

Portland Fuel Ltd: GENERAL TERMS & CONDITIONS OF FUEL SUPPLY (GTCs)

A. DELIVERY

1. Buyer shall request in writing or, at Seller's discretion, by other means to Seller deliveries of Product in accordance with the Agreement. Such request must: (a) specify the quantities, grade and location; and (b) be made at least 3 days prior to the requested delivery date. Notwithstanding the foregoing, the precise delivery dates and times shall be at Seller's option and Product shall be delivered on days, between hours and in loads of minimum and / or maximum quantities as may from time to time be prescribed reasonably by Seller. Buyer shall allow a reasonable period for Seller to deliver Product.
2. Buyer shall ensure that:
 - a. it provides, at each location at which delivery shall take place, suitable and safe bulk storage tanks, installations and facilities (including without limitation assistance and suitable hose connections) ("**Delivery Facilities**"), which: (i) shall comply with all applicable legal and regulatory requirements; (ii) the delivery road tank wagon ("**Delivery Vehicle**") can safely access, deliver Product and leave; and (iii) Product can be delivered without any risk of a Hazardous Situation;
 - b. for each delivery, there will be sufficient ullage for Product at the Delivery Facilities (and, in the case of Petroleum Spirit, that Buyer will procure certification to this effect) and that any connecting hose will be properly and securely fitted to the filling point for the safe and proper reception of the quantity of Product being delivered;
 - c. for each delivery, a competent person is present at all times throughout delivery operations who is authorised to accept deliveries involving Dangerous Goods ("**Competent Person**");
 - d. such Competent Person will, during the whole time of the delivery operations: (i) be in close proximity to the Delivery Vehicle and the storage tank; and (ii) so far as is practicable, keep a constant watch for the purpose of preventing any Hazardous Situation arising;
 - e. all storage tanks and installations will be clearly, correctly and appropriately labelled with the description of the grade of Product stored and the tank capacity;
 - f. all Delivery Facilities will have a means of measuring the contents of the storage installation, immediately prior to delivery, which is accurate, properly calibrated and in working order;
 - g. any special delivery instructions or hazards are clearly, correctly and concisely notified at the time when Buyer requests delivery and repeated at the time of delivery.
3. Buyer shall be liable for and shall indemnify, defend and hold harmless Seller in respect of: (a) any failure to comply with any provision of clause A2; (b) any loss, leakage, spillage, overflow, contamination of, or damage to, any Product occurring at the Delivery Facilities or any pollution or damage to person or property occurring at the Delivery Facilities ("**Hazardous Situations**"), other than as a result of breach by Seller; and (c) any losses, damages, liabilities, claims, costs and expenses suffered or incurred by Seller arising out of or in connection with any of the foregoing.
4. If an event occurs at the Delivery Facilities which causes or may cause a Hazardous Situation, Buyer shall immediately take such steps to seek to avoid, and/or clean up after and rectify, such Hazardous Situation.
5. Without in any way limiting or prejudicing any other provision, right or remedy under this Agreement (including without limitation clauses A3 and A4): (a) Seller may refuse to deliver any Product or cease delivering any Product if, in its sole discretion, it considers that such a delivery will or might result in adverse consequences of any kind whatsoever (including without limitation a Hazardous Situation); and (b) Seller or its agents or contractors may, at Buyer's expense, take such action as they deem fit to avoid, and/or clean-up after and rectify, any Hazardous Situation at the Delivery Facilities and Buyer hereby authorises any such action.
6. On completion of the delivery, the representative of Buyer shall confirm the delivery by signing a receipt provided by the Seller or its contractor at the time. Buyer warrants that any person signing the receipt is authorised to do so on behalf of Buyer and the signed receipt will be conclusive evidence of delivery by the Seller.

B. RISK & TITLE

1. Risk of loss or damage to the Product shall pass to Buyer, and delivery shall be deemed to take place, when the Product passes the flange and faucet valve assembly on the Delivery Vehicle connecting the delivery hose to the storage tank provided by or for the Buyer at the Delivery Facilities.
2. Title to Product shall not pass to Buyer until Seller has received payment in full of all sums due and owing by Buyer to Seller, including without limitation payment of the Price for all Product.
3. Subject to clause B5, until such time as title in Product passes to Buyer: (a) Buyer shall hold Product on trust as Seller's fiduciary agent and bailee (or in Scotland as custodian); and (b) Buyer shall keep all Product properly and safely stored at the Delivery Facilities to which it was delivered, protected, fully insured under an appropriate policy for all risks from the moment of delivery, identified as Product supplied by Seller and segregated from Product belonging to any other person.
4. Notwithstanding and without prejudice to clauses B3 and B5, whilst any Product remains the property of Seller, Buyer may use the Product in the ordinary course of its business, provided that no Default Event has occurred or Buyer has not otherwise breached this Agreement.
5. Buyer's right to possession of any Product shall cease immediately upon the occurrence of a Default Event or a breach of this Agreement by Buyer. Upon any such Default Event or breach, Seller shall have the right to: (a) take back possession of Product from Buyer by entering Buyer's premises and securing or removing Product from Buyer's premises; (b) sell any such Product as Seller deems fit, without need for any tender or auction, and apply the proceeds of sale in such manner as Seller deems fit in its sole discretion. Buyer shall be liable for and shall indemnify and hold harmless Seller in respect of any costs incurred by Seller in exercising these rights.

