

CARDLINK TERMS & CONDITIONS

The enclosed Card or Cards are issued by Cardlink Systems Limited, which has its offices at Level 1, 37- 41 Carbine Road, Mt. Wellington, Auckland.

You should read these Terms and Conditions carefully. By accepting and/or using the Card, those signing an application form for the Card, the Named Persons, the Cardmaster and the Card Users agree with Cardlink Systems Ltd to be bound by these terms and conditions and any future amendments from time to time made in accordance with clause 2.

1. DEFINITIONS

In these terms and conditions unless the context otherwise requires, the following expressions shall have the following meanings:

"Account" means the account opened by Cardlink in the name of the Cardmaster in respect of which transactions are debited, and payments made by the Cardmaster are credited, in the operation of the account.

"Application Form" means the application for an Account submitted to Cardlink.

"Business Day" means a day on which trading banks are open for commercial business in Auckland, New Zealand.

"Card" means the enclosed card and any other card issued at the Cardmaster's request, as agreed to by Cardlink at the relevant time.

"Cardlink" means Cardlink Systems Ltd and its successors or assigns.

"Cardmaster" means a person, company, corporation, firm or association who or which, by applying for a Card, has entered into an agreement with Cardlink by which the Cardmaster has a right to nominate Card Users.

"Card User" means each person nominated by the Cardmaster to use a Card.

"Charge" means the amount incurred during the Charge Period by the Cardmaster and the Card User for the purchase of Supplies using the Card at the Supply Price, whether or not a Sales Voucher is actually completed or signed in connection with such charge and includes the relevant Fee.

"Charge Period" means the recurring period determined by Cardlink at its discretion from time to time during which Charges may be incurred by the Cardmaster and the Card User.

"Credit Limit" means any limit imposed by Cardlink on the value of Supplies which may be purchased using the Card during a Charge Period.

"Discount" means any discount or rebate, however described, offered or provided by Cardlink to the Cardmaster from time to time in connection with any Charge.

"Fee" means such sum from time to time determined and charged by Cardlink in connection with an Account and/or the Card including running costs and levies and those fees and charges posted on Cardlink's website or otherwise notified to the Cardmaster from time to time.

"includes" and **"including"** mean including without limitation to the generality of the foregoing.

"Named Persons" means the directors and/or shareholders of the Cardmaster and such other persons who by signing the Application Form have accepted personal liability in respect of all use of the Card by the Cardmaster or Card Users.

"Petroleum Products" means any motor spirit, diesel, fuel oil, kerosene, detergents and solvents, lubricants (including all automotive and industrial lubricants and greases) provided (directly or indirectly) for sale or supply to the Cardmaster or the Card User.

"On-line Purchases" means internet purchases of Supplies by Card Users from the websites of Suppliers.

"Sales Voucher" means a voucher or receipt in the form from time to time provided by Cardlink or a Supplier for use of the Card.

"Sales Voucher Purchases" means purchases of Supplies from Suppliers made by Card Users using Sales Vouchers.

"Statement" means the consolidated tax invoice produced by Cardlink for each Charge Period that details all Charges owing to Cardlink by the Cardmaster.

"Supplier" means a person, company, corporation, firm or association appointed by Cardlink to (directly or indirectly) provide or sell Supplies to the Card User.

"Supplies" means goods and services sold or supplied by a Supplier nominated by Cardlink from time to time.

"Supply Price" means a price for the purchase of the Supplies as determined by Cardlink (from time to time) by reference to a range of factors, including prevailing market conditions.

"Vehicle" means a vehicle or equipment in respect of which particulars have been notified to Cardlink by the Cardmaster for use by a Card User or a vehicle or equipment hired by a Card User using the Card.

2. CHANGES

2.1 Cardlink reserves the right to vary these terms and conditions (including Fees and Discounts) at any time either by notice in writing to the Cardmaster via post or email, or by publishing the new or amended terms and conditions (including Fees and Discounts) on its website at www.cardlink.co.nz/terms. Any of these notices shall be deemed to be notice to every Cardmaster and Card User. Notice shall be deemed to have been received by the Cardmaster and Card User on the second Business Day after the day on which notice is posted to the last known address of the Cardmaster and the Card User, or posted to the website or via email. The Cardmaster and each Card User are bound by any such amendment unless all issued Cards are cut in half and returned to Cardlink within 5 Business Days of receipt of the notice as set out above. Use of Card after the notice will be deemed to be acceptance of the new or amended terms and conditions (including Fees and Discounts).

