

## The Fuel Trading Company Ltd: Fixed Price Fuel Card Terms & Conditions

1. In these Terms and Conditions, unless the context otherwise requires: -
  - “The Company” means The Fuel Trading Company Ltd whose registered office is situated at 109 Micklegate, York, YO1 6LB
  - “The Customer” means the Company person or persons who accept a quotation by the Company for the provision of Cards or whose order for Cards is accepted by the Company or who uses a Card:
  - “Card(s)” means a Fuel Card or other authorised personalised plastic Card which allows access to and withdrawals of Fuel at the Sites, such Card being issued by the Company to the Customer under the terms hereof:
  - “Default Event” is an event where the Customer 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.
  - “Damages Event” means an event - often but not exclusively a Default Event - whereby termination of the contract becomes both inevitable and irrevocable
  - “Fuel” means diesel engine road vehicle fuel:
  - “Other Fuel(s)” means petrol lubricants gas oil and any other products available for purchase at any of the Sites or which may become available for purchase at any of the Sites at any time in the future:
  - “Site(s)” means any participating site specified as such by the Company:
  - “Authorised” means any person agent employee contractor or officer of the Customer issued with a Card or duly appointed:
  - “User(s)” by the Customer to use a Card and who is bound by these Terms and Conditions:
  - “Fixed Volume” means a volume of fuel that the Customer has agreed to withdraw through the use of the Card over some pre agreed period of time.
  - “Fixed Price” is the pre agreed price that the Customer will be charged for the Fixed Volume net of duty and VAT which will be charged at the prevailing rate applicable on the date of withdrawal. The Customer confirms and recognises that a) The Company will enter into hedging instruments linked to, and to enable The Company to perform the terms of, this Agreement; and b) any failure to perform this Agreement may result in losses under those hedging instruments, for which the Customer will be liable.
  - “Hedging Instrument” means a financial instrument entered into by the Company to enable a Fixed Price fuel sale to take place.
  - “Hedging Loss” is a loss incurred by the Company in providing Fixed Priced fuel to the Customer by means of a Hedging Instrument.
  - “Period” is an amount of time as agreed by the Company and the Customer over which Fixed Volumes shall agree to be withdrawn by the Customer from a Site or Sites.
  - “PIN” means Personal Identity Number.
2. (i) The Customer shall accept and the Company shall provide the Cards in accordance with these Terms and Conditions and the Company’s terms of payment shall govern the contract between the parties to the exclusion of any other terms and conditions. These Terms and Conditions shall apply to all contracts for the sale and purchase of Fuel and/or Other Fuels in accordance with the use of the Card.
  - (ii) Any prices payable for the Fuel and/or the Other Fuels may be published by the Company to the Customer from time to time. Except where the Company has offered and the Customer has accepted and entered into a “Fixed Price Supply Agreement” the Company reserves the right in its absolute discretion to increase the price payable for the Fuel and/or the Other Fuels to reflect any variation in the market or economy and without prejudice to the generality of the foregoing for any other reason howsoever arising. The Customer agrees to pay the prices for the Fuel and/or Services from time to time applicable. Use of the Card by the Customer constitutes acceptance of any variations in price.
  - (iii) Unless the context dictates, any obligation or requirement on the Customer in these Terms and Conditions shall include an obligation or requirement on the Authorised User and any Authorised User shall be bound by these Terms and Conditions as if he were the Customer.
  - (iv) No variation to these Terms and Conditions shall be binding between the parties unless agreed in writing between a Director of the Customer and the Company.
  - (v) The Company’s employees or agents are not authorised to make any representations concerning the Cards unless confirmed by the Company in writing. In entering into the contract the Customer acknowledges that it is not entitled to rely on any such representations which are not so confirmed by the Company in writing and the Company shall not be liable for any loss or damage howsoever arising suffered by the Customer in reliance on any such representations unless confirmed in writing by the Company.
  - (vi) Any advice or recommendation given or made by the Company or its employees or agents to the Customer or its employees or agents regarding the use or application of the Cards which is not confirmed in writing by the Company is relied upon entirely at the Customer’s own risk and the Company shall not be liable for any loss or damage howsoever arising suffered by the Customer in reliance on any advice or recommendation so given or made.
