

QuickNom Terms of Use

1. These terms are the sole and entire terms and conditions that govern the access and use of QuickNom (<http://www.quicknom.com/esso>) by Buyer and its Users. Words used in these terms have the same meaning as in the covering letter and Schedule provided with them to Buyer by Seller unless the context otherwise requires.
2. Buyer acknowledges and agrees that QuickNom is merely a communication portal to facilitate the electronic transmission, receipt and administration of Buyer's gas nominations made in connection with the Agreements.
3. The maximum number of Users Buyer may have will be determined by Seller from time to time but at the minimum Buyer may have two Users. At all times Buyer remains solely liable for and bound by the actions taken by its Users in connection with QuickNom. Buyer and its Users are responsible for the confidentiality, use and safe keeping of all user names and passwords allocated by Seller to Buyer's QuickNom account. Buyer is responsible for any unauthorised access and use of Buyer's QuickNom account which arises due to a failure by the Buyer or its Users to comply with the foregoing.
4. If Buyer wishes from time to time to vary the Users allocated to its QuickNom account, it must notify Seller in writing of:
 - a. in the case of Users to be removed, the Users to be removed; and
 - b. in the case of Users to be added, the name, title and contact details of the Users to be added.

In the case of any User to be removed from Buyer's QuickNom account, Buyer acknowledges that such removal will not be effective until Seller confirms to Buyer that the User has been removed. In the case of any User to be added, that User must be an employee of Buyer unless Seller otherwise agrees in writing.

5. Buyer acknowledges that menus and other references used in QuickNom are unique to QuickNom and therefore may not be a direct reference to or have the same meaning as any identical or similar word or reference used in the Agreements. For the avoidance of doubt, Buyer also acknowledges that in all respects the terms of each Agreement between the Sellers and Buyer solely govern the type, timing and frequency of gas nominations that may be made by Buyer under each Agreement.
6. Buyer acknowledges and agrees:
 - a. that any gas nomination made by it using QuickNom is not deemed to have been notified to Seller or the Sellers unless confirmed received via email or fax to the Buyer or its nominated User. If no such confirmation is received by the Buyer or its nominated User, the Buyer must use an alternate communication means permitted by the respective Agreement to notify the Seller of its gas nomination. No extension or variation to the cut off times specified in the Agreements for gas nominations to be received by the Seller will occur as a result of any failure or inability by the Buyer for whatever reason to have successfully made a gas nomination via QuickNom;
 - b. that it will only access and use QuickNom for the purpose of making gas nominations in connection with the Agreements. Further, that it will not deliberately take any action which damages or interferes with the operation or functionality of QuickNom. Buyer agrees to ensure that its Users also comply with this clause;
 - c. that the Seller is not obligated to correct or check for any actual or potential errors or omissions made by the Buyer or its Users when inputting information into or via QuickNom;
 - d. that QuickNom is an internet based application and accordingly, circumstances beyond the reasonable control of the Seller may arise from time to time which prevent the Buyer and its Users from accessing and using QuickNom or otherwise prevent QuickNom from functioning (such as network or ISP congestion or failure). The Seller makes no representation, guarantee or warranty that QuickNom will always be available for access and use by Buyer and its Users; and
 - e. that whilst the Seller will use reasonable endeavours to ensure the completeness and accuracy of all information provided via or contained within QuickNom, it does not represent, guarantee or warrant that such information is complete or accurate. In all cases, terms specified in the Agreements prevail to the extent of any inconsistency with information provided via or contained within QuickNom.
7. Whilst the Seller will use reasonable endeavours to ensure QuickNom is always available for access and use by Buyer and its Users, it may also from time to time without notice or liability to the Buyer

immediately suspend access to QuickNom for maintenance, upgrading or modification or if it has reason to believe the integrity or operation of the system is impacted. The Seller will periodically keep the Buyer informed of the duration for which it anticipates the suspension will continue. During any such period of suspension, Buyer must use an alternate communication means permitted by the Agreements to notify the Seller of its gas nomination.

8. The Seller may at any time and for any reason cancel the Buyer's QuickNom account and terminate these terms without liability to the Buyer by one calendar month's prior written notice to the Buyer. If this occurs, Buyer must use an alternate communication means permitted by the Agreements to notify the Seller of its gas nomination on and from the effective date of such cancellation and termination.
9. The Seller may from time to time amend these terms by giving at least one calendar month's prior notice in writing to the Buyer. If the Buyer does not accept the amendments the Seller proposes, it must so notify the Seller in writing by the date which is 7 days prior to the date the amendments are to take effect (**Objection Date**). If no such notice of objection is received by the Seller by the Objection Date, the Buyer will be deemed to have accepted and agreed to amending these terms as proposed by the Seller. If a notice of objection is received by the Seller by the Objection Date, the Seller and the Buyer must attempt (but are not obliged) to agree on mutually acceptable amendments to these terms within 7 days of the Objection Date (**Negotiation Period**). Failing any such agreement within the Negotiation Period, the Seller may at its sole discretion and without liability to the Buyer immediately cancel the Buyer's QuickNom account and terminate these terms.
10. Despite anything to the contrary the Seller is not liable for any Consequential Loss howsoever and by whomsoever caused that is suffered or incurred by Buyer or its Users in connection with QuickNom. In this clause 10, "Consequential Loss" means consequential loss, loss of profit, loss of anticipated profit, loss of revenue, loss of goodwill, loss of business opportunity and any other loss of an indirect nature.
11. These terms shall be governed by and construed, interpreted and applied in accordance with the laws of the State of Victoria, excluding any choice of law rules which would refer the matter to the laws of another jurisdiction.