3. AUTHORISED CARD USER

The Cardmaster shall notify Cardlink of the name of each person authorised by the Cardmaster to use a Card, and if authorised only for a Vehicle, the registration details of that Vehicle by completing and returning an Application Form to Cardlink. In all cases the specimen signature of such person and such other particulars required by Cardlink shall be also notified by the Cardmaster to Cardlink.

4. COMPLIANCE BY CARD USER

The Cardmaster shall issue the Card to the Card User and shall ensure that both the Cardmaster and the Card User comply with these terms and conditions and any other instructions on the use of the Card as may be given by Cardlink to the Cardmaster from time to time, including keeping any Personal Identification Number assigned to the Card secure and not exceeding any Credit Limit.

5. LOSS OF CARD

5.1 If the Card is lost or stolen or otherwise ceases to be in the possession of the Cardmaster or the Card User, the Cardmaster shall immediately notify Cardlink by the fastest available means of communication giving all available information as to the circumstances of such loss or theft, confirming all such information to Cardlink in writing and taking all reasonable steps that Cardlink may require to assist Cardlink to recover the Card.

5.2 The Cardmaster shall be liable for all purchases made prior to receipt of such initial notification (including any purchases in excess of the Credit Limit) by Cardlink but shall have no liability for purchases made with the Card by parties other than the Cardmaster or the Card User after such receipt.

6. WITHDRAWAL OF CARD

6.1 Upon a Card User ceasing for any reason to be authorised by the Cardmaster to use the Card, or any Vehicle ceasing to be a Vehicle operated by the Cardmaster, then the Cardmaster shall immediately notify Cardlink and return the Card previously issued to the Card User to Cardlink.

6.2 The Cardmaster shall be liable for all purchases made prior to receipt by Cardlink of the Card (including any purchases in excess of the Credit Limit) but shall have no liability for purchases made after such receipt with the Card or in respect of any Vehicle ceasing to be subject to the Card.

7. INDEMNITY

The Cardmaster and the Named Persons shall indemnify Cardlink in respect of all claims, costs and expenses or other losses of whatsoever kind made against or incurred by Cardlink arising from:

7.1 the loss, theft or fraudulent or other misuse of the Card by the Card User or any other person, which occur prior to initial notification by the Cardmaster under clause 5 above or receipt of the Card pursuant to clause 6 above; or

7.2 as a result of the breach by the Cardmaster, Named Person or Card User of these terms and conditions; or

7.3 arising directly or indirectly out of or in connection with the supply or non-supply of the Supplies; or

7.4 otherwise arising directly or indirectly as a result of Cardlink having agreed to furnish the Card to the Cardmaster.

8. RETURN OF THE CARD

The Card is at all times the property of Cardlink and shall be returned by the Cardmaster to Cardlink immediately upon the request of Cardlink at any time for any reason without obligation on Cardlink to reissue the Card.

9. CANCELLATION

9.1 Cardlink may upon the cancellation, loss, theft or destruction of the Card or for any other reason give such notice as it thinks fit that the Card is no longer valid.

9.2 Cardlink shall be entitled to disclose to any Supplier or any other person the reason for the cancellation or invalidity of the Card. The Cardmaster, the Card User and the Named Persons waive all rights of action against Cardlink in relation to disclosure, whether given negligently or otherwise and irrespective of whether the disclosure is false, misleading or otherwise in error.

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

10. PURCHASE OF SUPPLIES

10.1 The Cardmaster shall ensure that the Card User obtains a Sales Voucher in respect of Sales Voucher Purchases. Each Sales Voucher shall be signed by the Card User at the time of purchase of the Supplies. The signature by the Card User on a Sales Voucher shall constitute a purchase by the Cardmaster from the Supplier of all Supplies to which that Sales Voucher relates. The Cardmaster shall have no right to dispute the amount of any Sales Voucher or the authority of the Card User to purchase those Supplies.

