“Agreement”** means:

- (a) the Application Form;
- (b) these Terms and Conditions;
- (c) the Personal Guarantee(s) (if any);
- (d) the direct debit request service agreement; and
- (e) the Special Conditions (if any),

each as may be amended from time to time in accordance with their terms.

**“Application Form”** means either:

- (a) an application for an Account submitted to BFC by the Account Holder; or
- (b) a request by the Account Holder (however expressed, whether verbally, in writing, or by electronic means) for issuing a Card.

**“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 payment devices) made available by BFC to the Account Holder for use by Card Users from time to time.

**“Card Loss Notice Date”** has the meaning set out in clause 6.2.

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

**“Charge”** means:

- (a) any sum from time to time determined and charged by BFC in connection with an Account; and/or
- (b) any sum from time to time determined and charged by BFC in connection with a Card; and/or

- (c) any amount incurred by an Account Holder or a Card User in respect of the purchase of Authorised Supplies using a Card, determined by application of the Supply Price (subject to any discount that BFC may grant from time to time).

**“Charge Period”** means the period determined by BFC and notified to the Account Holder, in relation to which reports and Statements of Charges for the Account Holder or each Card User are provided by BFC.

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

**“Credit Limit”** means any limit imposed by BFC from time to time on the value of Authorised Supplies which may be purchased using the Account or any Card during a Charge Period.

**“Discount”** means any discount or rebate, however described, offered, or provided by BFC at its sole discretion to the Account Holder in connection with any Charge.

**“Due Amount”** has the meaning set out in clause 15.

**“Due Date”** has the meaning set out in clause 15.

**“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.

**“Personal Guarantee”** means the guarantee (or guarantees) provided in favour of BFC in respect of the obligations of the Account Holder under these Terms and Conditions or the Agreement.

**“Personal Identification Number”** means any unique number or code assigned to a Card for security purposes.

**“Personal Information”** means personal information within the meaning of the *Privacy Act 1988* (Cth), including any successor or functionally equivalent replacement of such law.

**“Privacy Policy”** means BFC privacy policy, being the BFC Privacy Policy (Australia) available on the BFC website ([bfcards.com.au/privacy-policy/](http://bfcards.com.au/privacy-policy/)).

**“Sales Receipt”** means a receipt in the form provided by BFC following the use of a Card.

**“Small Business”** means an Account Holder who is a party to the Agreement, where the Agreement is 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 other than those specified in these Terms and Conditions that BFC and the Account Holder have agreed, in writing, to form part of the Agreement.

**“Statement”** means the consolidated tax invoice produced by BFC for each Charge Period that details all Charges owing to BFC by the Account Holder.

**“Supplier”** means a person, company, corporation, firm, or association appointed by BFC to deliver Authorised Supplies to Card Users on behalf of BFC.

**“Supply Price”** means a price for the purchase of the Authorised Supplies as either:

- (a) agreed between BFC and the Account Holder;
- (b) set or amended by BFC (from time to time); or
- (c) notified by BFC to an Account Holder (from time to time).

**“Terms and Conditions”** means these terms and conditions.

**“Vehicle”** means either:

- (a) a vehicle or piece of equipment, the particulars of which have been notified to BFC by the Account Holder, associated with a particular Card or by a Card User; or
- (b) a vehicle or piece of equipment hired by a Card User using a Card.

**“Withdrawn Card Receipt Date”** has the meaning set out in clause 7.3.

## **2 ACCEPTANCE OF THESE TERMS AND CONDITIONS (AND THE AGREEMENT)**

2.1 The Agreement is a contract between the Account Holder and BFC.

2.2 The Account Holder acknowledges that:

- (a) each Card is issued to the Account Holder;
- (b) each Card User acts as the Account Holder’s agent when using a Card;
- (c) the Account Holder is responsible for ensuring that any person the Account Holder authorises to use a Card is aware of their obligations as the Account Holder’s agent under these Terms and Conditions and the acknowledgements given by the Account Holder on their behalf;
- (d) BFC does not make any commitments about the availability of or supply of Authorised Supplies; and
- (e) the first use of a Card, or acceptance of the Agreement during the application process (whichever is earliest), confirms an Account Holder’s acceptance of these Terms and Conditions.

