

# Air BP Card General Terms and Conditions

November 2018

## DEFINITIONS

The following terms, when capitalised, shall have the meaning defined hereinafter, unless the context otherwise requires:

**'Additional Delivery Services'** means opening of Buyer's Aircraft fuelling bay doors and/or filler caps, operating of Buyer's Aircraft fuelling valves, monitoring Buyer's Aircraft wing panel fuel gauges, closing of fuelling valves when desired quantity of Fuel according to written load instructions provided by Buyer is reached, and closing fuelling bay doors and/or filler caps on Buyer's Aircraft;

**'Ad Hoc Sale'** means on a case by case, as and when, basis and not the subject of a contract to supply;

**'Affiliated Company'** means such company, if any, as is described in Section 14;

**'Agreement'** means together the Card Contract letter, the Air BP MyInvoice Agreement, these General Terms and Conditions and any agreed amendments and substitutions to any of them from time to time;

**'Air BP Card'** means the identification card issued by Seller to its general aviation customers for the obtaining of Fuel at locations where Seller operates, or is represented by another person who accepts the Air BP Card, by the presentation of such identification card;

**'Air BP MyInvoice Agreement'** means the Electronic Invoicing Agreement;

**'Buyer's Aircraft'** means the aircraft owned, leased, operated or nominated by or on behalf of Buyer or Buyer's Affiliated Companies;

**'Buyer's Representative'** means any representative or purported representative of Buyer and includes pilots, flight engineers and other notified representatives of Buyer;

**'Carbon Tax'** means any duty, tax, impost, due, charge, cost, obligation or liability (present or future) in respect of the production, removal, reduction, avoidance, sequestration or emission into the atmosphere of greenhouse gases, including carbon or any carbon compound, however described, and includes any cost incurred to (i) acquire any permit, certificate or other instrument or (ii) obtain an offset to avoid or reduce payment;

**'Card Contract letter'** means the letter sent by Seller to Buyer and signed and returned by Buyer to Seller, setting out the Buyer and Seller's agreement as to the issue and use of the Air BP Card;

**'Clause'** means a clause or sub-clause of the Card Contract letter;

**'Deliverer'** means the entity in addition to Seller who, on behalf of Seller, performs Seller's supply and delivery obligations under the Agreement;

**'Delivery Note'** means a document, produced in writing or by electronic means, accurately and clearly stating the date of receipt, time, product description, and quantity delivered in kilograms, litres, gallons or barrels, in accordance with Seller's normal practices, and registration number of aircraft, together in all cases with any additional information the Parties may agree upon;

**'Delivery Point'** means the physical point at which Fuel is transferred from Seller to Buyer;

**'Delivery Services'** means Additional Delivery Services or Normal Delivery Services;

**'Fuel'** means aviation jet kerosene and aviation gasoline complying with the relevant Specification(s);

**'Gross Negligence'** means any act or omission done or omitted to be done with deliberate or reckless disregard for the reasonably foreseeable consequences of such act or omission;

**'Guarantor'** is defined in Section 6.7.1 of Part B of these General Terms and Conditions;

**'HSE Information'** means the information or environmental data provided by Seller to Buyer in relation to Fuel;

**'IATA'** means the International Air Transport Association;

**'Into-Plane Services'** means the service of physically delivering Fuel into Buyer's Aircraft;

**'Into-Aircraft'** means deliveries made directly into Buyer's Aircraft;

**'Normal Delivery Services'** means positioning of fuelling equipment ready for fuelling, bonding to Buyer's Aircraft, connecting hose/hoses to Buyer's Aircraft, delivery of Fuel as per Buyer's written instructions (exclusive of operating tank valves or switches), disconnecting hoses, and debonding cable from Buyer's Aircraft;

**'Restricted Party'** is any person who is identified from time to time by any government or legal authority under applicable trade sanctions, export controls, anti-money laundering, non-proliferation, anti-terrorism and similar laws as a person with whom trade or financial dealings and transactions by Buyer and/or its Affiliated Companies are prohibited or restricted.

**'Section'** means a section of these General Terms and Conditions;

**'Specifications'** means the specifications detailed in Section 2 of Part B of these General Terms and Conditions;

**'Taxes'** means all present and future duties, taxes, imposts and dues of any description whatsoever from time to time including, without limiting the generality of the preceding description, all Carbon Taxes.

## Part A: Conditions relating to issuance and use of the Air BP Card

### 1. Use

Presentation of an Air BP Card will entitle the Buyer and any authorised user of the Air BP Card to charge to the Air BP Card purchases of aviation fuel made at locations where the Seller operates or is represented by another person who accepts the Air BP Card. Presentation of the Air BP Card is no guarantee of availability of fuel which is subject to existing contracted demand, operational resource and maintenance of supply.

Unless the Buyer advises the Seller otherwise, any pilot of any aircraft to which the Air BP Card relates will be deemed to be an authorised user.

### 2. Validity and Issue of Replacement/Additional Air BP Cards

Suppliers of aviation fuel are instructed that aviation fuel may only be delivered against a valid Air BP Card. A valid Air BP card is one in respect of which:

- a. no notice of cancellation or other ground of invalidity has been given by the Seller to the supplier of aviation fuel in question;
- b. the expiry date on the Air BP Card has not passed; and
- c. the registration number on the Air BP Card corresponds to that on the aircraft in respect of which the aviation fuel is procured.