  - (vii) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction entirely at the Company’s discretion and without any liability on the part of the Company.
3. (i) In so far as such liability is permitted to be excluded by statute the Company will not be responsible for the quality of the Fuel and/or Other Fuels supplied under these Terms and Conditions at any Site and the Company shall not be liable for any Fuel and/or Other Fuels losses howsoever arising.
  - (ii) For the purpose of these Terms and Conditions risk in Fuel passes to the Customer when the Fuel passes the outlet nozzle of the Site’s delivery pump and the risk in the Other Fuels passes to the Customer when the Customer takes delivery thereof.
  - (iii) Without prejudice to the provisions of this clause all terms and conditions and warranties (whether implied or express) made whether by the Company its agents servants or employees relating quality, fitness for purpose description of the Fuel and/or Other Fuels are excluded to the fullest extent permitted by law.
  - (iv) The Company shall not be liable for any loss or damage howsoever arising suffered by the Customer and/or Authorised User in connection with the Fuel and/or Other Fuels.

- (v) The Card may only be used by the Customer and the Customer is responsible for the safe keeping of the Card and the prevention of its unauthorised use.
- (vi) Where a PIN has been provided to the Customer, the Customer is responsible for the safe keeping of the PIN ensuring that only the user of the card may have access to it.
4. The Company shall endeavour to ensure that wherever possible, subject to the performance of these Terms and Conditions by the Customer, there is a supply of fuel and/or Other Fuels available for drawing by the Customer from any Site but notwithstanding this, the Company shall at its absolute discretion control the amount of Fuel and/or Other Fuels and the Company shall be entitled to limit the amount of Fuel and/or Other Fuels supplied provided under these Terms and Conditions and the Company shall not be liable for any loss or damage sustained by the Customer where the amount of Fuel and/or Other Fuels supplied is limited and the Company shall not be liable for any refusal by the Company person or persons to accept or honour the Card.
  5. The Company will endeavour to supply the Customer on a regular basis, details of the Customer's Fuel drawings for the period in question. The Company will endeavour to ensure that such information is accurate and up-to-date but shall not be liable for any errors or omissions in respect thereof. The Company reserves the right to supply such information by email and it is the responsibility of the Customer to advise the Company in the event of non-receipt. It is the Customer's responsibility to ensure that the VAT office is notified of their acceptance of e mail invoices.
  6. The Company shall not be liable for any loss or damage sustained by the Customer in the event of a Site being closed or otherwise not available for the withdrawal of Fuel and/or Other Fuels not being available whether on a temporary or permanent basis and the Company does not guarantee that any of the Sites will be open and available for use by the Customer at any particular time.
  7. The Company shall, subject to the Customer observing and performing all its obligations under these Terms and Conditions, make available to the Customer such number of Cards as the Customer shall reasonably require to enable the Customer to draw Fuel and/or Other Fuels from the Sites. The Customer will pay the Company such sum as the Company may in its absolute discretion determine per annum for each Card so issued or such other amount as may subsequently be agreed. The Company may in its absolute discretion from time to time set limits as to the amount of Fuel and/or Other Fuels the Customer is permitted to draw and may also charge for the non-use of such Cards.
  8. The Company reserves the right in its absolute discretion without giving notice to the Customer to vary the Sites in any directory of Sites from time to time produced by the Company and also to exclude any one or more of the Sites.
  9. The Customer shall at all times ensure that the Cards are kept undamaged. The Customer shall indemnify the Company against loss or damage caused by the use by the Customer and/or Authorised User of broken or damaged Cards.
  10. Cards issued to the Customer are not transferable or assignable in any way and shall only be used by the Customer or its Authorised Users. The Card shall not be used after its expiry date and shall on the day after such expiry date be destroyed by the Customer.
  11. (i) Cards shall at all times remain the property of the Company and shall be returned to the Company on demand within 7 days by registered post and may be retained at any time by the Company or any person acting on the Company's behalf and the Company may in its absolute discretion suspend, cancel, refuse to reissue or withdraw the use of any Card.  