## **3 VARIATIONS TO THESE TERMS AND CONDITIONS (AND THE AGREEMENT)**

3.1 Subject to clauses 3.2, 3.3, and 3.5, BFC reserves the right to:

- (a) unless otherwise agreed or unless otherwise required by law and for the purposes of BFC's legitimate business interests only, vary:
  - (i) any Charges at any time by:
    - (A) amending its schedule of Charges and publishing them on its website ([www.bfcards.com.au](http://www.bfcards.com.au)); or
    - (B) amending any Special Conditions and notifying them to the Account Holder by giving at least five (5) Business Days’ notice in writing (including by electronic means) to the Account Holder, which shall be deemed to be notice to every Card User; and
  - (ii) any Discounts at any time and giving at least five (5) Business Days’ notice in writing (including by electronic means) to the Account Holder, which shall be deemed to be notice to every Card User; and
- (b) vary the 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, industry standard, guidance or general industry practice;
  - (ii) to reflect any decision of a court, ombudsman or regulator;
  - (iii) to respond to changes in the cost of providing the Account and Card;
  - (iv) to discontinue a product in which case BFC may change the terms of the Account Holder's product to reflect a different product with similar features to the discontinued product;

- (v) to make these Terms and Conditions clearer or to add features; or
- (vi) to protect its legitimate business interests,

where BFC will:

- (c) publish the new or amended terms and conditions on its website ([www.bfcards.com.au](http://www.bfcards.com.au)); or
- (d) give at least five (5) Business Days' notice in writing (including by electronic means) to the Account Holder, which shall be deemed to be notice to every Card User, or such longer period as required by law,

unless the Account Holder is a Small Business and the change is adverse to the Account Holder, in which case BFC will notify the Account Holder at least 20 (twenty) business days before the effective date of the change.

3.2 Subject to clauses 3.3 and 3.5, BFC also reserves the right to:

- (a) vary any Charges;
- (b) apply new Charges; or
- (c) vary any Discounts,

charged or provided to the Account Holder following:

- (d) a breach of the Agreement by the Account Holder (and if the Account Holder is a Small Business, that breach by its nature is material or is likely to have a materially adverse impact on, either, the Account Holder's ability to meet their financial obligations, or BFC's security risk (or BFC's ability to assess either) and the Account Holder has not remedied that breach within the relevant 20 (twenty) Business Days (or it is not capable of being remedied); or
- (e) a change to the Account Holder's relative credit risk level (as defined by BFC's credit bureau) such that the Account Holder's relative credit risk level becomes less favourable,

where BFC will:

- (f) publish the new or amended terms and conditions on its website ([www.bfcards.com.au](http://www.bfcards.com.au)); or
- (g) give five (5) Business Days' notice in writing (including by electronic means) to the Account Holder, which shall be deemed to be notice to every Card User, or such longer period as required by law.

3.3 Use of a Card by the Account Holder after the expiry of the relevant notice period will be deemed to be acceptance of the new or amended Agreement. The Account Holder (and all Card Users) are bound by any such amendment unless the Account Holder elects to terminate the Agreement.

3.4 BFC is not obliged to give the Account Holder advance notice if an immediate change to these Terms and Conditions is deemed necessary for the security of BFC's systems or individual accounts.

3.5 If the Account Holder is unhappy with any adverse change BFC has made to these Terms and Conditions or any Charges or Discount, the Account Holder can close their account before the change takes effect without penalty.

## 4 AUTHORISED CARD USERS

4.1 If BFC accepts an Application Form, BFC will:

- (a) open an Account in the Account Holder's name; and
- (b) (at BFC's reasonable discretion), issue the number of Card(s) the Account Holder applied for.

- 4.2 BFC may (at BFC's reasonable discretion), issue additional Card(s) requested by the Account Holder from time to time.
- 4.3 The Account Holder shall provide BFC with:
- (a) the details for each person authorised to administer to the Account Holder's Account;
  - (b) the details for each person authorised by the Account Holder to use a Card;
  - (c) if authorised only for a specific Vehicle, the registration details of that Vehicle; and
  - (d) the details for any other particulars required by BFC.

