

# SportCard Caltex Fuel Policy

## 1. Introduction

- 1.1. This SportCard Caltex Fuel Policy describes the terms and conditions that govern your use of the SportCard Caltex StarCard.
- 1.2. You must read, agree with and accept all of the terms and conditions contained in this SportCard Caltex Fuel Policy which include those terms and conditions expressly set out below and those incorporated by reference, before you may use a SportCard Caltex StarCard.
- 1.3. You must read, agree with and accept all of the the information contained in the documents referred to in this document, as they may contain further terms and conditions which apply to you as a SportCard Caltex StarCard user.
- 1.4. SportCard has entered into an agreement with Caltex Australia Petroleum Pty Ltd ACN 000 032 128 ("Caltex") in relation to the purchase of fuel products with the SportCard Caltex StarCard.
- 1.5. By accepting this SportCard Caltex Fuel Policy, you also agree to be bound by the SportCard Caltex Starcard Conditions of Use.
- 1.6. We may amend this Agreement at any time in our discretion by posting the amended terms on our Site. The fact that amendments have been made to the SportCard Caltex Fuel Policy will also be notified on the Site.
- 1.7. Except as stated below, all amended terms shall automatically be effective 30 days after they are initially posted on our Site.
- 1.8. If you do not agree with such changes, you must terminate your use of the SportCard Caltex StarCard.
- 1.9. This Agreement may not be otherwise amended except in writing signed by you and SportCard.

## 2. Definitions

- 2.1. 'Business Day' means a day on which banks are open for general business in Sydney, New South Wales, other than a Saturday, Sunday or public holiday.
- 2.2. 'Caltex SportCard Prices' means the price the member will pay for fuel when purchased via the SportCard labelled StarCard
- 2.3. 'Caltex SportCard Transaction Fees' means any fees charged by Caltex to SportCard and passed onto the member.
- 2.4. 'Card' means your SportCard card, which carries the 'SportCard' logo.
- 2.5. 'Member' means a Sportcard member with a current membership number.
- 2.6. 'Program' means the SportCard Program.
- 2.7. 'SportCard Caltex Fuel Policy' means this Agreement.
- 2.8. 'SportCard Caltex StarCard' means the card, issued for the use of pre-paid purchases of Caltex products.

2.9. 'SportCard' means SportCard Pty Ltd ACN 119 621 911, the operators of SportCard program.

2.10. 'the Site' the SportCard website.

### 3. Eligibility

3.1. Use of a SportCard Caltex StarCard is available only to Members.

3.2. Use of a SportCard Caltex StarCard is available only to, and may only be used by, individuals who can form legally binding contracts under applicable law.

3.3. Use of a SportCard Caltex StarCard is not available to persons under 18 years of age or to temporarily or indefinitely suspended SportCard members.

3.4. The Card remains the property of SportCard.

### 4. Services

4.1. Members are to pre-purchase credits on to the SportCard Caltex StarCard.

4.2. For each dollar paid to the credit of the Members SportCard Caltex StarCard the Members SportCard Caltex StarCard will be entitled to make purchase at Caltex to the value of one dollar.

4.3. Credits paid to the Members SportCard Caltex StarCard will be processed and there may be some time between the payment to the Members SportCard Caltex StarCard and the credit to the Members SportCard Caltex StarCard.

4.4. Pursuant to the Agreement between SportCard and Caltex:

4.4.1. Caltex will issue to the Customer Caltex StarCard for the purposes of purchasing Petroleum Products and other Products and Services at Caltex's Merchant sites.

4.4.2. Caltex agrees to supply the Products and Services to the Member at the **Caltex SportCard Prices**.

4.4.3. Caltex will charge the Transaction Fees per every transaction effected through Caltex's StarCard at the **Caltex SportCard Transaction Fees**.

4.4.4. Prices and Fees are based on an average monthly purchase of at least 15 kilolitres of Motor Fuel by SportCard Caltex StarCard users.

4.4.5. Caltex may in its absolute discretion vary either the Prices or the Fees or both if average purchases of Motor Fuel fall below the amount set in respect of any period of 6 consecutive months.

4.4.6. Caltex supplies Caltex StarCard to the SportCard Member on the terms and conditions of Caltex's StarCard Conditions of Use (**Annexure A** of this Agreement).

4.5. To the extent of any inconsistency between Caltex's StarCard Conditions of Use and this Agreement, the provisions of this Agreement will prevail.

4.6. The Customer will indemnify Caltex for and against all loss, damage, liability, claims, costs and expenses which arise out of:

4.6.1. any breach of this Agreement by the Member

4.6.2. a negligent or wrongful act or omission of the Member

- 4.6.3.any use of Caltex StarCard by the Member
- 4.7. Except to the extent that such loss, damage, liability, claim, cost or expense is caused by a negligent act or omission of Caltex.
- 4.8. Without limiting any other remedies available to SportCard at law, in equity or under this Agreement, SportCard may, in its sole discretion, suspend or terminate your account if we suspect that you (by conviction, settlement, insurance or escrow investigation, or otherwise in our sole discretion) have engaged in fraudulent activity in connection with the use of the card.
- 4.9. Members agree to indemnify and hold us and subsidiaries, affiliates, officers, directors, agents, and employees, harmless from and against any claims, demands, proceedings, losses and damages (actual, special and consequential) of every kind and nature, known and unknown, including reasonable solicitors' fees, made by any third party due to or arising out of your breach of this Agreement or the terms and policies it incorporates by reference, or your violation of any law or the rights of a third party.
- 4.10.Members shall comply with all applicable domestic (including common law) and international laws, statutes, ordinances and regulations regarding your use of our service.
- 4.11.Without limiting other remedies available to SportCard at law, in equity or under this Agreement, we may, in our sole discretion, immediately issue a warning, temporarily suspend, indefinitely suspend or terminate your membership and refuse to provide our services to you if:
- 4.11.1.you breach this Agreement or the terms and policies those documents incorporate by reference;
- 4.11.2.we are unable to verify or authenticate any information you provide to us;  
or
- 4.11.3.we believe that your actions may cause legal liability for you, our users or us.
- 4.12.We do not guarantee continuous or uninterrupted access to Caltex our products and services.
- 4.13.To the extent that SportCard and all affiliates and related entities of SportCard are able to limit the remedies available under this Agreement SportCard and all affiliates and related entities of SportCard expressly limit their liability for breach of a non-excludable condition or warranty implied by virtue of any legislation to the following remedies (the choice of which is to be at SportCard's sole discretion):
- 4.13.1.in the case of goods, any one or more of the following:
- 4.13.1.1.the replacement of the goods or the supply of equivalent goods;
- 4.13.1.2.the repair of the goods;
- 4.13.1.3.the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- 4.13.1.4.the payment of the cost of having the goods repaired; and
- 4.13.2.in the case of services:

4.13.2.1.the supply of the services again; or

4.13.2.2.the payment of the cost of having the services supplied again.

## **5. Member Transactions**

5.1. Use of the Card by you constitutes your agreement to the SportCard Caltex Fuel Policy, which shall govern use of the Card and the provision of the Services.

5.2. If you do not accept the SportCard Caltex Fuel Policy, you must refrain from using the Card.

5.3. Members are responsible for completing all transactions you participate in (including monitoring the status and complying with all relevant legal obligations).

5.4. Members are obligated to complete the transaction with the Partner if you purchase an item.

## **6. SportCard and Member Transactions**

6.1. SportCard is not involved in the actual transaction between Members and Caltex, in the event of a dispute with one or more users, you release SportCard (and our officers, directors, agents, affiliates, parents, subsidiaries and employees) from claims, demands and damages (actual, special, direct, indirect and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

6.2. SportCard cannot and does not confirm each user's purported identity.

6.3. SportCard seeks to ensure that listed items do not infringe upon the copyright, trademark or other rights of third parties.

6.4. In no event shall we, our affiliates and related entities or our suppliers be liable for lost profits or any special, incidental or consequential damages arising out of or in connection with the supply or inability to obtain supply of Caltex products..

6.5. Members agree to accept sole responsibility for the legality of your actions under the laws which apply to you.

6.6. Members agree that SportCard and all affiliates and related entities of SportCard have no responsibility for the legality of our Members' actions.

6.7. To the extent permitted by law, our liability, and the liability of our suppliers, to you or any third parties in any circumstance is limited to the greater of:

6.7.1.the amount of fees you pay to us in the 12 months prior to the action giving rise to liability; and

6.7.2.\$100.

6.8. Notwithstanding the above provisions, nothing in this Agreement is intended to limit or exclude any liability on the part of SportCard and its affiliates and related entities where and to the extent that applicable law prohibits such exclusion or limitation.

## **7. Notices**

- 7.1. Except as explicitly stated otherwise, any notices shall be given by registered ordinary post (or if posted to or from a place outside Australia, by registered airmail) or by facsimile transmission
  - 7.1.1. to SportCard at P.O. Box 363, STANHOPE GARDENS NSW 2768
  - 7.1.2. to Members to the email address you provide to SportCard during the registration process
  - 7.1.3. alternatively to Members, we may give you notice by certified postage, to the address provided to SportCard during the registration process, or as updated by you as relevant.
- 7.2. Any notice shall be deemed given
  - 7.2.1. if sent by email, 24 hours after email is sent, unless the sending party is notified that the email address is invalid,
  - 7.2.2. if sent by pre-paid post, three Business Days after the date of posting, and on the seventh Business Day if sent to or posted from outside Australia, and
  - 7.2.3. if sent by facsimile transmission, on the Business Day the transmission is sent (as long as the sender has a confirmation report specifying the facsimile number listed above, the number of pages sent and the date of the transmission).

## **8. General**

- 8.1. This Agreement shall be governed in all respects by the laws of the State of New South Wales, Australia. All members of this Site irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.
- 8.2. The provisions of this Agreement are severable, and if any provision of this Agreement is held to be invalid or unenforceable, such provision may be removed and the remaining provisions shall be enforced.
- 8.3. Members agree that this Agreement and all incorporated agreements may be automatically assigned by SportCard, in our sole discretion, to a third party in the event of a merger or acquisition.
- 8.4. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.
- 8.5. Any failure by SportCard to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.
- 8.6. Members agree that this Agreement may not be construed adversely against us solely because we prepared it.
- 8.7. This Agreement and the terms and conditions incorporated herein set forth the entire understanding and agreement between us with respect to the subject matter hereof.
- 8.8. Any controversy or claim arising out of or in connection with this Agreement may at our discretion be settled by binding arbitration by reference to a commercial disputes centre. You agree to be bound by the ruling arbitrator. The costs of the dispute are borne by the originator.