

WFL (UK) LIMITED - GENERAL TERMS AND CONDITIONS OF SALE FOR LAND FUELS, LUBRICANTS AND OTHER PRODUCTS TO COMMERCIAL PARTIES

THESE CONDITIONS CONTAIN EXCLUSION AND LIMITATION CLAUSES

1. DEFINITIONS

1.1 In these Conditions, the following definitions apply:

“Automatic Delivery Services” means one of the three different automatic delivery services: i) “Top-Up” where the Seller tops-up the Storage in accordance with an agreed delivery cycle; ii) an estimated service where the Seller tops-up the Storage; and iii) a telemetry device where the Seller's electronic device measures the level of Product in the Storage (the provision of the device is subject to separate terms and conditions and charges).

“Conditions” means these General Terms and Conditions of Sale which shall apply to all sales of Product by the Seller.

“Contract” means a contract between the Seller and the Customer for the sale and purchase of Product in accordance with these Conditions.

“Customer” means a person or party purchasing the Product from the Seller.

“Delivery Point” means the coupling between the Seller's road vehicle or the delivery arm coupling at the applicable loading terminal and the inlet into the Storage tank, road vehicle, container or vehicle tank provided by the Customer.

“Force Majeure Event” has the meaning in clause 12.

“Law” includes any law, statute, directive, regulation, code of conduct, rule of court or delegated or subordinate legislation or other instrument having the force of law and “Laws” shall have a corresponding meaning.

“Order” means any order placed by the Customer for the Product (such orders may be placed verbally or in writing).

“Premises” means any premises designated by the Customer for delivery of Product including (without limitation) any premises belonging to any third party.

“Price” means the price for the Product as described in Clause 4.

“Product” means any product which is sold by the Seller and purchased by the Customer.

“Sale Confirmation” means any documentation which may be issued by the Seller to record the specific terms of Product supplied pursuant to an Order.

“Seller” means WFL (UK) Limited (company number 00594001) with registered offices at The Broadgate Tower, Third Floor, 20 Primrose Street, London, EC2A 2RS or any of its trading names, brands or divisions.

“Storage” means any storage tank provided by the Customer at any designated premises.

“Tax” means all taxes except for the Seller's taxes based on income.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its personal representatives, successors or permitted assigns.

1.4 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.

1.5 A reference to written or writing includes fax and email unless otherwise stated.

2. BASIS OF SALE

2.1 The Seller shall sell and the Customer shall purchase all Product in accordance with the Contract and these Conditions (including any applicable Sales Confirmation) to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of any inconsistency between these Conditions and any Sale Confirmation, the Sale Confirmation shall prevail.

3. ORDERS AND SPECIFICATIONS

3.1 Any Order shall constitute an offer by the Customer to purchase the Products in accordance with these Conditions.

3.2 The Customer is responsible for ensuring that the terms of an Order and any related Sales Confirmation are complete and accurate.

3.3 Once accepted by the Seller, no Order may be altered or cancelled without the written agreement of the Seller, any such agreement to be on condition that the Customer indemnify and hold the Seller harmless from all loss or damage (including the cost of all labour, materials and transport) resulting from such alteration or cancellation.

3.4 If the Seller agrees to provide the Customer with the Automatic Delivery Service, the Customer shall place an Order on that basis. When the Seller estimates that the Customer requires Product, the Seller shall schedule a delivery of Product to the Customer.

3.5 The Seller shall use its reasonable endeavours to ensure that Customers on the Automatic Delivery Service do not run out of Product however the Customer acknowledges that the Seller cannot guarantee that this will not happen (particularly during times of high usage or during adverse weather events). The Seller's estimates are based on either: i) the Seller's understanding as to the Storage capacity, historic Product usage and weather patterns; ii) any agreed delivery cycle; or iii) the information provided by the telemetry device (if any). The Customer shall notify the Seller if there is or there is likely to be a material change in those matters set out in i) above. The Customer acknowledges that it should, and agrees that it shall, regularly check the fuel level in the Storage and shall contact the Seller if it runs out of Product or believes that it is likely to run out of Product.