## 5 COMPLIANCE BY CARD USERS

- 5.1 The Account Holder shall:
- (a) issue a Card to each Card User; and
  - (b) ensure that it and each Card User comply with:
    - (i) the Agreement;
    - (ii) these Terms and Conditions; and
    - (iii) any other instructions on the use of a Card as may be given by BFC to the Account Holder from time to time, including keeping any Personal Identification Number secure and not exceeding any Credit Limit.
- 5.2 The Account Holder is responsible for all issued Cards and must monitor the use of the Cards by each Card User and ensure each Card is stored in a safe place.

## 6 LOSS, THEFT, OR DESTRUCTION OF A CARD

- 6.1 If a Card is lost, stolen, or destroyed or otherwise ceases to be in the possession of the Account Holder or a Card User, the Account Holder shall:
- (a) promptly cancel the Card; and
  - (b) notify BFC by the fastest available means of communication, giving all available information as to the circumstances of such loss or theft; and
  - (c) confirm all such information to BFC in writing as soon as practicable; and
  - (d) If applicable, take all reasonable steps that BFC may require to assist in the recovery of the lost or stolen Card.
- 6.2 The Account Holder:
- (a) shall be liable for all Charges arising prior to receipt of the initial notification to BFC in accordance with clause 6.1(b) (the "**Card Loss Notice Date**"), including any purchases in excess of the Credit Limit; but
  - (b) shall not be liable for any Charges arising after the Card Loss Notice Date; and
  - (c) agrees that a Card will no longer be valid (and will be cancelled) from the Card Loss Notice Date.

## 7 DE-AUTHORISATION OF A CARD OR A VEHICLE

- 7.1 If a Card User ceases, for any reason, to be authorised by the Account Holder to use a Card, the Account Holder shall:
- (a) promptly cancel the Card;

- (b) notify BFC; and
  - (c) if possible, return the applicable Card.
- 7.2 If any Vehicle ceases to be authorised by the Account Holder, the Account Holder shall:
- (a) promptly de-authorise the Vehicle; and
  - (b) notify BFC.
- 7.3 The Account Holder:
- (a) shall be liable for all Charges arising prior to BFC being notified under clauses 7.1(b) or 7.2(b) (the “**Withdrawn Card Receipt Date**”), including any purchases in excess of the Credit Limit; but
  - (b) shall not be liable for any Charges arising after the Withdrawn Card Receipt Date; and
  - (c) agrees that a Card will no longer be valid (and will be cancelled) from the Withdrawn Card Receipt Date.

## **8 INDEMNITIES FROM THE ACCOUNT HOLDER**

The Account Holder shall indemnify BFC against, and will immediately pay to BFC on demand without set-off or counter-claim (except to the extent the Account Holder has a right of set-off granted by law which BFC cannot exclude by agreement), any Loss or Claim suffered or incurred by BFC arising from:

- (a) the loss, theft or fraudulent or other misuse of a Card by a Card User or any other person, which occurs prior to the Card Loss Notice Date or Withdrawn Card Receipt Date;
- (b) a breach of contract, including a breach of these Terms and Conditions or the Agreement;
- (c) tort, including negligence, breach of statutory duty, or breach of equitable duty;
- (d) BFC (directly or indirectly) having agreed to supply or not supply a Card to the Account Holder, including but not limited to legal and other professional costs and disbursements on a full indemnity basis of assessing the Account Holder's credit application;
- (e) recovering (or attempting to recover) any amounts due to BFC under these Terms and Conditions or the Agreement from the Account Holder, a Card User, a party to a Personal Guarantee or any other person;
- (f) the supply or non-supply of Authorised Supplies;
- (g) damage caused to the property of a Supplier or third party by a Card User or the Account Holder in relation (directly or indirectly) to the Authorised Supplies,

except to the extent that the Loss or Claim is caused by BFC's fraud, negligence or wilful misconduct (including that of BFC's officers, employees, contractors or agents), where:

- (h) BFC need not make any payment before enforcing any right of indemnity under this clause 8; and
- (i) this clause 8 is for the benefit of and intended to be enforceable by BFC.

## **9 RETURN OF A CARD**

Each Card is at all times the property of BFC and shall be returned or destroyed by the Account Holder promptly upon the request of BFC at any time, or for any reason, without an obligation on BFC to reissue another Card.