10.2 All amounts debited to a Card as the result of an On-line Purchase, shall constitute a purchase by the Cardmaster. The Cardmaster shall have no right to dispute the amount of any On-line Purchase or the authority of the Card User to purchase those Supplies.

10.3 Cardlink shall not be liable to the Cardmaster for any loss, damage, costs or expenses suffered by the Cardmaster or the Card User arising directly or indirectly from failure by the Supplier to accept a Card or failure by the Supplier to charge the appropriate price for Supplies notwithstanding that such failure may constitute a breach of any contract or agreement between the Supplier and Cardlink.

10.4 Cardlink shall not be liable for any act or omission of any Supplier, or any defect or deficiency in any Supplies acquired by use of the Card. The Cardmaster will be solely responsible for any claim against or dispute with any Supplier and the existence of such claim or dispute shall not relieve the Cardmaster of the obligation to pay the amount of all Charges due to Cardlink as set out in the Statement.

11. WARRANTY BY CARDMASTER

Signature by a Card User on a Sales Voucher in conjunction with the use of the Card and use of a Card for an On-line Purchase shall constitute a warranty by the Cardmaster and the Card User to Cardlink that:

11.1 All statements, amounts and other information contained in the Sales Voucher or provided to the Supplier's website on the internet are true and correct in all respects and reflect a genuine commercial transaction between the Supplier and the Card User and there are no collateral contracts or other representations in existence affecting the sale of the Supplies to which the Sales Voucher relates;

11.2 In the case of a Sales Voucher Purchase, after its completion and signature the Sales Voucher has not been altered or added to;

11.3 The Cardmaster has no right to dispute or withhold payment to Cardlink in respect of the whole or any part of the amounts shown on the Sales Voucher;

11.4 The transaction complies in all respects with the requirements of any relevant law or regulation; and

11.5 The benefit of the transaction has not been assigned, pledged or dealt with by the Card User in any manner or in favour of any person other than the Cardmaster.

12. PROPERTY IN THE SUPPLIES

12.1 Cardlink acknowledges that the Cardmaster shall, subject to clauses 12.2 and 12.3, have the property in the Supplies and shall be entitled to the benefit of all terms and warranties relating to the Supplies.

12.2 Notwithstanding any period of credit, legal and beneficial ownership of the Supplies (except Petroleum Products) shall vest in Cardlink until payment of all the Charges is made in full to Cardlink by the Cardmaster. If payment is overdue Cardlink may recover and sell the Supplies (including Petroleum Products).

12.3 For the period until payment of the Charges and all other monies owing by the Cardmaster to Cardlink have been made in full, the Cardmaster grants to Cardlink a purchase money security interest in all of the Supplies (including Petroleum Products) and their proceeds and Cardlink may register that purchase money security interest on the Personal Properties Security Register and, where necessary, amend that registration. The Cardmaster acknowledges that these terms and conditions constitute a security agreement.

13. CARDLINK AND SUPPLIER LIABILITY

13.1 To the extent permitted by law, neither Cardlink, nor the Suppliers shall be liable to the Cardmaster or the Card User for any defects in the Supplies purchased or any Supplies improperly made or supplied, or for any mechanical failure of a vehicle resulting from such defects, nor for any loss, damage or claim whatsoever arising from such defects, whether directly or indirectly caused and whether suffered by the Cardmaster, the Card User or any third party.

13.2 The parties acknowledge and agree that the goods and services supplied by Cardlink to the Cardmaster and the Card User, and the Supplies acquired by the Cardmaster and the Card User using the Card are all "supplied and acquired in trade" within the meaning of the Fair Trading Act 1986 and the Consumer Guarantees Act 1993, and that the Consumer Guarantees Act 1993 and sections 9, 12A, and 13 of the Fair Trading Act 1986 will not apply to these terms and conditions and that it is fair and reasonable to exclude their application. **13.3** The parties also acknowledge and agree that the Sales of Goods Act 1908 and the United Nations Convention on Contracts for the International Sale of Goods are excluded from application to the purchase and provision of the Supplies.

