

FUELCARE LIMITED

TERMS AND CONDITIONS FOR THE SALE OF CHEMICALS

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions shall apply in these T&Cs:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these T&Cs.

Customer: the person who purchases the Goods from the Supplier.

Delivery Location: the location for delivery of the Goods as set out in the Order or such other location as the parties may agree in writing.

Domestic Delivery Location: a Delivery Location which is within the United Kingdom of Great Britain and Northern Ireland.

Force Majeure Event: an event or circumstance beyond a party's reasonable control (including the failures of any delivery service or carrier and changes to any applicable laws or regulations).

Goods: the goods (or any quantity of them) set out in the Order.

International Delivery Location: a Delivery Location which is outside of the United Kingdom of Great Britain and Northern Ireland.

Order: the Customer's order for the Goods, as set out in the Customer's email exchange with the Supplier or the Customer's purchase order form to the Supplier, or as agreed with the Supplier over the telephone, as the case may be.

Supplier: Fuelcare Limited (registered in England and Wales with company number 02385625).

T&Cs: the terms and conditions set out in this document.

1.2 The following rules of interpretation shall apply in these T&Cs:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 a reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.4 a reference to **writing** or **written** includes emails.

2. BASIS OF CONTRACT

- 2.1 These T&Cs apply to the Contract to the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Customer waives all and any rights it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that are inconsistent with these T&Cs.
- 2.2 Any samples, descriptive matter or advertising produced or provided by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on its website are made available for the sole purpose of giving an approximate idea of the Goods referred to in or on them, and the same shall not form part of the Contract nor have any contractual force.
- 2.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these T&Cs. The Customer is responsible for ensuring that the terms of the Order submitted by it are complete and accurate.
- 2.4 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

3. DELIVERY

- 3.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), a certificate of analysis of the Goods, and the manufacturer's instructions and material safety data sheets setting out how the Customer should properly use, handle and store the Goods.
- 3.2 Subject to clause 6.4, the Supplier shall arrange for the delivery of the Goods to the Delivery Location at any time after the Contract is formed and the Supplier notifies the Customer that the Goods are ready.
- 3.3 Delivery is completed on the completion of the unloading of the Goods at the Delivery Location.
- 3.4 Any dates quoted for delivery are approximate and estimates only, and, unless otherwise agreed in writing between the parties, the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or the Customer's breach of these T&Cs.

- 3.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or the Customer's breach of these T&Cs.
- 3.6 If the Customer fails to accept delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- 3.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 a.m. on the first Business Day after the day on which the Supplier or its carrier attempted to deliver the Goods to the Customer at the Delivery Location; and
- 3.6.2 the Supplier or its carrier shall arrange for storage of the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.7 If 15 Business Days after the day on which the Goods are deemed to have been delivered to the Customer, and the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of the Goods and, in such circumstances, the Customer shall remain liable for all amounts due under these T&Cs.

4. QUALITY AND CUSTOMER'S REMEDIES

- 4.1 The Supplier warrants to the Customer that on completion of delivery the Goods shall:
- 4.1.1 be of normal standards of industrial quality; and
- 4.1.2 be of the correct quantity (save for a 5% margin of error).
- 4.2 Subject to clause 4.3, if:
- 4.2.1 the Customer gives notice in writing to the Supplier within five days of completion of delivery that some or all of the Goods do not comply with the warranties set out in clause 4.1;
- 4.2.2 the Supplier is given a reasonable opportunity of examining such Goods or is otherwise provided with sufficient evidence from the Customer to satisfy itself of the Goods' non-compliance with the warranties set out in clause 4.1; and
- 4.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

then, the Supplier shall, at the Customer's option, replace or resupply the defective or missing Goods, or refund the price of the defective or missing Goods in full.