The issue by the Seller to the Buyer of any replacement and/or additional cards will be subject to, and made upon, the same terms and conditions as contained herein unless otherwise notified in writing to the Buyer by the Seller.

### 3. Purchase of Fuel

Subject to the terms of the Card Contract letter and these General Terms and Conditions, the Seller agrees to sell and deliver, or cause to be sold and delivered, as ad hoc sales (that is, on a non-contracted basis), and the Buyer agrees to purchase and pay for fuel so sold and delivered.

The Buyer is wholly responsible for ensuring that it orders or selects the correct grade of fuel for its aircraft, including for the avoidance of doubt and without limiting the generality of the foregoing, if the Buyer uses any self-serve pumps or other fuel delivery equipment. To the extent permitted by law, the Seller excludes all liability whatsoever for the selection of the correct fuel grade by the Buyer. The Seller makes no representation of any kind as to which grade of fuel is appropriate for any particular aircraft. The Buyer agrees to indemnify and does indemnify the Seller for all losses, liabilities, damages, costs (including lawyers' fees), expenses, demands and proceedings arising out of or in connection with or related to the Buyer's selection of fuel grade. The Buyer represents and undertakes that fuel purchased by the Buyer under the Card Contract letter is for delivery into the Buyer's aircraft and is not for the purpose of any onwards sale or distribution.

The Seller reserves the right to suspend deliveries if the terms of the Agreement are not complied with by the Buyer.

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## 4. Aviation Fuel Suppliers' Invoices

In situations where the Seller is acting as collection agent for the supplier of aviation fuel, the Seller undertakes to settle invoices rendered by the supplier of aviation fuel in relation to purchases made by the Buyer by presentation of a valid Air BP Card. Recovery of any VAT or similar turnover tax, however, will not be undertaken by the Seller and the Buyer should retain the necessary invoices from the supplier of aviation fuel to enable the Buyer to do so.

Upon payment by the Seller of the aviation fuel supplier's invoices, the Buyer agrees that the Seller will be subrogated to all of the aviation fuel supplier's claims and rights attaching to, and arising out of, such invoices (that is, the Seller shall be put in the place of the aviation fuel supplier).

## 5. Loss or Theft or change in Buyer's circumstances

In the event of an Air BP Card being stolen, lost or subject to actual or suspected unauthorised use, or in the case of the Buyer's Aircraft no longer being under the control of the Buyer, whether due to the Buyer having sold such Aircraft or otherwise, the Buyer will advise the Seller of this immediately by email to [sterling@bp.com](mailto:sterling@bp.com). The Buyer will give the Seller all the information in the Buyer's possession as to the circumstances of the loss, theft, misuse or cancellation of the Air BP Card and the Seller may disclose, as it deems necessary, any information it considers relevant.

## 6. Indemnity

The Buyer undertakes to indemnify the Seller from and against all losses, claims, demands, expenses or costs which the Seller may sustain or incur by reason of an Air BP Card issued to the Buyer being used by a person not authorised by the Buyer or by reason of any negligence or dishonest or criminal conduct relating to the use of the Air BP Card of which the Buyer or any supplier of the Buyer or their respective agents or employees have been guilty either alone or in concert with any person. This indemnity shall continue in force notwithstanding the termination of the Agreement.

Such indemnity, however, shall not extend to such negligence or dishonest or criminal conduct arising after the expiry of three days following receipt by the Seller of written confirmation from the Buyer of the misuse, loss, theft or cancellation of the Air BP Card.

## 7. Variation and Cancellation

The Air BP Card(s) shall at all times remain the Seller's property and the Seller may cancel the Agreement and the continued validity of the Air BP Card at any time by summary notice which may be given orally. The Seller may vary the conditions of use of the Air BP Card from time to time by written notice. The Buyer will be deemed to have accepted these variations if the Buyer keeps or uses the Air BP Card thereafter. On cancellation by either the Seller or the Buyer, the Air BP Card(s) shall be surrendered to the Seller forthwith and any supplier to whom a cancelled Air BP Card is presented shall be entitled to retain it and return it to the Seller.

## 8. No Assignment

The Agreement and the issue of the relevant Air BP Cards are personal to the Buyer and are not assignable or transferable in anyway in whole or in part by the Buyer and any deviation from this shall entitle the Seller to terminate the Air BP Cards in question immediately upon learning of any such deviation. Should any aircraft for which an Air BP Card has been issued pass from the Buyer's ownership or control, the relevant Air BP Card should be returned to the Seller immediately.

## 9. Data Protection

The data that the Buyer has previously provided to the Seller and that the Buyer may subsequently provide to the Seller will be used by the Seller so that the Buyer's details can be processed and/or the Buyer's account maintained, including for the purposes of credit assessment. The Seller also consults and relies on risk intelligence databases and publicly available sources of information and data, such as sanction lists, on an on-going basis, to comply with its relevant sanctions, anti-money laundering, and bribery and corruption prevention obligations. Information so obtained is for the Seller's internal use only except where

the law requires otherwise. The Buyer shall ensure that all directors, officers, key employees and/or owners of its company whose personal details were provided or may be obtained through these intelligence sources are made aware that the Seller may be processing their information for the purposes set out above.

Depending upon the Buyer's choice at the time of its application for Air BP Card(s), such data may be shared with other BP group companies outside of the European Economic Area to send the Buyer information about other BP goods or services that may be of interest to the Buyer.

