

## Conditions of Sale (v2)

These Conditions of Sale ("Conditions") apply to the contract for supply of the Products to the exclusion of all other terms and conditions including any which the Customer may purport to impose. They may not be varied except in writing signed by a director of UKAY. No contract comes into force until the Customer's order is accepted (either in writing or by telephone) by UKAY.

### 1. Definitions

- (a) **'UKAY'** means UKAY Fuels Ltd having company number 03308990 whose registered office is at Lynton House, 7 – 12 Tavistock Square, London, WC1H 9BQ.
- (b) **'Customer'** means UKAY's customer for Products.
- (c) **'Product(s)'** means one or more of fuel oil, Heating oil, gas oil/red diesel (i.e. not to be used as road DERV), road diesel fuel (DERV), petroleum spirit, lubricants and/or other products to be supplied by UKAY under any contract.
- (d) **'Contract'** means any contract between UKAY and the Customer for the sale and purchase of Products, incorporating these Conditions.

### 2. Price and Payment

- (a) The price of the Products is the price as quoted by UKAY (provided the Customer's order is placed within any period specified in the quotation) but if no price has been quoted (or the order is placed after the period specified in the quotation) the price of the Products is UKAY's price prevailing at the date of delivery irrespective of date of order. Certain Products are delivered in returnable packages for which a deposit is charged in addition (see further details in Condition 4 below). Prices for certain Products such as lubricants shall be subject to increase or decrease at any time upon prior written notification of the same to Customer.
- (b) Where a price has been quoted to a delivery or deliveries more than 7 days later the price is subject to increase in proportion to any increases imposed on UKAY by its supplier between the date of the quotation and the date of delivery.
- (c) The Customer shall be liable for any additional reasonable costs actually incurred by UKAY as a result of cancellations or as a result of variations requested by the Customer in quantities following placement of their order, specifications or delivery times, dates or locations.
- (d) Any discounts, rebates or allowances which may have been agreed are conditional on payment being made in full when due.
- (e) Payment must be made in full by cash or bankers draft on delivery. In the case of credit account customers (unless otherwise agreed with UKAY) payment will be debited under their Direct Debit authority on the first business day of the month following the month in which delivery is made and if the day of the month is not a day on which banks are able to process Direct Debits, on the next day when they can process them.
- (f) If any payment is overdue, UKAY, in addition to all its other right and remedies, may charge interest at the rate of 5% per annum above National Westminster Bank Plc base rate from time to time accruing on a daily basis until payment is made, whether before or after any judgment. Alternatively UKAY may choose to charge interest on any amounts overdue in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended from time to time.
- (g) Time for payment shall be of the essence of the Contract.
- (h) All payments payable to UKAY under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- (i) The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by UKAY to the Customer.

### 3. Orders, Time and Place of Delivery

- (a) The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.
- (b) UKAY shall use reasonable endeavours to deliver the Product as per the terms of the Contract, however, time for delivery is not of the essence of the contract and UKAY shall be under no liability to the Customer if delivery is delayed. The contract is subject to availability of the Products.
- (c) UKAY may deliver the Products by instalments if agreed to by the Customer (such agreement not to be unreasonably withheld or delayed) in any sequence and if it does so, may invoice for the Products so delivered, for payment in accordance with Condition 2.

- (d) If Products are to be delivered in accordance with periodic delivery schedules or on notification of the Customers requirements, the Customer shall not be entitled to cancel or vary such delivery schedule or notified delivery requirements without the prior written consent of UKAY this may, as a condition of giving such consent, require payment for any additional costs or expenses or any losses or penalties which it may incur or suffer as a result of such cancellation or variation.
- (e) The Customer shall be responsible for ensuring safe access for the delivery vehicle and safe conditions for delivery and that a competent person is in attendance on behalf of the Customer: and for ensuring compliance with all statutes, orders, regulations and safe practices in relation to storage of the Products including (if applicable) the conditions of the Customer's Petroleum Storage Licence. Where delivery occurs at UKAY's premises the Customer shall in addition comply with all rules, regulation's and requirements of UKAY including the conditions of UKAY's Petroleum Storage Licence. Further the Customer shall not allow any smoking or naked lights, heating appliances or other items or equipment which may give rise to a fire or explosion hazard during delivery.
- (f) Where Product is delivered in bulk through hose the quantity delivered by UKAY as evidenced by the bill of lading shall be final, binding and conclusive as to the quantity delivered save fraud or manifest error.
- (g) The Customer is responsible for ensuring that the correct feed number and or correct tank number is specified on the delivery note on arrival of UKAY's delivery tanker to Customer's site and that there is sufficient spare tank capacity for the quantity ordered. The Customer shall be liable for any extra cost incurred by UKAY if the Customer is unable to accept the full amount ordered. In the event of any spillage resulting from lack of tank capacity the Customer shall be liable to pay for the amount of Product spilled and shall be liable for any clean-up required and the costs of such clean-up.
- (h) If neither the Customer nor any competent person duly authorised to deal with the delivery is in attendance at the time of delivery and delivery is made into the wrong storage tank, or if the Customer or its staff or agent directs delivery into the wrong storage tank UKAY may at its option leave the Product where it has been delivered (and the Customer shall be liable for the price of it) or uplift the Product in which case the Customer shall be liable for any extra Cost incurred by UKAY and the cost of the Product if it has been contaminated in the Customer's tank.
- (i) The Customer shall fully indemnify UKAY against all claims, demands, proceedings, damages, losses, liabilities, costs, charges and expenses of any kind which may be suffered by UKAY or claimed against it (including costs and expenses of investigating and defending any such claims) arising from or in connection with any breach by the Customer of its obligations in paragraph (d) above.
- (j) The Customer may not direct delivery to be made at any premises other than its own premises without the prior written consent of UKAY, and shall in any event be liable for any extra costs incurred by UKAY in delivering to any address other than the address originally stated.
- (k) UKAY shall be responsible for ensuring safe delivery of Product and for ensuring compliance with all statutes, orders, regulations and safe practices in relation to transport and delivery of Product.