C. MEASUREMENT & QUANTITY

1. Seller or its agents or contractors shall determine the quantity of Product delivered.
2. The quantity of Product delivered may vary by up to 5% (either way) at Seller's option from the quantity requested by Buyer. Quantity shall be determined by Seller or its agents or contractors.
3. Buyer shall be responsible for verifying that the Product has been fully discharged from the Delivery Vehicle. Seller accepts no responsibility or liability for any discrepancies in the Buyer's tanks, dip rods or other measuring devices or any discrepancies arising therefrom.
4. The quality and quantity determinations made pursuant to this clause C shall be final and binding on Buyer and Seller as to the quality and quantity of the Product delivered, save for fraud or manifest error. The Price shall be payable based on the quantity loaded by the tanker and not necessarily the quantity discharged.

D. HEALTH, SAFETY & ENVIRONMENT

1. Seller is committed to the promotion of health and safety and to proper regard for the environment in respect of all its activities. Seller issues health and safety data sheets for Product ("**Data Sheets**"). Buyer shall ensure that its employees, agents, contractors, buyers and other persons who may use the Product: (a) are provided with the Data Sheets; and (b) read and observe the instructions and recommendations in the Data Sheets. Buyer shall provide its employees with appropriate training and information to enable them to handle and use the Product without danger to health or safety. To the extent permissible by law, Seller shall have no liability for the accuracy of the Data Sheets or for any loss, damage or injury resulting from any failure to adhere to the Data Sheets or from hazards inherent in the nature of the Product delivered. Replacement Data Sheets may be obtained by writing to: Trading Director, Portland Fuel Ltd, 1 Toft Green, York, YO1 6JT or via email to info@portland-fuel.co.uk.
2. Buyer shall: (a) ensure that the Delivery Facilities and all equipment used with Product is installed, maintained and operated in such manner to avoid accidents which could have reasonably been anticipated; and (b) do everything necessary to prevent Product, used or unused, entering drainage, sewage systems, water courses or soil. Buyer shall co-operate, so far as reasonable, with Seller in implementing measures designed to improve health, safety and environmental performance.

E. LIABILITY & INDEMNITY

1. Buyer will indemnify, defend and hold harmless Seller, its directors and its employees against any claims, liability, loss, damage, costs or expenses arising out of or in connection with:
 - a. Buyer's unloading, storage, handling, sale, use or disposal of any Product except to the extent caused by Seller's negligence and / or
 - b. Buyer's negligence, a Default Event or any failure by Buyer to comply with any term or condition of this Agreement
2. Neither party shall be liable to the other party under or in connection with this Agreement for the other party's: (a) loss of actual or anticipated profit; (b) losses caused by business interruption; (c) loss of goodwill or reputation; or (d) any indirect, special or consequential cost, expense, loss or damage even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the parties and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.
3. Notwithstanding anything to the contrary in this Agreement, Seller's total liability to Buyer in respect of losses, damages or claims (excluding any interest) arising out of or in connection with this Agreement in respect of an event or a series of related events, whether as a result of breach of contract, breach of warranty, breach of statutory duty, negligence or other tort, shall not exceed the purchase price of the relevant delivery of Product (at the time of the delivery) or, if the above breach of contract consists of a failure to deliver, the price of the Product had it been delivered and invoiced.
4. Notwithstanding anything to the contrary in this Agreement, Seller will not be liable for any breach of the Agreement and any claim by Buyer shall be waived and absolutely barred: (a) unless Buyer notifies Seller in writing within 7 days of such breach; (b) unless Buyer gives Seller a reasonable time to investigate the supposed breach; (c) if, in respect of quality or quantity claims, Buyer continues to use the Product in question after the occurrence of the breach; and (d) if Buyer alters, modifies or adds to the Product in any way without Seller's prior written consent.