14. PAYMENT FOR SUPPLIES

For Supplies purchased by the Card User using the Card in accordance with these terms and conditions, Cardlink shall pay the relevant Supplier the price agreed between Cardlink and the Supplier for those purchases.

15. CARDLINK CHARGES

15.1 Immediately following the conclusion of each Charge Period the Cardmaster will be issued a Statement, which will set out the Charges for that Charge Period and the total amount owing to Cardlink ("Payment Amount"). The Cardmaster must pay the Payment Amount to Cardlink by the due date specified in the Statement in accordance with clause

15.2 Cardlink reserves the right to change any Fees charged and to change or discontinue any Discounts offered or provided to the Cardmaster, without prior notice to the Cardmaster.

15.3 In respect of each Charge Period, the provision of Supplies and the provision of the Card and other services by Cardlink as set out in these terms and conditions during that Charge Period shall constitute a separate contract between Cardlink and the Cardmaster, Card Users and the Named Persons for that Charge Period. The agreed price for those Supplies, Cards and other services shall be the Payment Amount as set out on the Statement for that Charge Period.

16. PAYMENT BY THE CARDMASTER

16.1 The Cardmaster shall make payment to Cardlink of the Payment Amount referred to in clause 15, either by authorising its bankers to pay by direct debit initiated by Cardlink, or by cheque if so authorised by Cardlink.

16.2 Where the Payment Amount is not paid in full by the Cardmaster, any monies received by Cardlink from the Cardmaster shall be applied in such a way as Cardlink shall in its sole discretion determine.

16.3 Payment in full of the Payment Amount must reach Cardlink at its offices at Level 1, 37-41 Carbine Road, Mt. Wellington, Auckland, or if by direct debit being electronically received, no later than the due date for payment as specified on the Statement. Any payment made will not be deemed to have been received by Cardlink until the date on which such payment is actually credited to the Cardmaster's Account. If the due date falls on a weekend or a day other than a Business Day, payment should be received no later than the Business Day preceding the due date.

16.4 If a payment is overdue or dishonoured, Cardlink will charge the Cardmaster overdue and administration fees as determined by Cardlink and as posted on Cardlink's website from time to time, but without prejudice to the right of Cardlink to charge interest on the amount owing or any other rights and remedies available to Cardlink. If the Cardmaster or Card User continue to use a Card after a payment is due Cardlink will deem this to be a request for a credit extension. Such requests will be considered at Cardlink's discretion, taking into consideration the Cardmaster's account structure, payment history and any credit information available. Any request for a credit extension will be considered solely at Cardlink's discretion and if the request is rejected, Cardlink has no liability to the Cardmaster in respect of any action to cease supply. If Cardlink agrees to grant the Cardmaster a credit extension the Cardmaster may be charged a credit extension fee, being a percentage of Charges, until the outstanding balance has been repaid. In addition to the Cardmaster the Named Persons will also be liable for any outstanding amounts, as well as any legal and collection costs incurred in recovering the outstanding amount, including interest, until all relevant payments are made in full to Cardlink.

16.5 Cardlink may at the time a Charge is incurred, agree (on request) to accept payments in respect of the Charge incurred by means of an arranged instalment plan. Subject to the terms of that plan, and Cardlink's approval, that Charge may then be repaid by instalments over a period agreed with Cardlink. If this is agreed, the Cardmaster must pay to Cardlink a finance charge as may be determined by Cardlink from time to time, calculated from the time the Charge is incurred until final payment is made to Cardlink.

17. TERM AND TERMINATION

17.1 The term of this agreement shall be for a period from the date on which Cardlink accepts the completed Application Form of the Cardmaster and shall continue thereafter unless terminated by 30 Business Days' notice by either Cardlink or the Cardmaster, or such lesser period as determined by Cardlink if a Supplier terminates its arrangement with Cardlink.

17.2 Notwithstanding any prior waiver of its rights, Cardlink may without notice immediately terminate this agreement in respect of the Cardmaster or any Card User in any of the following circumstances:

(a) Failure for 5 Business Days by the Cardmaster or the Card User to pay any monies due under these terms and conditions.

