

## The Customer's Attention is Drawn to the Limitation of our Liability at Clause 11 of these Terms

### 1. DEFINITIONS

- 1.1 When the following words with capital letters are used in these Terms, this is what they will mean:
- (a) Event Outside Our Control: is defined in clause 12.2.;
  - (b) Goods: the goods that We are selling to you as set out in the Order;
  - (c) Order: your order for the Goods as set out overleaf;
  - (d) Terms: the terms and conditions set out in this document; and
  - (e) We/Our/Us: Kettlewell Fuels Limited registered under company number 2092955 whose registered office is at Station Depot Melmerby Ripon HG4 5EX.
  - (f) When We use the words "writing" or "written" in these Terms, this will include e-mail unless We say otherwise.

### 2. OUR CONTRACT WITH YOU

- 2.1 These are the terms and conditions on which We supply Goods to you.
- 2.2 Please ensure that you read these Terms carefully, and check that the details on the Order and in these Terms are complete and accurate. If you think that there is a mistake or require any changes, please contact Us to discuss.
- 2.3 These Terms will become binding on you and Us when We confirm verbally or in writing acceptance of an Order, at which point a contract will come into existence between you and Us.
- 2.4 We shall assign you an account number and print this on the delivery note when the Goods are delivered. Please quote the account number in all subsequent correspondence with Us relating to the Order.

### 3. CHANGES TO ORDER OR TERMS

- 3.1 We may revise these Terms from time to time in the following circumstances:
- (a) changes in how We accept payment from you;
  - (b) changes in relevant laws and regulatory requirements; and
  - (c) changes to accepted industry practice in the distribution of the Goods
- 3.2 If We have to revise these Terms under clause 3.1, We will give you at least one month's written notice of any changes to these Terms before they take effect. You can choose to cancel the contract in accordance with 13.
- 3.3 If you wish to cancel an Order before it has been fulfilled, please see your right to do so in clause 13.

### 4. FPS CODE OF PRACTICE

- 4.1 For the benefit of our consumer customers, We can confirm that We are members of FPS (Federation of Petroleum Suppliers Ltd) and undertake to abide by the FPS' Code of Practice. We will be happy to provide you with a copy of the FPS Code of Practice and their Customer Charter at your request.

### 5. DELIVERY OF GOODS

- 5.1 Please note that timescales for delivery and delivery charges will vary depending on the availability of the Goods; weather conditions and your address.
- 5.2 When you place your Order We will deliver the Goods in a timely manner. Occasionally Our delivery to you may be affected by an Event Outside Our Control. See clause 12 for Our responsibilities when this happens.
- 5.3 Delivery of an Order shall be completed when We deliver the Goods to the address you gave Us. Where possible We will leave a delivery note confirming delivery of the Goods.
- 5.4 In respect of delivery of the Goods to non-domestic premises, it is your responsibility to notify Us of any specific security or health and safety procedures that you require Us to comply with when delivering the Goods.
- 5.5 All risks associated with the storage and use of the Goods supplied shall pass to you once the Goods have been delivered:
- (a) in the case of any delivery in bulk by road vehicle delivery will be deemed to have taken place when on discharge it passes the hose connection of the storage tank, container, receptacle, vessel or fill line (as the case may be) provided by you for receiving that delivery; and
  - (b) in the case of barrels or other package deliveries delivery will be deemed to have taken place at the time of off-loading when the barrels or package are removed from Our delivery vehicle.
- 5.6 You own the Goods once We have received payment in full. We reserve the right until the Goods are paid for in full (and any other money owing under this contract) to enter your premises to recover and resell the Goods.
- 5.7 When you order a specific quantity it is acknowledged by you that due to the nature of the Goods there may from time to time be a shortfall in the quantity of Goods actually delivered (Shortfall).
- 5.8 In the event of a Shortfall you will be invoiced for the Goods actually delivered and it will be at Our sole discretion to determine whether or not a further delivery is to be made to you to top up any shortfall. If a further delivery is to be made this will be treated as a separate contract.

