

Customer Supply Agreement

October 2020

These terms and conditions along with your application constitute the *TFN Customer Service Agreement* made and entered into and between *TFN* and the *Applicant*.

Terms and Conditions Agreed:

1. Parties to this agreement

- 1.1. Market Demand Trading 268 Pty Ltd t/a TruckFuelNet "TFN" registration no 2005/022763/07, a company duly registered under the laws of South Africa; "**hereinafter referred to as TFN**"
- 1.2. Applicant refers to any individual, company, close corporation, trust or other business entity that submit an application and enter into this contract with TFN for services; "**hereinafter referred to as the Applicant**"

2. Agreement Documents

- 2.1. The whole agreement between the Applicant and TFN comprises the application form and this agreement. Once this document has been signed or accepted electronically or otherwise by the Applicant, the agreement will be concluded and this document together with the application will constitute the entire agreement between the parties.
- 2.2. The Applicant acknowledges and agrees that the Applicant may be required to accept this agreement and any amendments to this agreement from time to time by means of an electronic confirmation in the TFN Management System where the Applicant confirms of having read the terms and conditions recorded in this agreement and that the Applicant accepts it. The Applicant further agrees that such and any other required electronic acceptance will be binding and legally enforceable as if it was an original signature by the Applicant and such electronically accepted terms and conditions shall form part of this agreement as if originally incorporated herein.
- 2.3. The Applicant acknowledges that this agreement may be stored in electronic or film format and that such electronic document or film, or a print of such, shall be deemed to be primary evidence of the terms of this agreement.
- 2.4. TFN shall be under no obligation to produce the original agreement for the purpose of any legal proceedings or any other purpose.
- 2.5. This document records the general terms and conditions agreed between the parties for the product/s and service/s offered by TFN to the Applicant. The specific details, conditions of use and information of the product/s and/or service/s for which the Applicant subscribed to with TFN is recorded and stipulated in the product/s or service/s Product Brochure or Product Information Document. The Applicant will be given a copy of the Product Brochure for the products and services subscribed to with commencement of this agreement. The same is available on-line on the TFN Management System or TFN Website.
- 2.6. The Applicant acknowledges and confirms to have read the Product Brochure for the product and/or service/s subscribed in terms of this agreement; to have ascertained itself with the specifics, details and conditions of use for the product or service offering; and shall not have any claim against TFN on the basis of ignorance with regards to the conditions of use for the product/s and/or service/s offering.
- 2.7. Each party will bear its own costs in carrying out its obligations in terms of this agreement.

3. Amendment of terms and conditions of this agreement

- 3.1. TFN may at any time and at its sole discretion amend or substitute any or all of the terms and conditions recorded in this document.
- 3.2. TFN undertakes to notify the Applicant at least 30 days in advance of any amendments or substitutions to this agreement and in the event that it is not acceptable, the Applicant shall have the right to cancel this agreement.
- 3.3. Any amendments or substitution of this agreement does not waiver or relief the Applicant from any indebtedness to TFN.