## **10 CANCELLATION OR SUSPENSION OF A CARD OR AN ACCOUNT**

10.1 BFC may cancel or suspend any Card or Account or restrict the use of any Card or Account to the Account Holder where:

- (a) BFC has reason to suspect an existing or anticipated breach of these Terms and Conditions or the Agreement, or for any other reason; and
- (b) if the Account Holder is a Small Business:
  - (i) such breach is, in BFC's reasonable discretion, likely to have an impact on the Account Holder's ability to continue to perform its obligations under the Agreement; and
  - (ii) BFC has given reasonable notice to the Account Holder, unless BFC needs to manage an immediate and material risk in which case no notice may be given.

10.2 BFC is entitled to disclose to any Supplier or any other person the reason for the suspension, restriction, or invalidity of any Card or Account. To the maximum extent permitted by law, the Account Holder waives (and, if required by BFC, shall procure that each Card User shall waive) all rights of action against BFC in relation to the disclosure of such information, unless such disclosure is given unlawfully, fraudulently, or negligently.

10.3 BFC may, at any time, disclose to any third party information concerning a Card or Account as may be necessary for the operation of a Card or Account (or both).

## **11 PURCHASING AUTHORISED SUPPLIES USING A CARD**

11.1 The Account Holder shall procure that whenever using a Card each Card User:

- (a) verifies the Authorised Supplies being purchased using a Card (though a Sales Receipt, by entering a Personal Identification Number, or otherwise);
- (b) verifies all statements, amounts, and other information related to the Authorised Supplies are true and correct in all respects;
- (c) verifies the purchase reflects a genuine commercial sale and purchase transaction between BFC and the applicable Card User;
- (d) confirms there are no collateral contracts or other representations in existence affecting the provision of the Authorised Supplies to the applicable Card User;
- (e) is satisfied that the transaction complies in all respects with the requirements of any law or regulation; and
- (f) is satisfied that the Card is valid, and is in good physical working condition.

11.2 To the extent permitted by law and subject to clause 21, BFC shall not be liable to the Account Holder for any Loss arising directly or indirectly from:

- (a) a purchase made by an authorised Card User;
- (b) a failure by a Supplier to accept a Card;
- (c) any act or omission by a Supplier; or
- (d) any defect or deficiency in any Authorised Supplies acquired using a Card,

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).

## 12 COLLECTION AND HANDLING OF PERSONAL INFORMATION

The Account Holder represents and warrants that it has ensured (or will ensure) that:

- (a) each Card User; and
- (b) any person whose Personal Information the Account Holder discloses or makes accessible to BFC,

agrees to the collection and handling of their Personal Information by BFC as set out in BFC's Privacy Policy.

## 13 OWNERSHIP OF AUTHORISED SUPPLIES BEFORE AND AFTER PAYMENT TO BFC

13.1 BFC acknowledges that the Account Holder shall, subject to clauses 13.2 and 13.3, have the property in the Authorised Supplies and shall be entitled to the benefit of all terms and warranties relating to the Authorised Supplies.

13.2 Until the Account Holder has paid for any Authorised Supplies (and whether or not the due date for payment has passed), in addition to any rights BFC may have, at its reasonable discretion, BFC is authorised by the Account Holder and Card User without notice to the Account Holder, to enter the Account Holder's premises (or any premises under the control of the Account Holder or as an agent of the Account Holder in which Authorised Supplies are stored) and use reasonable force to take possession of all the Authorised Supplies without liability for any trespass, negligence, conversion, or payment of any compensation to the Account Holder whatsoever, 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).

13.3 On retaking possession of goods, BFC may elect to:

- (a) refund to the Account Holder any part payment that may have been made and to credit the Account Holder's account with the value of the goods less any charge for recovery of the goods; or
- (b) resell the goods.

## 14 BFC'S LIABILITY

14.1 To the maximum extent permitted by law, BFC shall not be liable to the Account Holder or a Card User for:

- (a) the unavailability of, or inability to access or use, or any defects in, any Authorised Supplies;
- (b) any Loss or Claim, however caused, suffered, or incurred by the Account Holder or a Card User, in connection with any defects in any Authorised Supplies purchased or any Authorised Supplies improperly made or supplied to a Card User or for any mechanical failure of a Vehicle resulting from such defects;
- (c) any action to cease supply;
- (d) a Card User being unable to access or use any Authorised Supplies as a result of a Credit Limit being reached or exceeded;
- (e) any error in, omission from, or delay in the provision of any information (including data) provided, or made available, to the Account Holder or Card User in connection with the Authorised Supplies; or



- (f) any other Loss or Claim whatsoever in connection with the purchase or use of the Authorised Supplies by the Account Holder or a Card User,

whether directly or indirectly caused and whether suffered by the Account Holder, a Card User or any third party, 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).

