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## **Fuel Oils**

**A Division of Fuel Oils (Holdings) Ltd**

### **Standard Conditions of Sale for Petroleum Products**

#### **1. General**

1.1 In these terms and conditions:

1.1.1 **"Company"** means Fuel Oils (Holdings) Limited

1.1.2 **"Affiliated Company"** means any company that is a subsidiary of the Company within the meaning of section 1159 of the Companies Act 2006.

1.1.3 **"Agreement"** means any contract between the Company or Affiliated Company and the Buyer for the sale and purchase of the Products, incorporating these Conditions

1.1.4 **"Buyer"** means the person or body corporate who concludes an Agreement with the Company or Affiliated Company

1.1.5 **"Conditions"** means the standard conditions of sale set out in these terms and conditions and (unless the context otherwise requires) includes any special terms agreed in writing between the parties

1.1.6 **"Products"** means the petroleum products (including any or any part of them) which the Company or Affiliated Company is to sell and deliver in accordance with the Agreement

1.2 These Conditions (plus any variations as permitted under Condition 1.3) shall apply to all orders (whether concluded or not) and all Agreements for the sale of the Products to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or other document). No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order or other document shall form part of the Agreement simply as a result of such document being referred to in the Agreement.

1.3 No variation or other terms, conditions or warranties of any nature whatsoever (whether verbal, collateral or otherwise) shall be added to these Conditions unless expressly accepted or confirmed in writing and signed by or on behalf of the Company or any Affiliated Company.

1.4 Each order or acceptance of a quotation for Products by the Buyer from the Company or Affiliated Company shall be deemed to be an offer by the Buyer to buy Products subject to these Conditions. No order placed by the Buyer shall be deemed to be accepted until the Company or Affiliated Company has, in writing, confirmed an order placed by Buyer, or has commenced the execution or delivery of the order. A mere confirmation of the receipt of an order will not automatically imply that the Company or Affiliated Company has accepted the order of the Buyer.

1.5 No servant, employee or agent of the Company or Affiliated Company has authority to agree to any variation or modification of or addition to these Conditions in any circumstances whatsoever and are not authorised to make any representations concerning the Products unless confirmed by the Company or Affiliated Company in writing. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company or Affiliated Company which is not set out in the Agreement. Nothing in this Condition shall exclude or limit the Company's or Affiliated Company's liability for fraudulent misrepresentation.

#### **2. Risk**

The risk in the Products shall pass to the Buyer or the Buyer's agent on delivery by the Company or Affiliated Company or by its agent. If the Buyer wrongfully fails to take delivery of the Products, risk shall pass the time when the Company or Affiliated Company has tendered delivery of the Products.

#### **3. Delivery**

3.1 Where the Products are delivered in bulk through hose, delivery shall be deemed to take place when such Products pass from the tank wagon's permanent hose pipe connection or from any hose of the Company or Affiliated Company attached thereto. In all other cases, delivery shall be deemed to take place on transfer of such Products to the Buyer or the Buyer's agent.

3.2 All orders are accepted subject to availability of the Products and the Company or Affiliated Company shall use its reasonable endeavours to deliver the Products to the Buyer within 48 hours of the receipt of the Buyer's order, but the Company or Affiliated Company shall not be liable for any delay in delivery of the Products howsoever caused and time for delivery shall not be of the essence of the Agreement.

3.3 Subject to the other provisions of these Conditions, the Company or Affiliated Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the Company's or Affiliated Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Agreement unless such delay exceeds 180 days.

3.4 If for any reason the Buyer fails to accept delivery of any of the Products when they are ready for delivery, or the Company or Affiliated Company is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

3.4.1 risk in the Products shall pass to the Buyer (including for loss or damage caused by the Company's or Affiliated Company's negligence);

3.4.2 the Products shall be deemed to have been delivered; and

3.4.3 the Company or Affiliated Company may store the Products until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3.5 If the Company or Affiliated Company delivers to the Buyer a quantity of Products of up to 90% more or less than the quantity accepted by the Company or Affiliated Company, the Buyer shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Agreement rate.

3.6 The Company or Affiliated Company may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Agreement. Each instalment shall be a separate Agreement and no cancellation or termination of any one Agreement relating to an instalment shall entitle the Buyer to repudiate or cancel any other Agreement or instalment.

3.7 The Company or Affiliated Company shall not be liable for any non-delivery of Products (even if caused by the Company's or Affiliated Company's negligence) unless the Buyer gives written notice of the non-delivery within 14 days of the date when the Products would in the ordinary course of events have been received.