## 10. Entire Agreement

The Agreement constitutes the whole and only agreement between the Seller and the Buyer relating to the Air BP Card(s) and supersedes and extinguishes any prior agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto.

The Buyer acknowledges that in entering into the Agreement it is not relying on any representation, warranty or undertaking made or given by the Seller or any other party at any time prior to execution of the Agreement which is not expressly set out herein.

## Part B: Conditions relating to the supply of Fuel to Air BP Card holders

### 1. REPRESENTATION

Buyer represents and warrants that it contracts hereunder on its own behalf and as agent for its Affiliated Companies in respect of deliveries to be made to them under the Agreement. Buyer agrees to procure the acceptance of delivery of Fuel by Buyer's Affiliated Companies from Seller or its Deliverer. All Buyer obligations made on behalf of Affiliated Companies shall be joint and several obligations of Buyer and Affiliated Companies.

### 2. QUALITY

2.1 All Fuel delivered will comply with the requirements prescribed in 'Table 1' (or equivalent) of one of the relevant specifications listed below:

#### Aviation jet kerosene

ASTM D 1655 - Grades Jet A and Jet A-1; Defence Standard 91-091 Jet A-1; Aviation Fuel Quality Requirements for Jointly Operated S (Checklist - latest issue). AFQRJOS for Jet A-1 embodies the most s requirements of ASTM D 1655 & Defence Standard 91-091 (JIG loc CGSB-3.23 - Grades Jet A and Jet A-1; GOST R 52050 - Grade GOST 10227 - Grades TS-1 and RT; GB 6537 - Grade No. 3 Jet Fuel; Grade Jet A-1; DCSEA 134 - Grade Jet A-1; MIL-DTL-83133F – Grad and F-34; MIL-DTL-5624U – Grade JP-5;

Defence Standard 91-87 – Grade F-34

#### Aviation gasoline

Defence Standard 91-90 (latest issue) for grades 80/87, 100/130 an or ASTM D910 (latest issue) for grades 80, 91, 100, 100LL

2.1.1 Furthermore, the Fuel shall meet the requirements, if any, set by the governmental regulatory authority with jurisdiction at the relevant Delivery Point. Should any such requirement lead to a deviation from the Specification, Seller shall notify Buyer in advance and Buyer's prior permission for delivery of such Fuel is required.

2.1.2 Buyer is wholly responsible for ensuring that it orders or selects the correct grade of fuel for its aircraft, including for the avoidance of doubt and without limiting the generality of the foregoing, if the Buyer uses any self-serve pumps or other fuel delivery equipment. To the extent permitted by law, Seller excludes all liability whatsoever for the selection of the correct fuel grade by the Buyer.

2.1.3 Seller makes no representation of any kind as to which grade of fuel is appropriate for any particular aircraft.

**2.2 EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 2.1, THERE ARE NO GUARANTEES, CONDITIONS OR WARRANTIES HEREIN, EXPRESS OR IMPLIED, AS TO THE SATISFACTORY QUALITY,**

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**MERCHANTABILITY, FITNESS OR SUITABILITY OF THE FUEL FOR ANY PARTICULAR PURPOSE OR OTHERWISE.** exist. Any fuelling by Seller of such aircraft shall be carried out on terms and conditions agreed by the Parties at the time of that fuelling.

2.3 If the Delivery Point is Into-Aircraft and Seller performs Delivery Services, any liability, damage, costs or losses incurred or suffered by Buyer for or arising from contamination of the Fuel supplied by Seller caused by contaminants in Buyer's Aircraft which existed prior to the time of supply or which enter Buyer's Aircraft during the delivery of Fuel by Seller from the environment outside of the refuelling equipment (including but not limited to ingress of water if Delivery Services are performed in the rain) is hereby excluded except to the extent caused by the Gross Negligence or wilful misconduct of Seller.

## 3. DELIVERY

3.1 Delivery of the Fuel shall be made into the Delivery Point.

### 3.2 Delivery Into-Aircraft with Into-Plane Services

If the Delivery Point is Into-Aircraft and Seller agrees to provide Into-Plane Services, the following provisions shall apply:

3.2.1 Delivery of the Fuel shall be made into Buyer's Aircraft by Seller or by its Deliverers.

3.2.2 Title to and risk of loss of the Fuel shall pass to Buyer at the time the Fuel passes the inlet coupling of the receiving aircraft.

3.2.3 Seller shall endeavour promptly to fuel any of Buyer's Aircraft arriving at a location. Buyer acknowledges that deliveries to other aircraft arriving on regular and scheduled flights, and to other aircraft arriving on irregular and unscheduled flights ahead of Buyer's Aircraft may have priority over deliveries to Buyer's Aircraft under this Section.

3.2.4 If Buyer requires deliveries at outside normal service hours (as advised by Seller to Buyer from time to time), Seller shall have the right to charge Buyer any increased cost to Seller of any such delivery.

3.2.5 Upon Buyer's request, Seller may provide the most current specific gravity or density measurement of Fuel from airport storage, or provide Buyer with appropriate devices to measure it at the Buyer's Aircraft, all at Seller's cost. Notwithstanding the foregoing, Buyer shall not hold Seller responsible for any claims and expense related to Seller providing the specific gravity or density measurement of such devices, except to the extent caused by Seller's wilful misconduct or Gross Negligence.

