

## Viva Energy Scheduling Portal Terms & Conditions 2019

### 1. Viva Energy Scheduling Portal

- 1.1 The Viva Energy Scheduling Portal is provided by Viva Energy Australia Pty Ltd.
- 1.2 The use of and access to the Viva Energy Scheduling Portal by the user (**You**) is governed by these Viva Energy Scheduling Portal Terms & Conditions (**Terms and Conditions**).
- 1.3 In order to access the Viva Energy Scheduling Portal, You must:
  - (a) register with Viva Energy by providing the required information as set out in the online registration form; and
  - (b) accept these Terms and Conditions.
- 1.4 By using the Viva Energy Scheduling Portal, You agree to be bound by these Terms and Conditions. If You do not agree to these Terms and Conditions, You should not use the Viva Energy Scheduling Portal.
- 1.5 To the extent of any inconsistency between these Terms and Conditions and the Carrier Terms, the Carrier Terms will take precedence over these Terms & Conditions.

### 2. Conditions of Use

- 2.1 Viva Energy will issue You with a user login ID and password to enable users nominated by You to access the Viva Energy Scheduling Portal. You are fully responsible and liable for any access or activity that occurs using Your user login ID or password.
  - 2.2 You:
    - (a) must protect the confidentiality of Your login ID and password and not disclose the login ID or password to any third party;
    - (b) must only use the Viva Energy Scheduling Portal for the Authorized Purpose;
    - (c) ensure that Your account details are complete, accurate and up-to-date; and
    - (d) notify Viva Energy immediately if You become aware of any unauthorized use of Your password, login ID, account or account information, or any other breach of security in relation to Viva Energy Scheduling Portal.
  - 2.3 You must not use the Viva Energy Scheduling Portal in an unlawful or inappropriate manner or for any purpose that would:
    - (a) breach these Terms and Conditions;
    - (b) infringe upon the privacy, intellectual property or other legal or proprietary rights of third parties;
    - (c) defame or cause damage to Viva Energy, its products or Affiliates; or
    - (d) compromise the security of the Viva Energy Scheduling Portal, including by introducing viruses into or hacking Viva Energy Scheduling Portal.
  - 2.4 Viva Energy does not guarantee the accuracy of information available on or through the Viva Energy Scheduling Portal.
  - 2.5 Viva Energy does not represent or warrant:
    - (a) that any material, file or program available for download and/or execution from or via the Viva Energy Scheduling Portal is free from errors, viruses, defects or other conditions which would damage or interfere with data, hardware or software with which it might be used; or
    - (b) that the Viva Energy Scheduling Portal will be accessible or available at all times.
  - 2.6 Viva Energy is not obliged to continue operating all or any part of Viva Energy Scheduling Portal. Viva Energy may modify or close down Viva Energy Scheduling Portal (or part of it) at any time without any liability on its part, and it may cancel or
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suspend Your access to or use of Viva Energy Scheduling Portal at any time.

### 3. Privacy

- 3.1 You acknowledge that You have read and understood the Viva Energy Australia Privacy Policy available at [www.vivaenergy.com.au](http://www.vivaenergy.com.au) (as amended from time to time) (**Privacy Policy**). The Privacy Policy contains details on the ways in which Viva Energy collects, stores and uses Personal Information provided by You through the Viva Energy Scheduling Portal.
- 3.2 You indemnify Viva Energy and its Affiliates from and against any loss, damage, cost, expense, fees or claim suffered or incurred by Viva Energy or its Affiliates arising from or in connection with any unauthorized disclosure of Personal Information using or in connection with Your password or user identification.

### 4. Confidentiality

- 4.1 Information contained in the Viva Energy Scheduling Portal is the confidential information of Viva Energy and You must not, without Viva Energy's written permission, disclose any content included in the Viva Energy Scheduling Portal to any third party. These obligations of confidentiality do not apply to content which is:
- (a) already in the public domain, other than through a breach of confidentiality obligations;
  - (b) is in the Your possession (with full right to disclose) before receipt from Viva Energy; or
  - (c) is lawfully received from a third party (with full right to disclose).