### 6. IF THE GOODS ARE FAULTY

If you are purchasing the Goods as a consumer, you have legal rights in relation to Goods that are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

### 7. CUSTOMER'S RESPONSIBILITY

- 7.1 We will supply and deliver the Goods (in bulk) to you subject to you ensuring that:
- (a) you provide Us with clear delivery instructions including full address and if applicable the location or identity of specific storage tanks;
  - (b) there is safe, unobstructed access to your premises and storage tank;
  - (c) the storage into which the delivery is to be made is safe, correctly installed and fit for purpose; has a secure gauging system for bulk storage and complies in all respects with all relevant statutes and regulations which may be in force from time to time;
  - (d) the storage into which the delivery is to be made will accommodate the full quantity ordered, in the event that there is insufficient capacity in the storage tank for the whole of the ordered amount to be delivered, We reserve the right to increase the price payable per litre in proportion with the amount of Goods actually delivered;
  - (e) you observe good health and safety practice due to the highly flammable nature of the Goods whether or not such practice is enforceable by law; and
  - (f) if you are present at delivery you ensure that the driver making the delivery couples up with the correct feed on your tank(s).
- 7.2 In the event that We are unable to deliver the Goods due to your failure to comply with your responsibilities under these terms and conditions, We reserve the right to charge you for any reasonable administrative and delivery charges in connection with the aborted delivery.

### 8. MINIMUM ORDERS

- 8.1 The minimum fuel Order We will accept is 500 litres.

### 9. AUTOMATIC TOP UPS

- 9.1 Where you have requested Us to provide automatic top ups we shall use our reasonable endeavours to monitor your supply and estimated usage.
- 9.2 Automatic top ups are calculated by way of estimate only and it is acknowledged by Us and you that there is the possibility that we may not deliver the Goods on time and your supply runs out. In the event that this happens we agree to contribute a maximum of £100 towards any proper and reasonable costs that you may incur for your boiler to be re-lit. We will request a copy of any invoice you have received before payment is made.

### 10. PRICE AND PAYMENT

- 10.1 Our prices will change at any time in line with crude oil prices, but price changes will not affect prices that We have confirmed with you.
- 10.2 The price payable by you shall be the price in accordance with clause 10.1 plus Value Added Tax (VAT) where appropriate. However, if the rate of VAT changes between the date of the Order and the date of delivery or performance, We will adjust the rate of VAT that you pay, unless you have already paid for the Goods in full before the change in the rate of VAT takes effect.
- 10.3 We will issue you with an invoice (by email or post) after delivery. All payments must be made within the payment terms specified on the invoice.
- 10.4 If you do not make any payment due to Us by the due date for payment, We may charge interest to you on the overdue amount at the rate of 2% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay Us interest together with any overdue amount.
- 10.5 However, if you dispute an invoice in good faith and contact Us within 5 days from the date of the invoice to let Us know that you dispute it, clause 10.4 will not apply for the period of the dispute.
- 10.6 Subject to your satisfying our credit check requirements, We may agree for you to pay for your Goods over a 12 month period. We will notify you of the monthly amount payable, such monthly instalments must be paid by you on the agreed date each calendar month by way of direct debit. If there are insufficient funds against your account with us at the time you make an Order for Goods we will notify you and request that you make an interim payment or increase your standing order to ensure that any shortfall is met within 14 days from the date of delivery. If you fail to comply with these terms and conditions then We reserve the right to withhold any further deliveries and demand payment in advance or cash on delivery.

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### 10. PRICE AND PAYMENT

10.7 In respect of business customers, We reserve the right to credit your account under these terms and conditions with the cost of any goods or services sold or supplied by you to Us at any time in lieu of us paying you for those goods and services.

### 11. OUR LIABILITY TO YOU

- 11.1 If We fail to comply with these Terms, We are responsible for loss or damage you suffer that is a foreseeable result of Our breach of the Terms or Our negligence, but We are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by you and Us at the time we entered into this contract.
- 11.2 We will make good any damage to your property as a result of any negligent act or omission caused by Us in the course of delivery of the Goods. However, We are not responsible for the cost of repairing any pre-existing faults or damage to your property that We discover in the course of delivery by Us.
- 11.3 We do not exclude or limit in any way Our liability for:
- (a) death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
  - (d) breach of the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 (description, satisfactory quality, fitness for purpose and samples); and
  - (e) defective products under the Consumer Protection Act 1987.
- 11.4 In relation to non-consumer customers and subject to clause 11.3:
- (a) We shall under no circumstances whatever be liable to you, 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 this contract; and
  - (b) Our total liability to you in respect of all other losses arising under or in connection with this contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods under the relevant Order against which a liability is proved.