(ii) If the Cards or any of them are lost or stolen or a Card is for any other reason liable to be misused the Customer shall immediately notify the Company and if such notification is given orally it must be confirmed in writing as soon as is reasonably practicable and in any event within 3 days quoting the Card number. In the event that a new Card is issued to replace the lost or stolen Card then the new Card will be allocated a new number.  
(iii) The Customer shall forthwith notify the Company if at any time the Customer suspends cancels or otherwise prohibits use of any Card for any reason and if such notification is given orally it must be confirmed in writing as soon as is reasonably practicable and in any event within 3 days. Such notification shall include details of the Authorised User's name and Card number. In the event that a Card is cancelled and/or withdrawn from use the Customer will in addition to the above confirm in writing that the Card in question has been physically destroyed. Failure to confirm such destruction will prevent the cancellation and the Card in question will remain on stop until the expiry date thereof has been reached. The Customer shall indemnify and keep indemnified the Company its estate and effects against all damages costs expenses and liability of whatsoever nature which the Company shall suffer by reason of the subsequent use of a Card that the Customer had confirmed as being destroyed. Where any Card is suspended cancelled or the use is otherwise prohibited this will be confirmed in writing by the Company to the Customer.  
(iv) In either of the cases envisaged by sub-clauses 11(ii) or 11(iii) hereof notification shall be deemed given only when given in writing and at the time specified in clause 26 hereof the Customer will be liable for any amounts of Fuel withdrawn from the Company's system or for any amounts of Other Fuels purchased with the use of any of the Cards until in the case of automated sites capable of accepting stop list updates via electronic data transfer, 2 working days after notice under either clauses 11(ii) or 11(iii) in respect of that Card is given by the Customer and confirmed by the Company, or in the case of manual sites, 3 working days after such notice is given to and confirmed by the Company provided such notice is given before 2.30 pm during the course of a working day (which term shall for the purposes of these Terms and Conditions mean any day from Monday to Friday inclusive which is not Christmas Day, Good Friday or a Statutory Bank Holiday) and any notice given outside such hours shall be deemed given at 9.00 am on the next working day thereafter.  
(v) The Customer will give to the Company and to any person or persons acting on the Company's behalf all assistance in the investigation and all available information as to the circumstances of the loss, theft or possible misuse of the Card, and will take all reasonable steps to assist the Company to recover the Card. The Customer consents to the disclosure to third parties of such information as is relevant concerning the Authorised User or use of the Card in connection with such loss, theft or possible misuse of the Card and the Customer will indemnify the Company its estate and effects against all loss, damage, costs, claims and liability arising from the loss of any Cards.  
(vi) Without prejudice to any other provision of these Terms and Conditions the Company may from time to time issue a list of stopped or invalid Cards and the Company shall not be liable for any loss or damage sustained by the Company in the event of any Card appearing on a list of stopped or invalid Cards (for whatever reason and including any Card being placed on a list of stopped or invalid Cards by an error of the Company or its employees agents or otherwise) or if a Card is not accepted for any other reason.  
(vii) Possession of the Card does not confer any right on the Cardholder to receive product.
  12. (i) The Customer and its Authorised Users will (subject to the agreement of the operator of the Site in question) be allowed to use the Cards for the drawing of Fuel and/or for the purchase of Other Fuels and products.

- (ii) All purchases made under these Terms and Conditions will be invoiced to the Customer and the Company reserves the right to recharge at a premium to the Customer any such purchases.
- (iii) It is acknowledged that as regards all purchases under these Terms and Conditions including the drawing of Fuel and/or the purchase of Other Fuels upon the acceptance of a valid Card the Fuel and/or Other Fuels and/or other goods the subject of the purchase in question are supplied by the operator of the Site and then delivered to the Customer by the said Site operator on behalf of the Company.
- (iv) The Company may at its absolute discretion set a credit limit for the Customer. Should the sums due, exceed or at the Company's absolute discretion look likely to exceed this limit, the Company reserves the absolute right to put the account on stop without further notice. It is the Customer's responsibility to inform the Company if an increased credit limit is required.
13. (i) The Customer agrees to pay the prices for the Fuel and/or Other Fuels which are from time to time in force and in accordance with 2(ii) the Company reserves the right to vary the prices at any time in its absolute discretion without giving notice to the Customer.