14.2 Notwithstanding any other provision of the Agreement:

- (a) BFC's total liability to the Account Holder or any Card User under the Agreement (in aggregate, tort (including negligence), under statute, or otherwise) shall be limited to:
- (i) the cost of having the services supplied again, determined by BFC acting reasonably; or
  - (ii) a sum which is equivalent to the aggregate Charges paid by the Account Holder to BFC in the three (3) months before the incident giving rise to the liability occurred; and
- (b) BFC shall not be liable to the Account Holder or any Card User for any loss of profit, loss of opportunity, indirect loss, or consequential loss resulting from any breach by BFC of its obligations under the Agreement, 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).

14.3 Without limiting any other provision of the Agreement and subject to clause 21.2 of the Agreement, any term, condition or warranty statutory or otherwise that is not expressly written in the Agreement is excluded (unless the law provides that it may not be excluded).

## 15 BFC CHARGES

Immediately following the conclusion of each Charge Period, the Account Holder will be issued a Statement, which will set out all the Charges for that Charge Period and the total amount owing to BFC (the "**Due Amount**"). All Charges, including Charges from all Card Users, are due and payable to BFC by the date specified on the Statement (the "**Due Date**").

## 16 PAYMENTS BY THE ACCOUNT HOLDER TO BFC

16.1 The Account Holder shall make payment for the Due Amount either by:

- (a) authorising its bankers to pay by a direct debit initiated by BFC;
- (b) a debit card or credit card, if authorised by BFC; or
- (c) direct credit, if authorised by BFC.

16.2 Where payment of the Due Amount is not made in full by the Account Holder on the relevant Due Date, any monies received by BFC shall be applied to the Due Amount in such a way as BFC shall determine, in its reasonable discretion.

16.3 Payment in full of a Due Amount must reach BFC no later than the Due Date. Any payment made will not be deemed to have been received by BFC until the date on which such payment is actually credited to BFC's bank account.

16.4 If a payment is overdue or dishonoured, BFC will charge the Account Holder any applicable Charges, including but not limited to:

- (a) interest and overdue and/or dishonour fees on the overdue or dishonoured Due Amount, as set out on BFC's website ([www.bfcards.com.au](http://www.bfcards.com.au)); and/or

- (b) interest and overdue and/or dishonour fees on any new amounts owing to BFC since the Due Date; and/or
- (c) any other Charges (notified to the Account Holder by BFC from time) to compensate BFC for additional reasonable administrative, legal or borrowing costs in dealing with an overdue or dishonoured payment,

but without prejudice to and unrelated to the right of BFC to charge interest or any other rights and remedies BFC may have. The Account Holder's liability to pay such Charges will be in addition to the Account Holder's liability to pay all Due Amounts. The right to require payment of interest is without prejudice to any other rights the BFC may have against the Account Holder at law or in equity.

- 16.5 A failure to pay any amount under the Agreement is not remedied until both the amount unpaid and any Charges payable have been paid in full.
- 16.6 BFC may, acting reasonably, agree (on request) to accept payments in respect of any Charges using an arranged instalment plan. Any such plan must:
- (a) be in writing (including by email);
  - (b) approved by both the Account Holder and BFC; and
  - (c) confirm that the Account Holder must pay BFC a finance charge (as determined by BFC), from the time the Charges were incurred until the final payment relating to those Charges has been made.

## 17 UNARRANGED TEMPORARY CREDIT EXTENSIONS

If the Account Holder allows a Card User to continue to use a Card where the Credit Limit has been reached or exceeded:

- (a) BFC will deem such use to be a request for an unarranged temporary credit extension where such a request will be considered at the reasonable discretion of BFC, taking into consideration the Account Holder's account structure, payment history, and any credit information if available; and
- (b) the Account Holder will incur additional Charges (as set out on BFC's website ([www.bfcards.com.au](http://www.bfcards.com.au))) for exceeding their Credit Limit; and
- (c) BFC will revoke existing Discounts provided to the Account Holder during the applicable Charge Period.