### 4. Returnable Packages

- (a) Oil containers and grease cartridges on which no deposit is charged by UKAY are non-returnable. All containers/packaging are returnable and are the property of UKAY.
- (b) Any deposit retained by UKAY will be refunded by UKAY on return of the empty packages to UKAY (at the Customer's cost) in good condition.
- (c) If any gas cylinder is damaged or lost after delivery to the Customer, the Customer shall be liable for the cost of repair (if it is repairable) otherwise for the full cost of replacement. If at any time the Customer is not holding the number of

gas cylinders delivered to it (less cylinders which have been returned) the shortfall shall be treated as having been lost by the Customer. If any such cylinder is later found and returned to UKAY. UKAY will allow an appropriate credit to the Customer.

## 5. Title and Risk

- (a) Risk shall pass on delivery of the Products to the Customer or his agent notwithstanding that title shall not pass until full payment is received by UKAY as specified in paragraph (b) below. In respect of Products delivered in bulk through hose, risk shall pass at the point of the connection between UKAY's delivery hose and the Customer's tank filler.
- (b) Title to all Products supplied by UKAY shall remain with UKAY until it has received full payment in cleared funds for all Products supplied by it to the Customer at any time.
- (c) Until ownership of the Product(s) have passed to the Customer, the Customer must:
- (i) hold the Product(s) on a fiduciary basis as UKAY's bailee;
  - (ii) store the Products (at no cost to UKAY) as far as is practicable separately from all other third party products or products of the Customer in such a way that they remain readily identifiable as UKAY's property;
  - (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
  - (iv) maintain the Product(s) in satisfactory condition and keep them insured on UKAY's behalf for their full price against all risks to the reasonable satisfaction of UKAY. On request the Customer shall produce the policy of insurance to UKAY; and
  - (v) hold the proceeds of the insurance referred to in condition 5.(c) (iv) on trust for UKAY and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- (d) Subject to paragraph (f) below, the Customer may resell the Product(s) before ownership has passed to it solely on the following conditions:
- (i) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
  - (ii) any such sale shall be a sale of UKAY's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- (e) The Customer shall store the Products safely, in a suitable manner. If Products which are UKAY's property are mixed with products which are the property of any other party it shall be presumed that UKAY's Products are the first quantity of the mixed products drawn by UKAY or its agent from any tank or container in which the products are kept.
- (f) UKAY may at any time revoke the Customer's power of sale by notice to the Customer if the Customer is in default for longer than 7 days in payment of any sum due to UKAY or if any cheque drawn in favour of UKAY is dishonoured or if UKAY has bona fide doubts as to the Customer's ability to pay. The Customer's power sale shall automatically cease if any of the events specified in Condition 9 occur, are threatened or in the opinion of UKAY are reasonably likely to occur.
- (g) If the Customer's power of sale is revoked or ceases, the Customer shall thereupon grant UKAY, its agents and employees an irrevocable licence at any time to enter any premises where the Product(s) are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to enter the Customer's premises to recover them, whether or not mixed with any other party's products.
- (h) UKAY shall be entitled to recover payment for the Product(s) notwithstanding that ownership of any of the Product(s) has not passed from UKAY.

## 6. Acceptance

- (a) Any shortage in delivery or incorrect delivery must be notified to UKAY immediately on discovery. The Customer shall be deemed to have accepted the Products as being in conformity with the contract unless written notice of rejection is received by UKAY within 60 days of delivery. Any Products accepted or deemed to have been accepted by the Customer cannot subsequently be returned and any claim which the Customer might otherwise have in respect of them shall be deemed to have been waived.
- (b) If after notice of rejection has been given the Customer deals with the Products as owner thereof or if any conduct of the Customer is inconsistent with rejection, the Customer shall be deemed to have accepted the Products.
- (c) UKAY will replace or (at its option) refund or credit the price of any Products which are defective or contaminated where notice of rejection has been given within the time limit in paragraph (a) above. The Customer shall allow UKAY and its agents to have access to the premises where the Products were delivered and any other premises where the

Products are stored for the purpose of investigating any such claim.