- 3.4. In addition to the above, no amendment other than those electronically accepted amendments referred to in clause 2.2 above or any consensual cancellation of this agreement or any provision or term thereof or any agreement or other document issued or executed pursuant to this agreement will be binding unless recorded in a written document signed by both parties.
 - 3.5. No settlement of any disputes arising under this agreement and/or any extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement will be binding unless recorded in a written document signed by both parties.
 - 3.6. Any such extension, waiver, relaxation or suspension, that is so given or made, will be strictly construed as relating strictly to the matter in respect whereof it was made or given and no such extension, waiver, relaxation or suspension of obligations shall be construed as an abandonment or waiver by TFN of its rights in terms of the agreement and any such extension, waiver, relaxation or suspension, that is so given or made shall be an indulgence and shall not vest any right to the Applicant to such extension, waiver, relaxation or suspension.
4. Commencement and duration
 - 4.1. This agreement commences on the date of signature or electronic acceptance by the Applicant and continues indefinitely thereafter until terminated by either party in terms hereof.
5. Services
 - 5.1. The services offered by TFN to the Applicant in the execution of this agreement are any one, or all, or a combination of the following services, as agreed between the parties and as detailed in the Product Brochure or Product Information Document:
 - 5.1.1. On-Road Diesel Refueling;
 - 5.1.2. On-road Diesel Management
 - 5.1.3. Detailed Transaction and Management Reporting;
 - 5.2. Any new or complementary future product or service offering introduced and offered by TFN to the Applicant and subscribed to and accepted by the Applicant, shall be ruled and governed by this agreement, except where specifically recorded in a separate agreement, and the terms and conditions of this agreement shall be legally binding and enforced between the parties in respect of such new or complementary future product or service offering, as if it was specifically stipulated and recorded in this agreement from inception.
 - 5.3. TFN as a Service Provider to the Applicant is dependent on TFN service providers' systems and operations (e.g. diesel depots) for the delivery of services and although it will use its best endeavours to ensure that services and facilities are always in operation, TFN does not guarantee to the Applicant 100% uptime or availability of products and services at TFN service providers and entities responsible for delivering a service. The Applicant accepts that no such guarantee is given or implied and the Applicant accepts that the Applicant has no claim against TFN for lack or failure by a TFN service provider to deliver a service.
6. TFN Service Points
 - 6.1. In the event of the Applicant refueling at TFN Service Points, the Applicant hereby requests and authorizes TFN to, on the Applicant's behalf, to procure and provide the Applicant with diesel at these sites.
 - 6.2. The Applicant acknowledges and accepts that they will be charged a service and handling fee by TFN for the provisions of the stock procurement, stock management and the refueling service for their vehicles.
 - 6.3. The Applicant furthermore hereby give his/her consent and authorizes TFN to deduct from funds in the Applicant's cash in advance account, or linked credit facility, if available, and make payment on the Applicant's behalf for bulk diesel stock purchases and service fees due by the Applicant at the applicable TFN Service Points where these products and services were rendered
 - 6.4. The Applicant further acknowledges and agrees to all the terms and conditions as recorded in the TFN Customer Service Agreement for bulk diesel supply and storage at TFN Service Points.
7. Applicant general obligations
 - 7.1. The Applicant shall: -
 - 7.1.1. use the TFN Customer Identification Card or Electronic Tags or Unique PIN/OTP numbers and/or any other Customer Identifier "TFN Card" issued to the Applicant for use at TFN service providers on the prescribed basis as determined by TFN from time to time;

- 7.1.2. use the TFN Card only at authorized service providers or participating service providers in the TFN Supplier Network;
- 7.1.3. not use, or permit the use of, the TFN Card on any other vehicle other than the vehicle against which the TFN Card has been registered or allocated to in the TFN system;
- 7.1.4. in the event that TFN has to take any legal action to enforce any of its rights under this agreement, be responsible for all the legal costs of TFN, on an attorney and own client basis, including any collection commission charged in respect of amounts recovered if legal action is taken against an Applicant in terms of this agreement; and
- 7.1.5. ensure that there are at all times sufficient funds in the Applicant account to cover payments to TFN suppliers for products and services delivered, especially providing for sufficient funds over weekends and public holidays.

8. Resolutions and Disputes

- 8.1. Save as otherwise provided, any dispute with regards to interpretation of any term or condition in this agreement, implementation of any term or condition in this agreement or the termination of this agreement or any other matter arising out of this agreement shall be submitted to and decided by arbitration as governed by the Arbitration Act 42 of 1965.
- 8.2. The Applicant is obliged to refer and lodge any dispute to TFN within fourteen (14) days of the transaction date.
- 8.3. The dispute shall first be mediated between the parties and if not resolved within ten (10) days of the date of referral to TFN, then the dispute will be referred to arbitration of a single arbitrator agreed upon between the parties, failing which such arbitrator shall be appointed by the President for the time being of the Arbitration Foundation of South Africa or his nominee or successor.
- 8.4. The decision of the arbitrator on such dispute will be final and binding on all concerned.
- 8.5. The arbitration proceedings will be conducted informally and as inexpensive as possible in Johannesburg or such other place the arbitrator may consider will suit the balance of convenience under the circumstances.
- 8.6. In the event that any urgent interdict is applied for by either TFN or the Applicant against the other party, then either party may approach the High Court having jurisdiction.
- 8.7. This arbitration clause is separable from the rest of this agreement and will remain effective between the parties after termination.