3.8 If the Company or Affiliated Company fails to deliver the Products for any reason other than any cause beyond the Company or the Affiliated Company's reasonable control or the Buyer's default, and the Company or Affiliated Company is accordingly liable to the Buyer, the Company or Affiliated Company's liability shall be limited to:

3.8.1 replacing the Products within a reasonable time;

3.8.2 issuing a credit note at the pro rata Agreement rate against any invoice raised for such Products; or

3.8.3 the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar products to replace those not delivered over the price of the Products.

3.9 Specifically in relation to delivery:

3.9.1 where delivery is taken at the Buyer's premises the Buyer shall provide safe access for the vehicles of the Company, Affiliated Company or its agents between the Public Highway and the actual point of delivery and shall observe all the conditions of the Buyer's Petroleum Storage Licence. In particular, the Buyer shall not allow any smoking or naked lights nor permit any stoves, electric or gas fires or radiators to function in the vicinity of such point of delivery;

3.9.2 where delivery is taken at the Company's or Affiliated Company's premises the Buyer shall comply with the safety regulations for the time being in force and with the conditions of the Company's or Affiliated Company's Petroleum Storage Licence applicable thereto (copies of which may be obtained on request). In particular the Buyer shall not allow any smoking or naked lights in the vicinity of such point of delivery;

3.9.3 the Buyer shall take delivery of the full quantity of the Products ordered by the Buyer and shall thereafter provide sufficient, safe and suitable bulk storage for such Products. In particular the Buyer shall comply with the requirements and conditions laid down by the Petroleum (Consolidation) Act 1928 and the Regulations made thereunder and any statutory modifications or re-enactments thereof for the time being in force; and

3.9.4 the Buyer shall fully indemnify the Company or any of its Affiliated Companies against all loss, damages, costs, expenses and claims which may be made against the Company or its Affiliated Companies for loss or damage caused by or arising out of or in conjunction with any breach of the Buyer of the provisions of this Condition 3.9 and investigating and defending any such claims.

#### **4. Description and quantity**

4.1 Where the Products are delivered in bulk through hose the quantity shown by the tank wagon dip rod or other measuring device employed by the Company or Affiliated Company shall be accepted by the Buyer as conclusive evidence of the quantity delivered. The Company or Affiliated Company cannot accept any responsibility whatsoever for discrepancies in the Buyers tank dip rods or other measuring devices.

4.2 In all other cases the Buyer shall accept the Company's or Affiliated Company's measurements of quantity as conclusive evidence of the quantity delivered in the absence of manifest error.

#### **5. Payment**

5.1 Payment by the Buyer for the Products shall be made by the 15th of the month following the date of invoice unless alternative terms shall be agreed in writing between the parties.