## 7. Liability

- (a) UKAY's liability for death or personal injury caused by negligence of UKAY or its subcontractors or agents is not limited. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.
- (b) Subject to paragraph 6 (c) and paragraph 7 (a) above, the following provisions set out the entire financial liability of UKAY (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (i) any breach of these Conditions; and
  - (ii) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- (c) 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 CONTRACT.**
- (d) LIABILITY FOR LOSS OR DAMAGE TO CUSTOMER'S PHYSICAL PROPERTY CAUSED BY THE NEGLIGENCE OF UKAY SHALL NOT EXCEED £1,000,000 IN RESPECT OF ANY ONE EVENT OR CONNECTED SERIES OF EVENTS.**
- (e) UKAY'S TOTAL LIABILITY (NOT INCLUDING ANY LIABILITY COVERED BY CLAUSE 7 (d) ABOVE) IN CONTRACT, TORT (INCLUDING BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT SHALL BE LIMITED TO THE CONTRACT PRICE OR £50,000 WHICHEVER IS THE GREATER AND UKAY SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY PURE ECONOMIC LOSS, LOSS OF PROFIT, LOSS OF BUSINESS, DEPLETION OF GOODWILL OR OTHERWISE, IN EACH CASE WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL, OR ANY CLAIMS FOR CONSEQUENTIAL COMPENSATION WHATSOEVER (HOWSOEVER CAUSED) WHICH ARISE OUT OF OR IN CONNECTION WITH THE CONTRACT.**
- (f) For the avoidance of doubt, subject to paragraph 6 (c) and paragraph 7 (a) above, UKAY shall not be liable for any loss or damage caused by or arising out of or in connection with the condition or quality of the Product(s) or the use or handling of the Product(s) after delivery including without limitation damage to or contamination of plant or equipment, contamination of other products owned by the Customer or third parties, damage to vehicles, crops or goods of any kind, loss of profits, goodwill or business, increased costs of working, increased costs of heating or any other loss or damage however arising whether direct or indirect or consequential and whether or not foreseen or foreseeable by UKAY.
- (g) To the extent such claims are excluded by paragraphs (b) (c) (d) or (e) above the Customer will indemnify UKAY against any claims, demands, losses, liabilities, proceedings, damages, costs, charges and expenses which may be claimed against UKAY by any one investigating and defending such claims.
- (h) Any liability of UKAY for non-delivery of Product(s) shall be limited to replacing the Product(s) within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Product(s).

## 8. Force Majeure

UKAY shall not be liable for failures or delays in delivery caused by circumstances beyond its control including without limitation any form of industrial action, inclement weather or default, delay or late missed deliveries by suppliers.

## 9. Termination

- (a) If any of the events specified in paragraph (b) below occur, UKAY shall be entitled without prejudice to any other of its rights, to cancel any delivery and/or suspend further deliveries and/or make partial deliveries under any contract with the Customer or to terminate the contract.
- (b) The events referred to in paragraph (a) above are: default by the Customer in respect of any payment due to UKAY or any breach of the contract or any other contract with UKAY (following notice of such default and or breach and failure to rectify within 10 business days); if a receiver, administrative receiver or receiver and manager is appointed in respect of part or all of the Customer's undertaking, property or assets; if a petition is presented or an order made or a resolution passed for the winding up of the Customer or the appointment of an administrator, if any distress or execution is levied upon any of the goods or property of the Customer or upon any Products supplied by UKAY and situate at the

Customer's premises or any premises at which the Customer stores such Products; if the Customer (if an individual or a partner in a partnership) offers or enters into any arrangement or composition with or for the benefit of his creditors; or upon the presentation by the Customer or by any person against the Customer of any application for an interim order or petition for a bankruptcy order within the meaning of the Insolvency Act 1986.

(c) In the event of any cancellation, suspension or termination under this Condition 9 the Customer shall remain liable to pay for all Products actually delivered and for UKAY's costs and losses resulting from the cancellation.

(d) Customer may terminate the Contract in the event of UKAY's material breach of its obligations under the Contract or in the event of a receiver, administrative receiver or receiver or manager is appointed in respect of part or all of the UKAY's undertaking, property or assets; if a petition is presented or an order made or a resolution passed for the winding up of UKAY .

#### 10. General

(a) Invalidity, illegality or unenforceability of any part of these Conditions shall not affect the validity, legality or enforceability of the remainder.

(b) UKAY's rights and remedies under the contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by UKAY nor by any failure or delay by UKAY in asserting or exercising any such rights or remedies.

(c) The contract (including these Conditions) shall be governed by and construed in accordance with English law.

(d) The headings in these Conditions are for convenience only

and shall not affect their construction.

#### 11. Disclosure

By entering into the contract on these Conditions, unless the Customer has indicated otherwise when placing the order or otherwise asks UKAY in writing not to do so, the Customer consents to UKAY using information concerning the Customer for the purposes of disclosure to credit reference agencies and any other third parties for the purposes of credit reference information.

#### 12. Assignment

(a) The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of UKAY.

(b) UKAY may assign the Contract or any part of it to any person, firm or company.

#### 13. General

(a) The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

(b) The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.