9. Ownership and risk

- 9.1. Ownership of the TFN Card remains vested in TFN.
- 9.2. The risk of loss of or damage to the TFN Card passes to the Applicant on delivery of the TFN Card to the Applicant.
- 9.3. At any time when the Applicant is in breach of any of its obligations in terms of this agreement, TFN shall be entitled forthwith and without notice to the Applicant to put on hold the TFN Card, and if TFN does so, this shall not give rise to any claim by the Applicant whether to re-instatement of the TFN Card or any other relief or liability for any loss suffered.
- 9.4. The registration fee paid by the Applicant on delivery of the TFN Card is not refundable under any circumstances.
- 9.5. If the TFN Card is lost or stolen the Applicant remains responsible for all fees and amounts due arising from the use (illegal or legitimate) and replacement of the TFN Card.
- 9.6. If for any reason a transaction is rejected at a TFN service provider due to insufficient funds in the TFN account or system failure by TFN or by TFN service provider and the Applicant's vehicle is held up for any reason whatsoever, TFN does not accept any responsibility or liability for damage to loads such as perishable or other goods.

10. Payments for services

- 10.1. The Applicant shall pay TFN the fees for services and prices for product received from TFN Suppliers as agreed from time to time and as per the official listing prices and fees published on the TFN Website or management system from time to time or as announced and communicated by TFN from time to time to the Applicant through electronic mail or post mail delivered.

- 10.2. The Applicant acknowledges and accepts, with regards to deposits and payments, that TFN is not acting as a bank or financial institution; that TFN is not a deposit taking institution and that TFN will under no circumstances advance credit to the Applicant or allow deferred payments on the Applicant account;
- 10.3. The Applicant, in terms of this agreement, appoints TFN as agent and payer service provider for the payment, on behalf of the Applicant and from funds in the Applicant account, of amounts due by the Applicant to TFN service providers for purchases and services incurred by the Applicant at TFN service providers.
- 10.4. The Applicant will only be entitled to repayment of deposits made in terms of this agreement in the event that TFN fail to provide the services as agreed in this agreement or with termination of this agreement as for provided herein.
- 10.5. The Applicant acknowledges and accepts that TFN and TFN's appointed service providers may experience system failures from time to time, which means that TFN is not able to process transactions real time or update service provider systems with account balances or cards on hold; and that it may happen that transactions are processed off-line resulting that the Applicant account may go in credit, i.e., a shortfall; and that TFN have the right in terms of this agreement to request and demand from the Applicant an acceptable financial guarantee as security for the repayment of shortfall amounts caused by system failures or circumstances outside the control of TFN; and that the Applicant acknowledges and accepts that the financial guarantee is not for a credit limit or will not establish a credit limit on the Applicant's account, but it is to protect TFN and TFN's appointed service providers against any financial risks and losses in the event of system failures, whilst providing a service to the Applicant.
- 10.6. The Applicant undertakes and agrees to pay for services provided by TFN and for the products and services delivered by TFN's appointed service providers in the TFN Supplier Network.
- 10.7. The Applicant acknowledges that it may happen from time to time that systems may go off-line and that transactions are processed off-line by means of a manual procedure ("manual transaction") and agrees to the acceptance of such manual transactions on the proviso that the TFN Card or any other identification or access method used by TFN, together with the registered/appointed vehicle for that particular TFN Card, was present at the point of sale.
- 10.8. Fees and charges payable by the Applicant for services provided and delivered in terms of this agreement shall be confirmed in writing prior to entering into this agreement and subject to any changes during the currency of this agreement as provided in this agreement.
- 10.9. All deposits made by the Applicant into the Applicant's TFN account shall be preferably by electronic transfer. Where deposits are made in cash the net amount after deducting cash deposit bank charges will be credited to the Applicant account. **Deposits by cheque are not acceptable and not allowed under any circumstances.**
- 10.10. The Applicant agrees and consents to TFN deducting all fees and charges due to TFN for services delivered in terms of this agreement from the Applicant's pre-paid account or from rebates due and payable to the Applicant.
- 10.11. Where the Applicant operates on a pre-paid account basis it is the Applicant's responsibility to ensure:
 - 10.11.1. that there are sufficient funds available in the Applicant's account for payment for services;
 - 10.11.2. that deposits are made to the nominated bank account as prescribed by TFN from time to time;
 - 10.11.3. that deposits are made during normal working hours, 08h00 to 16h30 Monday to Friday, using the unique account reference number assigned to the Applicant so as to enable TFN to identify and allocate the deposited funds without undue delay;
 - 10.11.4. that proof of payment is forwarded to TFN for immediate processing of the deposit;
- 10.12. The net amount of the deposit received from the Applicant will be credited to the Applicant's pre-paid account;
- 10.13. No interest will be paid in respect of credit balances in the Applicant's pre-paid account.
- 10.14. Where the Applicant pays for services by bank fleet card the following will apply:
 - 10.14.1. Rebates due and payable to the Applicant for the calendar month will be electronically paid before the 7th of the next month;