- 4.3 The Supplier shall not be liable for the Goods' failure to comply with the warranties set out in clause 4.1 in any of the following events:
- 4.3.1 the Customer makes any use of such Goods after giving notice to the Supplier in accordance with clause 4.2.1;
 - 4.3.2 the defect arises because the Customer failed to follow the Supplier's or manufacturer's instructions as to the use, handling or storage of the Goods;
 - 4.3.3 the Goods differ from their description as a result of any changes made to ensure that they comply with all applicable statutory or regulatory requirements.
- 4.4 The Customer shall be deemed to have accepted the Goods, and their compliance with these T&Cs, at the end of the period specified in clause 4.2.1 unless the Customer has already served a notice of non-compliance in accordance with that clause.
- 4.5 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in clause 4.1.
- 4.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and all other warranties and representations (express or implied) are, to the fullest extent permitted by law, excluded from the Contract.
- 4.7 These T&Cs shall apply to any replacement Goods supplied by the Supplier under clause 4.2.

5. TITLE AND RISK

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 5.2.1 the Supplier receives payment in full for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - 5.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 5.4.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.3.2 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 5.3.3 notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1; and

- 5.3.4 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 5.4 Subject to clause 5.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
 - 5.4.1 it does so as principal and not as the Supplier's agent; and
 - 5.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 5.5 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 10.1, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:
 - 5.5.1 require the Customer to deliver up all Goods in its possession that have not been used or resold; and
 - 5.5.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. PRICE AND PAYMENT

- 6.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the time the Order is accepted by the Supplier.
- 6.2 The price of the Goods includes the costs of insuring and packaging the Goods but excludes:
 - 6.2.1 the costs of transporting the Goods for delivery, which shall be invoiced to the Customer;
 - 6.2.2 amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 6.2.3 all other taxes, charges, levies, assessments and other fees of any kind imposed by any governmental or other authority in respect of the importation of the Goods to an International Delivery Location, which, unless otherwise agreed with the Supplier in advance, shall be the responsibility of the Customer to pay and satisfy.
- 6.3 Subject to clause 6.4, where the Delivery Location is a Domestic Delivery Location, the Supplier shall submit its invoice to the Customer for the Goods at the same time the Order is accepted by the Supplier, and the Customer shall, unless otherwise stated in the invoice, pay such invoice within 30 days of its date.
- 6.4 Where:

6.4.1 the Delivery Location is an International Delivery Location; or

6.4.2 the Supplier, in its absolute discretion, decides the provisions of this clause 6.4 shall apply;

then, the Supplier shall submit an invoice to the Customer at the same time the Order is accepted by the Supplier, and the Customer shall pay such invoice within 30 days of its date or, if earlier, the payment date set out in the invoice. The Supplier shall be under no obligation to dispatch the Goods until payment of such invoice has been made by the Customer in accordance with these T&Cs.

6.5 Payment by the Customer of the Supplier's invoices, and any other payments required under these T&Cs, shall be made:

6.5.1 in full and in cleared funds without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law);

6.5.2 in Pound Sterling or Euros gross of any foreign exchange and bank transaction fees;

6.5.3 by the due date for payment or, if no due date is specified, promptly and without delay. In all circumstances, time for payment is of the essence; and

6.5.4 by way of bank transfer, debit card, credit card or PayPal to the bank account or PayPal account nominated in writing by the Supplier, as applicable.

6.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of four percentage points (4%) per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6.7 The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7. CUSTOMER'S USE, HANDLING AND STORAGE OF THE GOODS

7.1 The Customer shall ensure that:

7.1.1 it, and its employees, personnel, agents and contractors, and all other persons engaged by it or on its behalf, use, handle and store the Goods in accordance with the manufacturer's instructions and material safety data sheet, including:

(a) to only use the Goods for their intended and specified purposes; and

(b) not to use the Goods after their expiration date.

7.1.2 its employees, personnel, agents and contractors, and all other persons engaged by it or on its behalf:

- (a) fully understand the manufacturer's instructions and the requirements of the material safety data sheet before using, handling or storing the Goods;
- (b) are professionals who are appropriately trained and qualified to use and handle the Goods for their intended and specified purposes; and
- (c) exercise proper skill, care and diligence, and are proficient, in respect of the use, handling and storage of the Goods.