## 18 CREDIT CHECKS AND REPORTING

18.1 The Account Holder consents to BFC, in accordance with the law and its Privacy Policy:

- (a) performing a credit check on the Account Holder
- (b) performing a credit check on any of the Account Holder's guarantors;
- (c) disclosing the Account Holder's or any of its guarantor's personal and credit information to credit reporting bodies and other credit providers,

recognising that the purpose of this credit check is to assess the Account Holder's application for a credit account.

18.2 The right to perform credit checks in clause 18.1 extends to a right for BFC to perform credit checks in the future for the purpose of reviewing credit increase applications, reviewing the Credit Limit on the Account, and collecting any payments owed by the Account Holder to BFC.

18.3 Where it is appropriate to do so, BFC may also disclose credit information relating to the Account Holder and any of its guarantors to credit reporting bodies for the purpose

of reporting default and repayment history information about the Account Holder and any of its guarantors.

## 19 AML AND CTF CHECKS AND REPORTING

- 19.1 The Account Holder consents to BFC, in accordance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and its Privacy Policy, performing anti-money laundering (**AML**) and counter-terrorism financing (**CTF**) checks on the Account Holder, its directors and officers, its shareholders, its guarantors, any Card User, or any other person (as applicable).
- 19.2 The right to perform AML and CTF checks in clause 19.1 extends to a right for BFC to perform AML and CTF checks in the future to update any required reporting information.

## 20 TERM AND TERMINATION

- 20.1 The Agreement shall start from the date on which BFC accepts a completed Application Form from the Account Holder.
- 20.2 The Agreement shall continue unless or until terminated by 20 (twenty) Business Days' notice by either BFC or the Account Holder, or such lesser period as determined by BFC where BFC needs to manage a material and immediate risk, including a risk of loss to the Account Holder or BFC.
- 20.3 Notwithstanding any prior waiver of its rights, BFC may terminate the Agreement immediately and without notice in respect of the Account Holder in any of the following circumstances:
- (a) failure by the Account Holder to pay a Due Amount by the date which is three (3) Business Days after the Due Date for that Due Amount;
  - (b) breach by the Account Holder or a Card User of the Agreement where, in the reasonable opinion of BFC:
    - (i) the breach cannot be remedied; or
    - (ii) the breach can be remedied, but has not been remedied by the Account Holder or the applicable Card User within seven (7) Business Days after BFC gives notice specifying the default to the Account Holder;
  - (c) the Account Holder or a Card User:
    - (i) suspends payment of its debts generally;
    - (ii) is or becomes unable to pay its debts when they are due;
    - (iii) is or becomes unable to pay its debts (within the meaning of the *Corporations Act 2001* (Cth), including any successor or functionally equivalent replacement of such law);
    - (iv) becomes insolvent;
    - (v) ceases or threatens to cease business;
    - (vi) has a receiver, receiver and manager, administrator, controller, liquidator, trustee or similar official appointed over any of the assets or undertakings;
    - (vii) has an application or order is made for the winding up or dissolution of the Account Holder (or Card User, if applicable);
    - (viii) has a resolution passed, or any steps are taken to pass a resolution for the winding up or dissolving of the Account Holder (or Card User, if applicable), except for the purpose of an amalgamation or reconstruction; or

- (ix) enters into or attempts to enter into any arrangement, composition or compromise with, or assignment for the benefit of its creditors or any class of them; or
  - (x) enters into or attempts to enter into a compromise with creditors or (in the case of a limited liability company) going into liquidation except for a voluntary liquidation for the purposes of amalgamation or solvent reconstruction of the Account Holder.
- 20.4 The termination of the Agreement shall not affect the rights or liabilities of any party against the other to the date of such termination.
- 20.5 The outstanding balance on the Account shall immediately become due and payable on the termination of the Agreement, and the Account Holder shall promptly return all Cards to BFC.
- 20.6 All parties acknowledge that any provisions of the Agreement which, expressly or by implication, are intended to survive termination which shall continue in full force and effect notwithstanding the termination of the Agreement.