5.2 The time of payment of the price shall be of the essence of the Agreement.

5.3 Receipts for payment will be issued only on request.

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- 5.4 No payment shall be deemed to have been received until the Company or Affiliated Company has received cleared funds.
- 5.5 All payments payable under the Agreement shall become due immediately on its termination despite any other provision.
- 5.6 The Buyer shall make all payments due under the Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company or Affiliated Company to the Buyer.
- 5.7 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Company or Affiliated Company, the Company or Affiliated Company may, if applicable, terminate the Agreement or suspend any further deliveries to the Buyer and charge interest (both before and after any judgment) on all overdue amounts at 4% per annum above the minimum lending over the base rate of the Bank of England or eight per cent per annum whatever is the higher, accruing on a daily basis until payment is made. The Company or Affiliated Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6. Returnable packages**
- 6.1 The deposit charged on returnable packages shall be paid at the same time as payment for the Products contained therein. Packages on which no deposit is charged are free and non-returnable.
- 6.2 If returnable packages are returned to the Company or Affiliated Company carriage forward and reach the Company or Affiliated Company in a condition fit for the Company or Affiliated Company's immediate use, the amount of the deposit paid shall be credited to the Buyer in full. The Company or Affiliated Company's certificate as to the condition of any package upon its receipt by the Company shall be final and conclusive.
- 7. Limitation of liability**
- 7.1 Subject to any relevant provisions in Condition 3, the following provisions set out the entire financial liability of the Company or Affiliated Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 7.1.1 any breach of these Conditions;
- 7.1.2 any use made or resale by the Buyer of any of the Products, or of any product incorporating any of the Products; and
- 7.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.
- 7.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Agreement.
- 7.3 Nothing in these Conditions excludes or limits the liability of the Company or Affiliate Company:
- 7.3.1 for death or personal injury caused by the Company's negligence; or
- 7.3.2 under section 2(3), Consumer Protection Act 1987; or
- 7.3.3 for any matter which it would be illegal exclude or attempt to exclude its liability; or
- 7.3.4 for fraud or fraudulent misrepresentation.
- 7.4 Subject to Conditions 7.2 and 7.3:
- 7.4.1 the Company's or Affiliated Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the Agreement price; and
- 7.4.2 the Company shall not be liable to the Buyer for loss of profit, whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement.
- 8. Road fuels**
- In no case shall gas oil or kerosene Products be sold for use as fuel in mechanically propelled vehicles constructed or adapted for use on the roads in contravention of the Customs and Excise Act 1952 as amended by the Finance Act 1962, or of any statutory modification or re-enactment thereof.
- 9. Prices**
- 9.1 The price to be paid by the Buyer for the Products shall in all cases be the relevant price as stated in the Company's Wholesale Price List in force at the date of delivery.
- 9.2 Where the Products are delivered in returnable packages, the Buyer shall pay the appropriate deposit charged by the Company thereon as more fully outlined in Condition 6 above. The Company or Affiliated Company reserves the right, by giving notice in writing to the Buyer at any time before delivery, to increase the price of the Products to reflect any increase on the cost to the Company or Affiliated Company which is due to any factor beyond the control of the Company or Affiliated Company, any change in delivery dates, quantities or specifications for the Products which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company or Associated Company adequate information or instructions.
- 9.3 Unless expressly stated otherwise, the price for the Products shall be exclusive of any applicable value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which the Buyer shall be additionally liable to pay to the Company or Affiliated Company.
- 9.4 The certificate of the Secretary of the Company for the time being as to the relevant prices for the purpose of the Agreement shall be conclusive evidence of the facts respectively certified.
- 10. Title**
- 10.1 Ownership of the Products shall not pass to the Buyer until the Company or Affiliated Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 10.1.1 the Products; and
- 10.1.2 all other sums which are or which become due to the Company or Affiliated Company from the Buyer on any account.
- 10.2 Until ownership of the Products has passed to the Buyer:
- 10.2.1 the Buyer shall hold the Products on a fiduciary basis as the Company's or the Affiliated Company's bailee;
- 10.2.2 the Buyer shall, as far as is reasonably possible, store the Products (at its own cost) separately from all other products of the Buyer or any third party in such a way that they remain readily identifiable as the Company's or Affiliated Company's property;
- 10.2.3 if the Products must be mixed with products owned by the Buyer and/or any person other than the Buyer, the mixture shall become and/or be deemed to be owned in common with the Buyer and/or that other person in proportion to the quantities that the Company or Affiliated Company and the Buyer and/or that other person or persons have contributed; and
- 10.2.4 the Buyer shall maintain the Products in satisfactory condition and keep them insured on the Company's or Affiliated Company's behalf for their full price against all risks to the reasonable satisfaction of the Company or Affiliated Company. On request, the Buyer shall produce the policy of insurance to the Company or Affiliated Company.
- 10.3 The Buyer may resell the Products before ownership has passed to it solely on the following conditions:
- 10.3.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Company or Affiliated Company on behalf of the Company or Affiliated Company and the Buyer shall account to the Company or Affiliated Company accordingly; and
- 10.3.2 any such sale shall be a sale of the Company's or Affiliated Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 10.4 The Buyer's right to possession of the Products shall terminate immediately if:
- 10.4.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 10.4.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Agreement or any other contract between the Company or Affiliated Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 10.4.3 the Buyer encumbers or in any way charges any of the Products.
- 10.5 The Company or Affiliated Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company or Affiliated Company.
- 10.6 The Buyer grants the Company and its Affiliated Companies, their agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 10.7 Where the Company or Affiliated Company is unable to determine whether any Products are the products in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company or Affiliated Company to the Buyer in the order in which they were invoiced to the Buyer.
- 10.8 On termination of the Agreement, howsoever caused, the Company's or Affiliated Company's (but not the Buyer's) rights contained in the provisions of this Condition 10 shall remain in effect.
- 11. Assignment**
- 11.1 The Company or Affiliated Company may assign the Agreement or any part of it to any person, firm or company.
- 11.2 The Buyer shall not be entitled to assign the Agreement or any part of it without the prior written consent of the Company or Affiliated Company.
- 12. Force majeure**
- 12.1 The Company or Affiliated Company reserves the right to defer the date of delivery or to cancel the Agreement or reduce the volume of the Products ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company or Affiliated Company including, without

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limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company or Affiliated Company to terminate the Agreement.

**13. General**

- 13.1 Each right or remedy of the Company or Affiliated Company under the Agreement is without prejudice to any other right or remedy of the Company or Affiliated Company whether under the Agreement or not.
- 13.2 If any provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Company or Affiliated Company in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of any of its rights under the Agreement.
- 13.4 Any waiver by the Company or Affiliated Company of any breach of, or any default under, any provision of the Agreement by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Agreement.
- 13.5 The parties to the Agreement do not intend that any term of the Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 The formation, existence, construction, performance, validity and all aspects of the Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.