- (ii) If the Customer has entered into a Fixed Price agreement the minimum invoice amount for any given Period will be the Fixed Volume multiplied by the Fixed Price plus relevant duty and VAT as applicable at the invoice date or delivery date as applicable.
- (iii) The Customer shall maintain a bank account capable of accepting Direct Debits, paying cheques and paying by BACS and make the details of such bank account known to the Company upon request.
14. (i) Payment for all sums due to the Company under these Terms and Conditions are to be made on the date specified in accordance with the Company's terms of payment which shall be notified in writing to the Customer and payment for all sums due is required to be made by the Customer in one instalment on the date as detailed in the agreed Terms.
- (ii) If the Customer fails to comply with the agreed terms of payment the Company reserves the right to withdraw rebates or other allowances which the Company may in its absolute discretion give and such additional sums shall become due to the Company immediately. The Company will recover interest on any overdue debt to the full extent permitted by law and will also require repayment of all reasonable costs incurred by the Company in the course of recovering any overdue debt, including any credit Card payments. The Company reserves the right to put on stop any account and/or Cards when payment has not been received by the agreed terms irrespective of the reasons for this and thereafter increase prices to cover the increased risk of trade.
- (iii) The Customer acknowledges and confirms that: (a) The Company is only willing and able to enter into a Fixed Price Agreement because the Company has or will enter into derivative instruments designed to hedge exposure to market price movements ("**Hedging Instruments**") for the Product; (b) in the event of a Default Event and/or termination of this Agreement, the Company 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 the Customer's breach.
- (iv) In the event of a Default Event, Buyer shall be liable for: (a) payment for any Product delivered or deemed delivered under the Agreement, which shall be recoverable as a debt equal to the Price of the product; (b) damages for any Product the Seller has bought but not delivered at (i) a sum equal to the relevant quantities of Product plus any tolerances; multiplied by (ii) the difference between the Price and the price of any resale of the Product by the Seller or the market price of the Product as at the date of the Default Event and/or termination, whichever is greater; (c) damages in respect of any Hedging Loss; and (d), any other losses, costs, damages or expenses caused by the Buyer's breach.
15. (i) The Customer shall as a pre-condition of any transaction at a Site (whether a withdrawal of Fuel or purchase of Other Fuels) ensure that any person using a Card shall produce a valid Card to the operator of the Site prior to the commencement of the proposed transaction.
- (ii) Without prejudice to the preceding provisions of this clause the Customer agrees to provide the Card and to allow the Card to be checked (including verification of the signature or the vehicle registration number on a Card) by the Company or any person authorised including the Site operator and its employees, agents or other persons authorised by the Site operator in accordance with these Terms and Conditions and the Company shall not be liable for any loss or damage whatsoever or howsoever arising sustained by the Customer in the event that a Card is not so checked by the Company or any person authorised by the Company including any Site operator and its employees, agents or other persons authorised by the Site operator in accordance with this clause or in accordance with these Terms and Conditions.
- (iii) The Customer shall ensure that any person using a Card shall not tamper with or try to alter or interfere with the Site fuel monitoring device or any other equipment at the Site. In the event of their appearing to be a defect or fault in the site fuel monitoring device or any other equipment the Customer shall forthwith report the same to the Company or the site operator.
- (iv) The Company shall not be liable for any failure of the site fuel monitoring device to accept the Card nor shall the Company be responsible for any consequential loss or damage sustained by the Customer arising from the failure of any site fuel monitoring device or other equipment or of the Customer to use the site fuel monitoring device or other equipment properly.
16. In the event of the Customer failing to make payment to the Company of any sums due to the Company under the Terms and Conditions the Customer shall be prevented from drawing Fuel from the Sites and/or purchasing Other Fuels or from otherwise using the Card in accordance with these Terms and Conditions.

17. The trading relationship between the Company and the Customer will continue in full force and effect until terminated:
  - a. By the Company on the expiration of written notice of at least 30 working days of their intention to do so given at any time.
  - b. By the Customer on the expiration of written notice of at least 3 months of their intention to do so given at any time but this will only be effective once the Customer has returned each issued Card and repaid any sums outstanding under these Terms and Conditions, including but not limited to
    - i. charges for the non-use of the Card.