### 5. Intellectual Property

- 5.1 Intellectual property rights in the content included in Viva Energy Scheduling Portal, including all text, graphics, photos, advertisements, names, logos, materials, software and tools, including results derived from the use of such software and tools, is owned or licensed by Viva Energy.
- 5.2 You must not modify, copy, reproduce, republish, frame, download, upload to a third party website, post, transmit or distribute the content appearing in Viva Energy Scheduling Portal in any way except where You have obtained prior written permission to do so from the owner of the relevant content. Your use of Viva Energy Scheduling Portal does not grant or transfer any rights, title or interest to you in relation to content included in the Viva Energy Scheduling Portal.

### 6. Liability

- 6.1 To the fullest extent permitted by law, in no event will Viva Energy or any of its officers, employees, contractors, representatives or agents be liable for any direct or indirect loss (including, without limitation, any losses in the nature of consequential losses, lost profits, loss of revenue, loss of management time, opportunity costs, special damages or loss of business profits or loss of data), damage, claim, expense, cost or other liability (whether as a result of negligence or otherwise) arising in connection with:
- (a) your use of Viva Energy Scheduling Portal;
  - (b) inaccuracy or incompleteness of any information contained on the Viva Energy Scheduling Portal ;
  - (c) temporary or permanent unavailability of Viva Energy Scheduling Portal;
  - (d) defects in, or problems with, any computer system or communication link (including delays in electronic communication); or
  - (e) any computer virus or other program device which could damage or interfere with
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data, hardware or software.

- 6.2 To the fullest extent permitted by law, Viva Energy excludes all warranties and conditions relating to Your use of the Viva Energy Scheduling Portal. To the extent Viva Energy's liability for breach of any implied warranty or condition cannot be excluded by law, Viva Energy's liability will be limited, at its option, to:
- (a) in the case of services supplied or offered by Viva Energy:
    - (i) the re-supply of those services; or
    - (ii) the payment of the cost of having those services re-supplied; and
  - (b) in the case of goods supplied or offered by Viva Energy:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of having the goods replaced; or
    - (iv) the payment of the cost of having the goods repaired.

## 7. General

- 7.1 Viva Energy reserves the right to vary these Terms and Conditions at any time, in its absolute discretion, by giving You not less than 14 days' notice in writing.
- 7.2 These Terms and Conditions are governed by the laws in force in the State of Victoria, and any proceedings arising out of these Viva Energy Terms & Conditions shall be determined by a court of competent jurisdiction in that State.
- 7.3 Viva Energy will not be responsible for any failure to comply or any delay in complying with any of these Terms and Conditions if compliance has been delayed, hindered, interfered with or prevented by any cause beyond Viva Energy's reasonable control, a strike, lock-out or other industrial action (whether or not Viva Energy is a party to it or would be able to influence or procure its settlement), or compliance with a government request.
- 7.4 Viva Energy may terminate or suspend Your access to all or part of the Viva Energy Scheduling Portal, immediately upon notice (including by email), for any conduct that is in violation of the Terms and Conditions or any applicable law. Viva Energy may also terminate Your access to the Viva Energy Scheduling Portal if You cease to have existing Carrier Terms with Viva Energy.
- 7.5 The failure of Viva Energy to insist upon strict performance of any of the provisions of these Terms and Conditions will not be deemed a waiver of any subsequent breach of or default of these Terms and Conditions by You.
- 7.6 If these Terms and Conditions or any part thereof is or becomes or is declared illegal, invalid or unenforceable for any reason whatsoever in any jurisdiction and such term or part is severable, it is deemed deleted from these Terms and Conditions in the relevant jurisdiction.

## 8. Definitions

- 8.1 **'Affiliate'** means a related body corporate as that term is defined in the Corporations Act 2001 (Cth)
- 8.2 **'Authorised Purpose'** [means the scheduling of Product deliveries to Viva Energy customers in accordance with the Carrier Terms].
- 8.3 **'Carrier Terms'** means the existing carrier agreement between You and Viva Energy.
- 8.4 **'Personal Information'** has the meaning given to it in the *Privacy Act 1988* (Cth).
- 8.5 **'Viva Energy'** means Viva Energy Australia Pty Ltd (ABN 46 004 610 459).
- 8.6 **'Viva Energy Scheduling Portal'** means the website that has been developed for a carrier to schedule deliveries to Viva Energy customers in accordance with the Carrier Terms.
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