F. DEFAULTS & DAMAGES

1. A "**Default Event**" shall occur if Buyer: (a) fails to make any payment under the Agreement on the due date; (b) fails to comply with any of its other obligations under the Agreement; (c) becomes bankrupt or insolvent or is otherwise the subject of any bankruptcy, insolvency or similar proceedings, is unable to pay its debts as they fall due, is wound up or dissolved or an administrator, receiver, liquidator, trustee or other similar official is appointed; or (d) commits a Default Event or similar such event however defined or otherwise breaches any other agreement between Seller and Buyer.
2. Upon a Default Event, Seller may in its sole and absolute discretion do any one or more of the following, without prejudice to and in addition to any rights and remedies provided elsewhere in the Agreement or in law:
 - a. terminate any one or more deliveries under the Agreement, whether or not the Default Event relates to such delivery or deliveries, by giving written notice to the Buyer;
 - b. terminate the whole Agreement, including all further deliveries thereunder, by giving written notice to Buyer; and/or
 - c. suspend performance of any of its obligations under the Agreement until the Default Event is cured. If the time for performance expires during the suspension, Seller shall not be required to perform a suspended obligation later.
3. Buyer acknowledges and confirms that: (a) Seller is only willing and able to enter into the Agreement because Seller has or will enter into derivative instruments designed to hedge Seller's exposure to market price movement ("**Hedging Instruments**"); (b) in the event of a Default Event, breach by Buyer and/or termination ("**Damages Event**"), Seller may suffer or incur liability, loss, damage, cost and expense arising out of or in connection with its Hedging Instruments ("**Hedging Loss**"); and (c) notwithstanding any other provision of the Agreement, any Hedging Loss shall always be, or deemed to be, foreseeable, recoverable and directly caused by the Default Event and/or Buyer's breach.
4. In the event of a Damages Event, Buyer shall be liable for, in addition to any monies otherwise payable under the Agreement, damages which shall comprise: (a) a sum equal to: (i) the relevant quantities of Product plus any tolerances; multiplied by (ii) the difference between the contract price and the price of any resale of the Product by Seller or the market price for the Product as at the date of the Damages Event, whichever is greater; and (b) any Hedging Loss; and (c) any other losses, costs, damages or expenses caused by the Damages Event. Any events after the Damages Event, which might otherwise reduce damages, shall not be taken into account when assessing the damages payable by Buyer to Seller.

G. MISCELLANEOUS

1. Neither Seller nor Buyer shall be responsible for any failure to fulfil any term or condition of this Agreement if fulfilment has been hindered or prevented by a "Force Majeure" event, meaning any circumstances not within the reasonable control of Seller or its agents or contractors or Buyer, including without limitation any act of God, natural calamity, floods, fires or explosions, acts of war or terrorism, strikes or other industrial action, orders or action by any governmental, military or police authority, or any event similar to the foregoing. For greater certainty, a lack of funds, the availability of a more attractive market or inefficiency in operations do not constitute events of "Force Majeure". The party seeking to invoke this clause shall give written notice to the other party specifying the Force Majeure event and its likely duration.
2. Save to the extent expressly provided in this Agreement, Seller gives no representation, warranty, guarantee or condition, express or implied, in relation to any Product as to its quality, description, merchantability, suitability or fitness for any purpose (whether or not any intended purpose is known by Seller). The terms and conditions implied by sections 13, 14 and 15 of the Sale of Goods Act 1979, as may be amended or replaced, are excluded.
3. If Buyer fails to pay in full any amount on the due date, without prejudice to any other rights of Seller, Seller shall have the right to charge interest on any unpaid amount from the due date until Seller receives payment in full into Seller's bank account. Interest shall be payable at a rate per annum equivalent to the Bank of England base rate prevailing at the due date plus 5% compounded daily.
4. Unless otherwise expressly indicated, the Price specified in the Agreement is exclusive of any VAT, which Seller shall be entitled to charge Buyer at the prevailing rates.
5. Buyer has all consents, licences, permits and authorisations necessary for it to perform all of its obligations under the Agreement.
6. The invalidity, illegality or unenforceability of any provision of the Agreement shall not affect or impair the validity, legality or enforceability of any other provision of the Agreement in any way whatsoever.
7. All sensitive commercial arrangements (price, quantity etc.) are to remain private and confidential between Seller and Buyer.
8. The Agreement supersedes and cancels in all respects any previous representations, conditions, agreements and / or undertakings, whether given in writing or orally, concerning the subject matter of the Agreement.
9. This Agreement is governed by English Law and subject to the jurisdiction of the English Courts. Any claim by Buyer shall be deemed waived and absolutely barred unless Buyer commences proceedings within 1 year of the date on which the Product to which the claim relates was delivered or, if the claim concerns a failure to deliver, the date on which it should have been delivered.