### 12. EVENTS OUTSIDE OUR CONTROL

- 12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.
- 12.2 An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation disruption of supply, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.
- 12.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:
- (a) We will contact you as soon as reasonably possible to notify you; and
  - (b) Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our delivery of Goods to you, We will arrange a new delivery date with you after the Event Outside Our Control is over.
- 12.4 You may cancel the contract if an Event Outside Our Control takes place and you no longer wish Us to provide the Goods. Please see your cancellation rights under clause 13. We will only cancel the contract if the Event Outside Our Control continues for longer than 12 weeks in accordance with Our cancellation rights in clause 13.

### 13. YOUR RIGHTS TO CANCEL AND APPLICABLE REFUND

- 13.1 Before the Goods are delivered, you have the following rights to cancel an Order for Goods, including where you choose to cancel because We are affected by an Event Outside Our Control or We change these Terms under clause 3.1 to your material disadvantage:
- (a) You may cancel any Order for Goods up to 24 hours before the date of delivery by contacting Us.
  - (b) If you cancel an Order under clause 13.1(a) and you have made any payment in advance for Goods that have not been delivered to you, We will refund these amounts to you.
  - (c) If you cancel an Order with less notice than 24 hours notice before the date of delivery then We reserve the right to charge you a reasonable cancellation fee to cover administrative costs of which we will notify you at the time of cancellation.

### 14. OUR RIGHTS TO CANCEL AND APPLICABLE REFUND

- If We have to cancel an Order for Goods before the Goods are delivered:
- (a) We may have to cancel an Order before the Goods are delivered, due to an Event Outside Our Control or the unavailability of stock. We will promptly contact you if this happens.
  - (b) If We have to cancel an Order under clause 14(a) and you have made any payment in advance for Goods that have not been delivered to you, We will refund these amounts to you.

### 15. INSOLVENCY

- 15.1 If you suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or admit an inability to pay your debts, or (being a company) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) have any partner to whom any of the foregoing apply; then We may cancel or suspend all further deliveries under these terms and conditions or under any other contract between you and Us without incurring any liability to you, and all outstanding sums in respect of Goods delivered to you shall become immediately due.

### 16. INFORMATION ABOUT US AND HOW TO CONTACT US

- 16.1 We are a company registered in England and Wales. Our company registration number is 2092955 and Our registered office is at Station Depot, Melmerby, Ripon, HG4 5EX.
- 16.2 If you have any questions or if you have any complaints, please contact Us. You can contact Us by telephoning Our customer service team at 01765 640682 or by e-mailing Us at [sales@kettlewellfuels.co.uk](mailto:sales@kettlewellfuels.co.uk).
- 16.3 If you wish to contact Us in writing, or if any clause in these Terms requires you to give Us notice in writing (for example, to cancel the contract), you can send this to Us by e-mail, by hand, or by pre-paid post to Kettlewell Fuels Limited at Station Depot, Melmerby, Ripon, HG4 5EX or email to [sales@kettlewellfuels.co.uk](mailto:sales@kettlewellfuels.co.uk). We will confirm receipt of this by contacting you in writing. If We have to contact you or give you notice in writing, We will do so by e-mail, by hand, or by pre-paid post to the address you provide to Us in the Order.

### 17. HOW WE MAY USE YOUR PERSONAL INFORMATION

- 17.1 We will use the personal information you provide to Us to:
- (a) provide the Goods;
  - (b) undertake any necessary credit checks with licensed Credit Reference Agencies;
  - (c) process your payment for such Goods; and
  - (d) inform you about similar products or services that We provide, but you may stop receiving these at any time by contacting Us.
- 17.2 You agree that We may pass your personal information to credit reference agencies and that they may keep a record of any search that they do.

### 18. OTHER IMPORTANT TERMS

- 18.1 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify you in writing if this happens, but this will not affect your rights or Our obligations under these Terms.
- 18.2 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 18.3 If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. If We do waive a default by you, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.
- 18.4 These Terms are governed by English law. You and We both agree to submit to the non-exclusive jurisdiction of the English courts. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.