(b) Failure by the Cardmaster or Card User to observe these terms and conditions after 5 Business Days' notice specifying the default has been given by Cardlink.

(c) The Cardmaster or the Card User becoming insolvent, ceasing or threatening to cease business or having a receiver appointed for execution or distress levied upon any of its assets or a meeting being called of the Cardmaster's or Card User's creditors or any of them for the purposes of financial restructuring or the payment of money due.

(d) The Cardmaster or the Card User entering into or attempting to enter into a composition with their creditors or (in the case of a limited liability company) going into liquidation excepting a voluntary liquidation for the purposes of amalgamation or reconstruction of the Cardmaster or the Card User.

17.3 The termination of this agreement shall not affect the rights or liabilities of any party against the other to the date of such termination.

17.4 The outstanding balance on the Account shall immediately become due and payable on the termination of this agreement and the Cardmaster or the Card User shall immediately return all Cards to Cardlink.

18. OTHER LIABILITY

The Cardmaster, the Card User and the Named Persons acknowledge and agree that they are jointly and severally liable for all Charges made with or incurred by the use of the Cards issued to the Cardmaster and the Card User.

19. FORCE MAJEURE

Neither Cardlink, nor any Supplier shall be under any liability to the Cardmaster or any Card User for failure to perform any obligation if that failure is due to an event beyond the reasonable control of the Cardlink or the Supplier or their respective agents, subcontractors or employees.

20. WAIVER

Any neglect, forbearance or indulgence on the part of Cardlink relating to its strict rights under these terms and conditions shall not be deemed to be an express or implied waiver of such rights.

21. ASSIGNMENT

Neither the Cardmaster, the Named Persons, nor any Card User shall assign, subcontract or otherwise deal with its rights or obligations (or both) under these terms and conditions.

22. PRIVACY

The Cardmaster, the Card User and the Named Persons agree that Cardlink may collect their personal information (as defined in the Privacy Act 1993) during the application process and in the course of subsequent business dealings. Cardlink will only use this personal information for purposes relating to the performance of these terms and conditions and for other dealings with Cardlink, including direct marketing. The Cardmaster, Card User and the Named Persons authorise Cardlink to disclose their personal information to third parties for these purposes.

22. NOTICES

22.1 All communications between the parties to these terms and conditions shall be given in writing and be deemed to have been given to the addressee at the time stated below provided that the notice is addressed to the last known business address of the other party. (a) By mail - 2 days after despatch (b) By facsimile, email or other electronic means of written communication - 6 hours after despatch during business hours or if despatched outside of business hours, then the next Business Day.

22.2 Clause 22.1 does not apply to a notice given under clause 5 or clause 6 of these terms and conditions. Notice under clauses 5 and 6 is given when Cardlink actually receives the notice.

23. FURTHER ASSURANCES

Unless otherwise specified in these terms and conditions the Cardmaster and the Card users will when requested by Cardlink, promptly do, sign and deliver everything reasonably required to give full effect to these terms and conditions and the transactions contemplated by these terms and conditions.

24. SEVERANCE

Should any part or provision of these terms and conditions be held invalid or unenforceable, then that invalid or unenforceable part or provision will be deemed severed from these terms and conditions and will not affect the validity or enforceability of the remainder of these terms and conditions.

25. SURVIVAL

Without limiting the clauses that will survive termination of this agreement, the following clauses will survive termination (irrespective of the basis for the termination): Clause 6 Withdrawal of Card; Clause 7 Indemnity; Clause 8 Return of Card; Clause 9 Cancellation; Clause 10 Purchase of Supplies; Clause 11 Warranty by Cardmaster; Clause 12 Property in the Supplies; Clause 13 Cardlink and Supplier Liability; Clause 15 Cardlink Charges; Clause 16 Payment by the Cardmaster; Clauses 17.3 and 17.4 Termination; Clause 18 Other Liability; Clause 19 force Majeure; Clause 20 Waiver; Clause 21 Assignment; Clause 22 Privacy; Clause 22 Notices; Clause 24 Severance; and this Clause 25 Survival.