    - ii. charges in relation to clauses 14. (iii) and 14. (iv) ("Damages Event" and "Hedging Loss")
  - c. By the Company who is entitled to terminate such relationship forthwith if:
    - i. The Customer is in breach of any of its obligations herein; or
    - ii. Execution of any judgment is levied on the Customer; or
    - iii. The Customer enters into any composition or arrangement with its creditors; or
    - iv. The Customer becomes insolvent or calls a meeting with a view to going into voluntary liquidation or if a petition for winding-up shall be presented or a receiver and/or administrator and/or administrative receiver and/or manager is appointed or if the Customer has a liquidator appointed over any of its property or assets or enters into an agreement with its creditors or a mortgagee or debt or equity holder takes steps to exercise its security; or if the Customer is presented with an application for an interim order or a bankruptcy petition within the meaning of the Insolvency Act 1986, or if an interim order or bankruptcy order is made against the Customer or if the Customer has a liquidator appointed or if a meeting - whether formal or informal - is called of the Customer's creditors or if the Customer becomes bankrupt or suffers sequestration to be awarded of the Customer's estate or effects or suffer any arrestment, charge or other diligence to be issued or levied upon the Customer or his estate or effects or suffer any exercise or threatened exercise of any landlord's hypothec. Provided that such termination shall be without prejudice to the rights obligations or liabilities of either party which have accrued at the date of termination.
18. (i) Neither party shall be under liability whatsoever to the other for failure or delay in the performance of any of its obligations hereunder if and for so long as such performance becomes impracticable by reason of force majeure, except that the Customer will still be liable to pay any sums which have become payable by the Customer under these Terms and Conditions before the incident of force majeure.  
(ii) Force majeure shall include without limitation act of God, flood, fire, tempest, war, civil commotion, riot, shortage of materials, enactment of legislation by Government or municipal authorities, industrial disputes or any other cause (whether or not of the same nature as the foregoing) which is beyond the reasonable control of the party affected.  
(iii) The party which is prevented from performing its obligations hereunder by force majeure shall advise the other party as practicable of its inability to meet its obligations specifying the cause of the force majeure and shall advise the other party when such difficulty ceases.
19. All charges referred to in these Terms and Conditions are to be taken as exclusive of Value Added Tax which, where applicable, shall be added to the relevant charge.
20. Any dispute relating to:
  - i. Drawings of Fuel from the Sites: or
  - ii. The purchase of Other Fuels or any other goods should be notified in writing to the Company within 14 days from the date of delivery of the stock statement or invoice (whichever is the earlier) which relates to the disputed delivery drawing purchase price or other matter. Thereafter such stock statements or invoices as appropriate shall be deemed final and conclusive evidence as to the accuracy of the information stated therein.
21. The Customer agrees to indemnify the Company against all loss damage action claims expenses and costs including but not limited to financial loss whatsoever and howsoever arising directly or indirectly out of or in connection with any breach by the Customer of its obligations contained herein.
22. Any waiver by the Company of any breach of any of the conditions herein shall not be construed as a waiver of any earlier or later default of a like nature.
23. In the event of the invalidity or unenforceability of any part or provision of these Terms and Conditions such invalidity or unenforceability shall be deemed omitted or as the case may be reduced in size or duration to the extent necessary to render such provision or part enforceable but it shall not affect the validity or enforceability of any other part or provision which shall remain in full force and effect.
24. (i) Nothing in these Terms and Conditions shall be deemed to create a partnership between the Company and the Customer.  
(ii) Nothing in these Terms and Conditions shall be deemed to create a relationship of agent and principal between the Customer and the Company.
25. Where the Customer consists of two or more persons acting in partnership such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.
26. Any notice served hereunder pursuant to these Terms and Conditions shall be in writing and shall be deemed to have been properly served on the addressee if delivered by hand sent by facsimile transmission or sent by pre-paid first class ordinary or registered or recorded delivery post to the addressee at its address set out above or at such other address as shall have later been notified to the sender in writing and such notice shall be deemed to have been given at the time of delivery if delivered by hand or facsimile transmission or 48 hours after despatch of it posted as aforesaid.
27. These Terms and Conditions shall be governed by the Laws of England and both parties submit to the jurisdiction of the High Court of Justice of England.