3.2.6 Deliveries shall be made in accordance with all applicable governmental laws and regulations, and the requirements laid down by the airport governing authority. Furthermore, unless otherwise agreed, Seller or its Deliverer shall use or apply Seller's standard quality control and operating procedures (as amended from time to time) or those of its Deliverer utilised by it for deliveries into Buyer's Aircraft, provided however that failure to use or apply such procedures shall not be grounds for termination pursuant to Section 11.2(i) unless such failure is one affecting safety and/or quality control that has not been cured in the requisite time and which is sufficiently grievous as to amount to a material breach of the Agreement.

3.2.7 Except as otherwise agreed in writing by Seller or its Deliverer, Seller or its Deliverer shall not be obliged to make delivery unless Buyer's Representative is present. Seller shall provide the number of copies of the Delivery Note as agreed with Buyer and as necessary pursuant to local requirements, and Buyer shall ensure, unless otherwise agreed, that Buyer's Representative signs the Delivery Note upon delivery of the Fuel.

3.2.8 Notwithstanding anything to the contrary express or implied elsewhere in the Agreement, Seller shall not be obliged to fuel any of Buyer's Aircraft if such aircraft is or is reasonably believed by Seller to be under the control of hijackers, or if any other circumstances whatsoever of a similar nature (including, without limitation, circumstances of duress) exist or are reasonably believed by Seller to

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3.2.9 Buyer shall have sole responsibility for operating all appropriate aircraft fuelling switches, valves and pre-set quantities gauges. In the event that Buyer requests the Seller or its Deliverer to operate any aircraft re-fuelling switches, valves and/or pre-set quantities gauges and/or requires Additional Delivery Services, Buyer shall indemnify, defend and hold harmless Seller and its Deliverer from and against all claims, demands, proceedings, damages and liabilities for loss of or damage to property or for reasonable attorneys' fees), losses and expenses, arising out of or related to Seller or its Deliverer's actions in performing or omission to perform the requested services.

3.2.10 If Buyer requests that fuel is delivered or removed from Buyer's Aircraft when there are passengers or other persons on board Buyer's Aircraft or embarking or disembarking, Buyer agrees to be solely responsible for ensuring that the provisions of the local airport regulations relating to such delivery or removal are carried out, that appropriate instructions are issued by Buyer's employees for the safety of said persons during such delivery or removal and that such instructions are strictly observed by Buyer's employees and said persons.

3.2.11 If Seller or its Deliverer delivers or removes Fuel from Buyer's Aircraft when there are passengers or other persons on board the aircraft or embarking or disembarking, Buyer agrees to indemnify, defend and hold harmless Seller from and against any and all claims, demands, proceedings and damages and liabilities for death of or injury to any passengers or other persons on board or embarking or disembarking and against all associated direct costs (including reasonable attorneys' fees), losses and expenses, caused by or arising out of Into-Plane Services or removal of Fuel from Buyer's Aircraft, whatever the cause of such injury or death including Seller or its Deliverer's negligence, Gross Negligence or wilful misconduct.

### 3.3 Delivery Into-Aircraft without Into-Plane Services

If the Delivery Point is Into-Aircraft and Seller does not agree to provide Into-Plane Services, notwithstanding anything herein to the contrary, Buyer shall make its own arrangements for Into-Plane Services and Seller makes no representations, warranties or covenants, and shall be deemed to have no liability with respect to those Into-Plane Services, including but not limited to, delays, shortages, or contamination attributable to the Into-Plane Services and Buyer agrees to indemnify Seller for any such liabilities, including the negligence, Gross Negligence or wilful misconduct of Buyer, Buyer's Affiliates or their respective contractors relating to the provision of Into-Plane Services under this Section 3.3. The Parties agree that the foregoing remains the case even where Seller may invoice on behalf of the Into-Plane Service provider. Title to and risk of loss of the Fuel shall pass to Buyer at the earlier of the time the Fuel passes the inlet coupling of the receiving aircraft or the time the Fuel passes the inlet coupling of Buyer's or Buyer's Into-Plane Services contractor's or agent's receiving equipment or, in the case of self-service customers, as the Fuel passes from the nozzle of the dispensing apparatus.

3.4 Seller's measurement shall be accepted as the quantities of Fuel delivered unless a claim is made pursuant to Section 5.

3.5 Buyer agrees to indemnify, and does indemnify, the Seller for all losses, liabilities, damages, costs (including lawyers' fees), expenses, demands and proceedings arising out of or in connection with or related to the Buyer's selection of fuel grade.

## 4. DEFUELLING

4.1 Buyer may request and Seller may agree upon a de-fuelling of Buyer's Aircraft. The Fuel so removed from Buyer's Aircraft shall be disposed of or stored as agreed between the Parties and at Buyer's sole cost and expense. Seller may charge an extra fee for such services.

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4.2 If Seller has delivered Fuel Into-Aircraft and provides Into-Plane Services, and de-fuelling of Buyer's Aircraft is necessary due to Seller's fault or negligence (e.g. delivery of off-spec Fuel or delivery of a larger quantity than agreed upon), Seller or its Deliverer shall defuel Buyer's Aircraft, at Buyer's request and at Seller's sole cost and expense.

## 5. COMPLAINTS AND CLAIMS

5.1 Complaints as to short delivery or delays shall be noted on the Delivery Note at the time of delivery, followed by a written claim to be made within fifteen (15) days after delivery.