- 10.14.2. All fees and charges due to TFN for services delivered in terms of this agreement shall be deducted from rebate amounts due and payable to the Applicant;
 - 10.14.3. The Applicant shall be responsible, payable immediately on demand, for the payment of any amounts due as a result of a card payment rejected or not processed successfully, for whatever reason, or negligence by a service attendant to process the payment for a purchase, the result being that the amount is still due and outstanding by the Applicant;
 - 10.15. Where the Applicant make use of the fuel credit offered by Standard Bank Fleet Management "SBFM" in partnership with TFN, the Applicant acknowledges and hereby gives authorization and consent as follows:
 - 10.15.1. TFN will present the TFN account related services of the Applicant, e.g., monthly account fee, due by the Applicant to TFN, to SBFM for processing against the Applicant's credit facility with SBFM and to be paid over to TFN;
 - 10.15.2. TFN will calculate and pay on behalf of the Applicant, on a monthly basis, the cents per litre "cpl" credit cost fee agreed and payable by the Applicant to SBFM for the fuel credit facility, which amount shall include VAT, as prescribed and required by the Income Tax Act;
 - 10.15.3. In both instances in 10.15.1 and 10.15.2, TFN and SBFM act as agents for the Applicant to process and make the payments for and on behalf of the Applicant;
 - 10.16. The Applicant undertakes to sign all and any documents necessary to enable TFN to recover any amounts due to TFN by the Applicant for any of the services provided and delivered in terms of this agreement by TFN and its service providers.
 - 10.17. TFN shall immediately suspend any and all services and hotlist TFN Cards with TFN's appointed service providers where there are not sufficient funds in the Applicant's account.
 - 10.18. The balance as reflected in the TFN Management System is accepted as the correct balance for the purpose of account management. Where there is a mistake on the Applicant account, TFN will rectify it with immediate effect.
 - 10.19. TFN reserves the right to increase the fees and charges for services offered in terms of this agreement, provided that the Applicant is given at least one month's notice prior to implementation and activation.
11. Applicant's Guarantee and Undertaking
- 11.1. The Applicant confirms and acknowledges of being informed and made aware that a situation may occur where the Applicants account goes into a negative, i.e. the Applicant's TFN Account has run out of funds and does not have sufficient funds to settle payment to TFN's appointed service provider ("funds shortfall");
 - 11.2. In the event of a funds shortfall, the Applicant undertakes and agrees to, within twenty four (24) hours of being informed of the lack of funds position, make an adequate deposit to the Applicant's TFN Account to enable TFN to settle, on the Applicants behalf, all TFN's appointed service provider for all outstanding amounts due for service and products provided by said TFN appointed service providers to the Applicant;
 - 11.3. The guarantee given by the Applicant in terms of this agreement is an unconditional guarantee given without protest or prejudice, binds the Applicant unconditionally and in the event that the Applicant is a legal entity, the directors and principals of such legal entity, and can be used by TFN, without notice, to obtain a court order from any South African Court to collect the funds from the Applicant or file any application with the court to secure or collect the funds from the Applicant;
 - 11.4. Any legal and/or court fees emanating from TFN exercising its rights in terms of this agreement to collect any and all outstanding amounts due by the Applicant to the bank or TFN shall be for the account of the Applicant on the scale as agreed between the parties elsewhere in this agreement;
12. Use of TFN Management System
- 12.1. The applicant has the right to use the on-line internet accessible TFN Management System for its account management.
 - 12.2. TFN shall supply the Applicant with a username and password login to access the system.
 - 12.3. The Applicant will be allocated access and user rights to the system features and functionality in accordance with the product offering and services to which they have subscribed.
 - 12.4. It is the Applicant's responsibility to protect its login details and prevent unauthorized access to the Applicant account.