7.2 The Customer acknowledges and accepts that:

7.2.1 improper use, handling and/or storage of the Goods may result in loss of or damage to its and third parties' property; and

7.2.2 it has been provided with all information and documentation which it requires and which is necessary for it, and its employees, personnel, agents and contractors, and all other persons engaged by it or on its behalf, to use, handle and store the Goods properly in accordance with the manufacturer's instructions and material safety data sheet.

8. CUSTOMER'S WARRANTIES, UNDERTAKINGS AND INDEMNITY

8.1 The Customer warrants and represents that:

8.1.1 in purchasing the Goods, it is acting exclusively in the course of its trade, craft, business or profession;

8.1.2 the Supplier is permitted to deliver the Goods to it at the Delivery Location and such delivery (including when the Goods are in transit) shall be in compliance of all applicable laws and regulations; and

8.1.3 it is satisfied that its employees, personnel, agents and contractors, and all other persons engaged by it or on its behalf are qualified and properly trained and have been provided with all information and documentation necessary to correctly use, handle and store the Goods.

8.2 The Customer undertakes, where the Delivery Location is an International Delivery Location, at the time the Order is submitted, to provide the Supplier with details of:

8.2.1 all applicable laws and regulations relating to such International Delivery Location; and

8.2.2 any particular delivery arrangements which should be adhered to, including details relating to any jurisdictions through which the Goods should not pass in transit.

8.3 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:

8.3.1 any breach of these T&Cs by the Customer;

8.3.2 the enforcement of this agreement; and

8.3.3 any claim made against the Supplier for death, personal injury or damage to property arising out of or in connection with the Contract or the Goods, to the extent that the claim is attributable to the acts, omissions or negligence of the Customer or of its employees, personnel, agents and contractors, and all other persons engaged by it or on its behalf.

9. INTELLECTUAL PROPERTY RIGHTS

Nothing in these T&Cs, nor the sale of the Goods pursuant to the Contract, is intended to or shall have the effect of transferring any interest in any intellectual property rights (including patents, copyright, trademarks, business names, goodwill, rights in designs and inventions) owned by the Supplier or any third party to the Customer.

10. TERMINATION

10.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

10.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of the Customer being notified in writing to do so by the Supplier;

10.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

10.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

10.1.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 10.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods (including when in transit) under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clauses 10.1.1 to 10.1.4 (inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason all amounts owing to the Supplier shall become immediately due and payable and the Customer shall immediately pay to the Supplier all such amounts (including all invoices and interest).
- 10.5 Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract, or the right to recover any debt, that existed at or before the date of termination.
- 10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. LIMITATION OF LIABILITY AND INSURANCE

- 11.1 Nothing in these T&Cs shall limit or exclude the Supplier's liability for any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability including:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 11.1.2 fraud or fraudulent misrepresentation; and
 - 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 11.2 Subject to clause 11.1:
- 11.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 11.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of:
 - (a) the price of the Goods under the Contract including the applicable delivery charges; or

- (b) the amount recoverable under the Supplier's product liability insurance cover, in respect of such liability, then in effect.

11.3 During the Contract, the Supplier shall maintain in force, with a reputable insurance company, product liability insurance with a reasonable cover amount, given its liabilities that may arise under or in connection with the Contract, and shall, at the Customer's request, provide the Customer with details of the insurance cover which is in place.

12. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for a period of 30 days, the party not affected may terminate this Contract by giving two weeks written notice to the affected party.

13. GENERAL

13.1 Assignment and other dealings.

13.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

13.2 Entire agreement.

13.2.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.2.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

13.3 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.4 **Waiver.** A waiver of any right or remedy is only effective if given in writing. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

13.4.1 waive that or any other right or remedy; nor

13.4.2 prevent or restrict the further exercise of that or any other right or remedy.

- 13.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.6 **Notices.**
- 13.6.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 13.6.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.6.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 a.m. on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 13.6.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.7 **Language.** These T&Cs are drafted in the English language and any notice to be given under or in connection with the Contract shall be in English and all other documents to be provided under or in connection with the Contract shall be in English.
- 13.8 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 13.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 13.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.