5.2 Complaints as to defects in quality or any other matter shall be notified to Seller as soon as practicable, followed by a written claim to be made within fifteen (15) days after delivery.

5.3 If the claim is not made within the fifteen (15) day period, it represents a waiver of the right to claim. In no event shall a waiver of the right to claim be made or implied by a signature or any other statement on the Delivery Note, irrespective of whether or not such Delivery Note contains conditions implying such waiver.

## 6. INVOICING, PAYMENT, CREDIT AND SECURITY

6.1 Seller shall invoice Buyer for Fuel delivered in accordance with the terms of the Card Contract letter.

6.2 Buyer shall settle each invoice in full without any set-off, deduction or withholding whatsoever unless such deduction or withholding is required by law, in which event the Buyer will pay such additional amount as will result in the receipt by the Seller of the full amount specified in each invoice and the Buyer will account for the full amount so withheld or deducted to the relevant taxing authority or other governmental authority in accordance with the applicable law.

6.3 If the date for payment is a day when Seller's bank is closed for business, Buyer shall make the payment on any preceding day when Seller's bank is open for business.

6.4 Without prejudice to Seller's other rights under the Agreement, if Buyer fails by the due date to pay any amount due under the Agreement, interest shall accrue upon that amount from the due date for payment until the date on which payment in full is received by Seller's bank. The applicable rate of interest shall be the rate of three per cent (3%) above the London Interbank Offer Rate for one (1) month Eurodollars as current from time to time and as advised by National Westminster Bank p.l.c., 53 Threadneedle Street, London EC2P 2NJ.

6.5 Seller shall have the right to demand from Buyer an assurance of Buyer's performance under the Agreement where Seller, in its sole opinion (acting reasonably), has a belief that Buyer's ability to pay or otherwise perform under the terms and conditions of the Agreement has been, or may be, impaired. The said assurance may be demanded in any form required by Seller including (without limitation) prepayment, bank guarantees, securities, performance bonds or any other means deemed suitable and sufficient by Seller. Seller may withhold further performance under the Agreement until the date on which such assurance is received.

### 6.6 Direct Debit

6.6.1 Where the Parties agree that payments for Fuel shall be collected by direct debit, without prejudice to Buyer's obligation to make payments under the Agreement, Buyer may elect upon reasonable notice to Seller, to make such payments thereunder by direct debit as from a date agreed between Buyer and Seller.

6.6.2 If Buyer elects to make payments by direct debit, Buyer shall issue an instruction to its bank in a form satisfactory to Seller, authorising that bank to debit Buyer's account with amounts due to Seller in accordance with Seller's notifications and to make payments to Seller in accordance with Seller's instructions.

6.6.3 In the case of payments by direct debit, Seller shall provide Buyer with a statement of account by posting the same on the Air BP MyInvoice online invoicing system showing the amount to be debited.

6.6.4 Buyer shall immediately notify Seller if Buyer at any time cancels its direct debiting instructions to its bank. Buyer shall make all subsequent payments by telegraphic transfer.

6.6.5 If at any time Buyer's bank declines for any reason to accept Seller's direct debiting instructions or if for any reason Seller does not receive a payment which was to be made by direct debit, Seller may notify Buyer accordingly and may require that all or any payments or subsequent payments shall be made by telegraphic transfer, without prejudice to Seller's right to regard any such occurrence as a failure by Buyer to make payments when due under the Agreement.

### 6.7 Guarantee

6.7.1 Where Seller requires Buyer to provide a guarantee of payment for Fuel, Buyer shall enter into an arrangement with a guarantor (the 'Guarantor') acceptable to Seller under which the Guarantor shall agree to conclude with Seller a guarantee agreement in terms acceptable to Seller to guarantee, with immediate effect, payment of all sums from time to time due and payable by Buyer to Seller under the Agreement.

6.7.2 Such guarantee shall provide for payment by the Guarantor of sums due to Seller under the guarantee within two (2) business days after the date of Seller's demand for payment from the Guarantor.

6.7.3 Notwithstanding anything to the contrary express or implied elsewhere in the Agreement, Seller shall not be obliged to make any delivery of quantities of Fuel at any time unless there is in existence a guarantee enforceable by Seller against a guarantor satisfactory to Seller as provided herein in form and substance and for an amount satisfactory to Seller.

## 7. DUTIES, FEES, TAXES AND CHARGES

7.1 All prices for Fuel are exclusive of all Taxes levied or imposed, whether directly or indirectly, upon the quantities supplied under the Agreement, or upon their production, manufacture, storage, export, import, ownership, use, handling, purchase, sale, delivery or transportation, or on Seller in respect thereof unless stated otherwise. Any such Taxes shall be for the account of Buyer unless stated otherwise. If Seller pays any sums in respect of Taxes which are for the account of Buyer, Buyer shall in each case refund to Seller the US dollar equivalent of that sum, calculated at an exchange rate applied, designated or recommended by the relevant authority in the country in question for the month in which Seller paid such sum or, in the absence of any such rate, at the IATA exchange rate notified for that month.

7.2 Seller shall endeavour, as far as is reasonably practicable short of litigation, to support Buyer's claim to any reduction or drawback of Taxes to which Buyer is entitled and to ensure that deliveries to Buyer are made in the manner required to obtain such reduction or drawback. Any additional expense incurred by Seller in supporting Buyer's claim or in making deliveries under this Section 7.2 shall be for Buyer's account.