- 12.5. TFN shall not be liable for any damages suffered by the Applicant of whatsoever nature and the Applicant has no claim against TFN for any damages or losses incurred by the Applicant as a result of unauthorized use of Applicant's login details or of unauthorised access to the Applicant's account.
- 12.6 In addition, TFN shall not be liable in the event that the Applicant is denied access to the TFN Management System as a result of Applicant's arrears account or non-compliance with the terms of this agreement or in the event that the TFN Management System may be offline for whatever reason.

13. Limitation of Liability, Indemnity and Force Majeure

- 13.1. TFN shall not be liable to the Applicant whether in terms of any indemnity or otherwise for any loss or damage arising in whole or in part from any act or omission of the Applicant or those for whom the Applicant is vicariously liable.
- 13.2. TFN shall not be liable to the Applicant for any indirect or consequential damages, whether within the contemplation of the parties or not and howsoever arising. Notwithstanding anything contained in this agreement the aggregate liability of TFN to the Applicant from any cause of action whatsoever shall not exceed R1000.00.
- 13.3. Insofar as the performance of any obligation or duty by TFN in terms of this agreement is performed or assumed by any of its directors, employees, agents, service providers or sub-contractors, clauses limiting and/or excluding or indemnifying the liability of TFN are stipulated for their benefit as well as that of TFN and their liability shall be limited and/or excluded and they shall be indemnified accordingly.
- 13.4. TFN shall not be liable to the Applicant for any losses incurred or any direct or consequential damage as a result of failure of an appointed service provider of TFN to deliver in a service or as a result of a fraudulent action or deed or transaction of an employee or an appointed service provider of TFN.
- 13.5. Neither party will be liable to the other if it is unable to perform any of its obligations under the agreement due to Force Majeure. In the event of Force Majeure, the affected party undertake to give notice to the other party within 5 days of the event. If performance of any obligation under this agreement as a result of Force Majeure is delayed for longer than 30 days, either party may request termination of this agreement.

14. Termination and Cancellation

- 14.1. Either party may terminate or cancel this agreement as for provided herein.
- 14.2. Termination without cause:
- 14.2.1. Either party may terminate this agreement in writing with one (1) full calendar months' notice expiring at the end of a calendar month.
- 14.2.2. TFN undertakes to repay to the Applicant within 14 days of termination of this agreement, after deduction of any and all fees and charges due to TFN or due by the Applicant to any of TFN's appointed service providers, any credit balance in the Applicant account.
- 14.3. Termination with cause:
- 14.3.1. TFN shall be entitled to terminate this agreement forthwith by written notice to the Applicant at its domicile address as per the Applicant's application form if the Applicant:
- 14.3.1.1. breaches any term of this agreement;
 - 14.3.1.2. fails to maintain its account with sufficient funds;
 - 14.3.1.3. fails to deposit a payment when so required;
 - 14.3.1.4. fails to abide by the rules of TFN or the use of the TFN Card or user conditions of a product or service.
 - 14.3.1.5. is insolvent or commits an act of insolvency.

15. Notices and communications

15.1. The parties choose as their *domicilium citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

15.1.1. in the case of TFN:

15.1.1.1. Office address: 111 Monument Road, Nimrod Park, Kempton Park

15.1.1.2. Postal address: PostNet Suite #101, Private Bag X7, Aston Manor, 1630

15.1.1.3. Fax No +27 11 394-0660

15.1.2. in the case of the Applicant, the address provided by the Applicant on the TFN Application Form.

15.2. Any notice to a party:

15.2.1. sent by Pre-paid registered post (by airmail if applicable) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 14th business day after posting (unless the contrary is proved);

15.2.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

15.2.3. sent by telefax to its chosen telefax number stipulated in clause 13.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

15.2.4. sent by electronic mail to the email address provided by the Applicant on its application form, shall be deemed to have been received on the date and time sent by the sender.

15.3. The Applicant undertakes to notify TFN before the effective date of any changes to the details of the Applicant, provided on in the application form.

16. Miscellaneous

Save as provided for in this agreement, the rights and remedies of TFN whether arising under this agreement or in law shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing duly executed by an authorized representative of TFN.