## **21 AUSTRALIAN CONSUMER LAW**

- 21.1 The Cards are a product intended to be used for business purposes and not for personal, domestic or household use. The parties acknowledge and agree that the goods and services supplied by BFC to the Account Holder or any Card User, and the Authorised Supplies acquired by the Account Holder or a Card User are all “supplied and acquired in trade”.
- 21.2 If any consumer guarantee given under the Australian Consumer Law as set out in Part 3-2 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) cannot be excluded in respect of goods or services not of a kind ordinarily acquired for personal domestic or household use or consumption, and subject to the qualifications contained in Section 64A of the Australian Consumer Law, BFC's liability for breach of that consumer guarantee will be limited to one of the following as reasonably determined by us:
- (a) in the case of goods:
    - (i) the replacement of goods or the supply of equivalent goods;
    - (ii) the repair of goods;
    - (iii) payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired; or
  - (b) in the case of services:
    - (i) the supplying of the services again; or
    - (ii) the payment of costs of having the services supplied again.
- 21.3 Liability for breach of any condition or warranty implied by any other applicable law is limited to one of the limits as determined by BFC and set out in 21.2(a) and 21.2(b) above.

## **22 RESALE RESTRICTION**

Unless and except to the extent otherwise agreed between BFC and the Account Holder in writing, the Account Holder must not:

- (a) promote, resell, or pass on the use or any pricing benefit of BFC to the Account Holder's related entities or any third parties; and/or

- (b) represent or otherwise imply that the Account Holder is a reseller or promoter of BFC's or any BFC services or that the Account Holder is otherwise entitled to pass on any pricing benefit of BFC to the Account Holder's related entities or any third party.

## **23 ACCOUNT HOLDER IS LIABLE FOR ALL CHARGES**

The Account Holder acknowledges and agrees that it is liable for all purchases made with, or Charges incurred by, the use of, a Card issued to the Account Holder and, subsequently, a Card User, 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).

## **24 FORCE MAJEURE**

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

## **25 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 Agreement or on the occurrence of a termination event does not result in a waiver of that right.

## **26 ASSIGNMENT**

- 26.1 BFC may, without the consent of the Account Holder by notice to the Account Holder, assign, transfer, subcontract, or otherwise deal with all or any part of its rights or obligations under the Agreement to any person.
- 26.2 The Account Holder may not assign or transfer any of its rights or obligations under the Agreement without the consent, in writing, of BFC, which will not be unreasonably withheld. Any change in the effective management or control of the Account Holder shall be deemed to be an assignment for the purposes of this clause 26.2.
- 26.3 If the Account Holder assigns its rights under the 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.

## **27 NOTICES**

- 27.1 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.
- 27.2 The Account Holder must notify BFC of any change to its name, registered office or principal place of business, address details (including address details associated with

any Card), or of any change in its directors or officers as soon as possible upon a change being effected.

- 27.3 The Account Holder acknowledges and agrees that it is responsible for all expenses and/or fees incurred in relation to its use of the Cards where BFC has relied on information provided by the Account Holder, and the Account Holder has not notified BFC that such information is incorrect, out-of-date, needs to be updated, or needs to be changed. BFC is not liable to the Account Holder for any loss suffered where this occurs, 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).

## 28 GOVERNING LAW AND JURISDICTION

These Terms and Conditions (and the Agreement) are governed by the laws of Victoria. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

## 29 UNENFORCEABLE PROVISIONS

A provision of, or the application of a provision of, the 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 Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the Agreement.

## 30 FURTHER ASSURANCES

The Account Holder will, and will procure that each Card User 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 Agreement.

## 31 SPECIAL CONDITIONS

Special Conditions (if any) are part of and incorporated into the 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.

## 32 GST

- (a) Any reference in this clause 32 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 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 32.
- (c) Any amount referred to in the Agreement (other than an amount referred to in clause 32(h)) which is relevant in determining a 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 Agreement, the consideration to

be provided by the other party (the “**Second Party**”) under the 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 32(d) to the First Party at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The First Party must issue a tax invoice to the Second Party of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 32(d) or at such other time as the parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with the 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 32(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.
- (h) If one of the parties to the Agreement is entitled to be reimbursed or indemnified for a Loss incurred in connection with the 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 32(d).



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