7.3 If Buyer is entitled to purchase any Fuel sold pursuant to the Agreement free of any Taxes or charges, Buyer shall deliver to Seller in advance a valid exemption certificate for such purchase.

7.4 Any on airport charges levied on Seller at any time in respect of deliveries hereunder shall be charged to Buyer in addition to the price.

7.5 Any new off-airfield third party fees charged to Seller at any time in respect of deliveries hereunder shall be charged to Buyer in addition to the price. Such new fees shall not include any off-airfield third party fees charged to Seller at the commencement of the Agreement.

## 8. FORCE MAJEURE

8.1 In addition to any other exemptions (arising out of the same or other causes) provided by law, no failure or omission by either Party to carry out or observe any of the provisions of the Agreement shall give

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rise to any claim against that Party, or be deemed to be a breach of the Agreement, if the same shall arise out of Force Majeure, which is hereinafter defined as any cause not reasonably within the control of that Party, whether or not foreseen, including (without limitation) such causes as labour disputes, strikes, governmental intervention, or the Party's response to the insistence of any governmental instrumentality or person purporting to act therefor, wars, civil commotion, hijacking, fire, flood, supply failures, accident, acts of terrorism, storm or any Act of God.

8.2 Notwithstanding the provisions of Section 8.1, neither Party shall be relieved of any accrued obligation to make payment or provide indemnities under the Agreement.

8.3 The Party delayed or prevented by Force Majeure shall use all reasonable endeavours to remove such reasons or mitigate the effects thereof, and upon removal and remedying of such reason said Party shall promptly resume the performance of its obligations, provided however that a Party in removing such reasons or mitigating such efforts shall not be required to settle strikes or lockouts or government claims by acceding to any demands when, in the discretion of the Party, it would be inappropriate to do so.

8.4 Force Majeure affecting either Party's Affiliated Companies, Deliverer or other agent or subcontractor at any location or with respect to any location shall, as to that specific location, be considered Force Majeure affecting that Party.

## 9. HEALTH, SAFETY, THE ENVIRONMENT AND ETHICS

9.1 Buyer shall comply with all relevant health, safety and environmental laws, regulations or recommendations operating in any jurisdiction whatsoever in or to which Buyer supplies, delivers, carries, sells or uses Fuel delivered under the Agreement.

9.2 Seller shall not be responsible for any loss, damage or injury resulting from any hazards inherent in the nature of the Fuel delivered under the Agreement.

9.3 Buyer shall co-operate with Seller and its Deliverers in respect of all safety measures. Buyer shall further ensure that no maintenance work or operation of equipment which may create a source of ignition is carried out in the vicinity of any delivery or removal of Fuel. If Buyer fails to co-operate, Seller may in its absolute discretion cease or suspend delivery or removal and any exercise or forbearance in exercising such discretion shall be without prejudice to any other rights of Seller.

9.4 Buyer shall indemnify and keep indemnified, defend and hold harmless Seller and its Deliverers against all liabilities, claims, damages, losses and/or proceedings directly or indirectly arising out of or in any way connected with the failure by Buyer to comply with all or any of Buyer's obligations under Sections 9.1 to 9.3 inclusive.

9.5 Neither of the Parties shall make nor cause to be made any bribe (including without limitation any facilitation payment) or other payment which is intended to influence a decision in their favour. The Parties both commit to the best industry practices with respect to ethical conduct and health, safety and environmental performance.

9.6 The Parties confirm and agree that they will each respectively comply with all applicable anti-bribery and corruption and anti-money laundering laws and regulations and will not offer, give, promise to give or authorise the giving to any person whatsoever, or solicit, accept or agree to accept from any person, either directly or indirectly, anything of value including, without limitation, facilitation payments, in order to obtain, influence, induce or reward any improper advantage. The Parties will likewise each procure their respective directors', officers', employees' and Affiliated Companies' compliance with the provisions of this clause (together the "Anti-Corruption Obligation")

## 10. LIABILITY, INDEMNITY AND INSURANCE

10.1 Except where expressly provided in the Agreement, neither Seller nor Buyer shall be liable for any loss of profits or prospective profits, consequential, indirect, punitive or special damages arising out of or in connection with the Agreement or performance of obligations pursuant to the Agreement, whether or not the same is foreseeable.

10.2 If the Delivery Point is Into-Aircraft and Seller does not provide any Into-Plane Services, the liability of the Seller for any loss, damage, claim or other expenditure arising out of or in connection with the failure by Seller to perform its obligations under the Agreement shall be limited to the prompt refund of the purchase price, or at Seller's option, the replacement of the Fuel at no additional cost to Buyer

10.3 In respect of the indemnities and limitation and exclusion of liabilities granted by Buyer under Sections 2, 3.2.9, 3.2.11, 3.3, 3.5, 9.4, 10.1 10.2 and 10.5, Buyer acknowledges that such indemnities, limitations and exclusions extend to Seller, its Affiliated companies, agents and sub-contractors and the Deliverers, and each of their respective agents, directors, officers, employees and sub-contractors and that Seller is acting as the agent and trustee of such other persons in accepting such indemnities, limitations and exclusions of liability.

10.4 THE WARRANTIES SET FORTH IN SECTION 2 AND THE REMEDIES SET FORTH IN THIS SECTION 10 SHALL BE DEEMED WAIVED BY BUYER UNLESS BUYER: (I) PROPERLY STORES, LOADS, USES AND MAINTAINS THE FUEL, AND CONFORMS WITH ANY WRITTEN RECOMMENDATIONS OF SELLER PROVIDED TO BUYER, INCLUDING BUT NOT LIMITED TO THE HSE INFORMATION; (II) REFRAINS FROM MODIFYING THE FUEL IN ANY WAY OTHER THAN PURSUANT TO SELLER'S WRITTEN INSTRUCTIONS OR APPROVAL; (III) REFRAINS FROM USING THE FUEL IN ANY WAY IN CONTRADICTION WITH ITS INTENDED USE OR IN CONTRADICTION OF SELLER'S WRITTEN INSTRUCTIONS; (IV) REFRAINS FROM SUBJECTING THE FUEL TO ANY KIND OF MISUSE OR DETRIMENTAL EXPOSURE; (V) REFRAINS FROM ADULTERATING, ADDING TO, MIXING, COMMINGLING OR BLENDING THE FUEL WITH ANY OTHER PRODUCTS (OTHER THAN AVIATION JET KEROSENE OR AVIATION GASOLINE, AS THE CASE MAY BE, OF THE SAME SPECIFICATION), ADDITIVES, MATERIALS OR SUBSTANCES WITHOUT FIRST OBTAINING THE WRITTEN PERMISSION OF SELLER; (VI) MAKES A VALID AND TIMELY CLAIM PURSUANT TO SECTION 5, AND (VII) PROVIDES SELLER WITH FULL OPPORTUNITY TO INSPECT, MEASURE AND TEST THE FUEL, INCLUDING THE TIMELY PROVISION OF A RETAINED SAMPLE (ONE US GALLON MINIMUM) FROM ANY AFFECTED FUEL.

10.5 Save as provided otherwise herein, the Parties shall each indemnify, defend and hold harmless the other from all claims, demands and causes of action asserted against the other by any person (including without limitation employees of either Party) for personal injury, loss of or damage to property, or alleged violations of law, if resulting from the wilful or negligent acts or omissions of the indemnifying party. Where personal injury, death or loss of or damage to property is the result of the joint negligence or misconduct of the Parties hereto, the Parties expressly agree to indemnify each other in proportion to their respective share of such joint negligence or misconduct.

10.6 **Insurance** Buyer shall at all times whilst the Agreement is in effect insure itself against its liabilities and obligations under these General Terms and Conditions with a reputable insurance company. Buyer shall produce evidence of such insurance forthwith upon being required so to do by Seller.

## 11. TERMINATION

11.1 Notwithstanding provisions to the contrary in the Card Contract letter, a Party may terminate the Agreement in whole or in part by means of a written notice to the other Party without need of judicial recourse and with immediate effect in the event of:

11.1.1 a material breach of the Agreement (and for the avoidance of doubt non-payment of any amount due and payable under the Agreement will constitute a material breach) by the other Party or its Affiliated Company, but only insofar that such breach, if curable, has not been cured within ten (10) days of receiving written notice of the

# Air BP Card General Terms and Conditions

default from the first Party. During such ten (10) day period the non-breaching Party may elect to suspend its performance of the Agreement; or

11.1.2 the other Party or any of Buyer's Affiliated Companies experiencing a material adverse change in its financial condition (in the opinion of Seller), becoming insolvent, making a general assignment for the benefit of its creditors or committing an act of bankruptcy or a petition for its reorganisation or readjustment of its indebtedness is filed by or against it, or a receiver, trustee, administrator or liquidator of all or substantially all of its property is appointed or any other person other than the normal officers of the Party or Affiliated Company of Buyer concerned is appointed with responsibility for the management of that Party's business or any part of its assets.

11.2 The Seller may terminate the Agreement at any time without prior notice to the Buyer and with immediate effect if the Seller is of the opinion that (i) the Buyer or any of its agents, representatives or delegates has misused any of the Seller's equipment whether deliberately, recklessly, negligently or otherwise, (ii) if the Buyer or any of its agents, representatives or delegates has failed to operate any of the Seller's equipment in accordance with instructions given by the Seller from time to time.

11.3 Either party may suspend and/or terminate the Agreement, in whole or in part by written notice to the other Party, without need of judicial recourse and with immediate effect, if it reasonably believes in good faith that the other Party's failure to comply with the Anti-Corruption Obligation (in clause 9.6), is reasonably likely to cause direct or indirect damage to its reputation.

11.4 Either of the Buyer or the Seller may terminate the Agreement on giving to the other 30 days prior written notice at any time.

11.5 On notice of termination being given, the Buyer shall immediately surrender to the Seller all Air BP Cards in the Buyer's possession. Termination shall be without prejudice to the settlement of any outstanding accounts and any indemnity obligations arising under the Agreement.

11.6 Termination effected by a Party under this Section 11 shall not affect any other rights or remedies of such Party under the law or otherwise.

11.7 Notwithstanding termination, each Party shall fulfil all obligations accrued under the Agreement prior to the time the termination becomes effective.

11.8 Clauses 2.1.2, 3.2.9, 3.2.11, 3.5, 9.4, 10, 16 and 23 shall survive termination of the Agreement and continue in full force and effect.

## 12. ASSIGNMENT AND SUBCONTRACTING

12.1 Buyer may not assign its rights or transfer or delegate its obligations in the Agreement, in whole or in part, without the prior written consent of Seller.

12.2 Seller may, without prior consent of Buyer, assign its rights in the Agreement and/or transfer, delegate or subcontract its obligations in the Agreement, in whole or in part, to its Affiliated Companies or to third parties and Buyer hereby consents to such transfer, delegation or subcontract. Seller shall be jointly and severally liable for the performance by the transferee, delegate or subcontractor of the Agreement and Seller shall continue to benefit from the indemnities, limitations and exclusions of liability granted by Buyer in the Agreement.

## 13. SET-OFF

Seller may set off against payment for any amounts payable or to be paid under the Agreement any sums held by Seller for the account of Buyer.

## 14. AFFILIATED COMPANIES

For the purpose of the Agreement, a company is an affiliated Company if it is (i) controlled by a party; (ii) controls a party; or (iii) is under

common control with a party. As used herein, the terms "controlled", "controls" and "control" shall denote a direct or indirect ownership interest of fifty per cent (50%) or more of the issued share capital or stock having the right to vote for directors or other governing authorities of the controlled entity.

## 15. NON-WAIVER

No failure or delay of any Party (including their employees and agents) to exercise any right or power under the Agreement or at law shall operate as a waiver thereof, except as provided in the Agreement, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power under the Agreement, and no waiver by any Party of any provision or part of any provision of the Agreement shall be binding unless expressly confirmed in writing.

## 16. NON-DISCLOSURE

The information contained in the Agreement and any arbitration and arbitration award pursuant to it is confidential between the Parties. Either Party may only disclose such information to its professional advisers on condition that the recipient agrees to be bound by the restrictions of this Section 16, and to any other person outside its own organisation, its Affiliated Companies or the Deliverers to the extent necessary to perform the Agreement and upon the prior written consent of the other Party being obtained, which consent shall not unreasonably be withheld. However, each Party is allowed to disclose information to any governmental or supranational authority to the extent disclosure is legally compulsory.

## 17. NOTICES

Notices under the Agreement shall be made in writing (including facsimile) and shall be deemed duly given only when delivered to the other Party at the address stated in the Card Contract letter. Upon request of a Party, the other Party will reconfirm the receipt of any notice. Either Party may amend such address by giving the other Party not less than fifteen (15) days' notice in writing.

## 18. ENTIRE AGREEMENT

In case of discrepancies between any provision in these General Terms and Conditions and any provision in the Card Contract letter, such provision in the Card Contract letter shall prevail.

## 19. SEVERABILITY

The provisions of the Agreement are severable and the invalidity of any provision in the Agreement shall not affect all other provisions, which will remain valid and binding.

## 20. MODIFICATIONS

Modifications or amendments to the Agreement are only valid when expressly agreed upon in writing.

## 21. OFFICIAL VERSION

These General Terms and Conditions and the rest of the Agreement shall be executed in the English language and the English language will be the only official language. Translations in any other language may be made for convenience purposes, but those translations shall in no event limit, alter, interpret, define or amend the contents of the English version of these General Terms and Conditions or the rest of the Agreement.

## 22. THIRD PARTY RIGHTS

Except as provided in Sections 3.2.9, 3.2.11, 9.4, 10.1, 10.5 and 13.2 of these General Terms and Conditions, no person other than a Party may enforce the Agreement. Notwithstanding this Section 22, the Parties may agree to vary or rescind the Agreement without the consent of any other person.

## 23. CONTINUING OBLIGATIONS

The Parties do not intend to create a continuing obligation to buy, sell or exchange petroleum products. Accordingly, each Party expressly waives any rights it may have under any existing government regulations to insist upon the continued purchase, sale or exchange of petroleum products.

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## 24. RESELLERS

24.1 If Buyer purchases Fuel for delivery into aircraft at a location and those aircraft are not owned or operated by Buyer or its Affiliated Companies, the Buyer agrees that notwithstanding any contrary terms of the Agreement, none of Seller, Seller's Affiliated Companies or Seller's Deliverers are obliged to supply Fuel to the Buyer, its nominee or assignee if the Seller or any of Seller's Affiliated Companies have pre-existing exclusive fuel supply arrangements with the owner or operator of that aircraft for that location.

24.2 Buyer agrees to nominate the owners or operators of aircraft (each a "Buyer Customer") into which Buyer requires Seller to deliver Fuel pursuant to the Agreement.

24.3 Buyer warrants that any party to whom either: (a) Buyer or any of its Affiliated Companies resells Fuel sold to it by Seller or one of Seller's Affiliated Companies; or (b) Buyer or any of its Affiliated Companies requires Seller or one of its Affiliated Companies to deliver Fuel is not a Restricted Party.

## 25. TRADE CONTROLS AND BOYCOTTS

Notwithstanding anything to the contrary herein, nothing in the Agreement is intended, and nothing herein should be interpreted or construed, to induce or require either Party to act in any manner (including failing to take any actions in connection with any sale or delivery of Fuel) which is inconsistent with, penalised or prohibited under any laws or regulations of the United States of America, the United Kingdom, the European Union or any European Union member state or other official United States of America, United Kingdom, European Union or European Union government rules or requirements applicable to such Party which relate to trade sanctions, foreign trade controls, export controls, embargoes or international boycotts of any type.