4. PRICE OF THE PRODUCT

4.1 In the absence of any Price stated at the time of Order or in any Sale Confirmation, the Price shall be that ruling at the date of despatch, but the Seller may vary the Price at any time before delivery, by oral or written notice to the Customer, so that the Price reflects any cost increase due to any factor beyond the control of the Seller, or any delay caused by the Customer in giving the Seller adequate information or instructions. The Customer acknowledges that the Seller's ability to vary the Price in this way is reasonable as the Products are commodity products and as such are subject to considerable fluctuation over short timescales.

4.2 The Price is inclusive of any applicable customs duty and costs and charges of transport, but exclusive of any other Tax on the Product which shall be calculated at the date and time of each delivery of Product and be paid to the Seller by the Customer in addition to the Price.

4.3 Unless otherwise agreed, any quantity received by the Customer in excess of the Contract quantity will be priced at the prevailing market price on the date of receipt.

4.4 A quotation for the Products given by the Seller shall not constitute an offer. Quotations are valid until the end of the day on which the quotation is given.

4.5 The Seller may charge the Customer a reasonable card processing fee where the Customer chooses to pay by debit or credit card to cover the costs and fees the Seller incurs with the debit or credit card companies. Any debit or credit card charge will be made clear before the Customer makes payment by debit or credit card.

4.6 The Seller may charge the Customer a failed delivery charge if it is unable to complete a delivery of ordered Products due to the Customer's default (which shall include, without limitation, a breach of clause 7). The failed delivery charge shall be a reasonable amount taking into account the cost to the Seller in attempting to deliver the Product.

4.7 The Seller's failure to add Tax, assessment, fee or other charge to any invoice shall not relieve the Customer from liability therefor.

4.8 The Customer shall provide the Seller with any documentation, including, but not limited to, registrations, exemptions, certifications, claims, refunds, declarations or otherwise, in a form and format, and on or before whatever due date that the Seller shall request, to satisfy the Seller's requirements in connection with any Tax, assessment, fee and/or other charge.

4.9 The Customer's failure to provide the Seller with such requested documentation will result in the inclusion of all appropriate taxes of whatever nature and fees arising at any point in time on applicable invoices and the recovery of any imposed Taxes and fees will be the responsibility of the Customer. The Customer shall indemnify and hold the Seller harmless for any damages, claims, liability or expense that the Seller may incur due to the Customer's failure to comply with the requirement in clause 4.8. Furthermore, the Customer agrees to cooperate and execute any document reasonably requested by the Seller to the extent necessary to further the intent of Clauses 4.7 to 4.9 (inclusive) or to recover any amounts improperly paid to any governmental authority or other agency.

5. TERMS OF PAYMENT

5.1 The Seller may invoice the Customer once delivery of the Product has been tendered, or the Seller has given the Customer oral or written notice that the Product is ready for collection ('**Delivery**'). The Customer shall pay the Price and the Seller shall be entitled to recover the Price notwithstanding that physical delivery may not have taken place and/or title to the Product has not passed to the Customer. The time of payment of the Price shall be of the essence of the contract, and the Customer shall not be entitled to withhold payment of any sums due by invoking any right of set-off or counterclaim.

5.2 The Customer shall pay the invoice in full and in cleared funds within 21 days of Delivery, or as otherwise agreed. Payment shall be by direct debit, unless otherwise agreed, and if the payment date falls on a bank holiday, collection will be made on the first prior available banking day.

5.3 If the Customer fails to make payment due to the Seller under the Contract by the due date, then the Seller reserves the right to:

5.3.1 claim interest and costs in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;

5.3.2 cancel or suspend the Contract (and any other Contracts the Seller has with the Customer); and/or

5.3.3 without notice suspend or cancel delivery of Products under the Contract or any other Contract the Seller has with the Customer until the outstanding amounts are paid.

5.4 The Customer consents (and confirms that all relevant directors, employees and partners consent) to the Seller obtaining such credit reference searches and other information relating to the Customer's credit status as the Seller may require from time to time. In using personal information relating to all relevant directors, employees and partners as permitted by this clause 5.4, the Customer acknowledges that the Seller may transfer it outside the European Economic Area provided it is always covered by adequate data protection standards.

6. DELIVERY

6.1 The Seller will use its reasonable endeavours to deliver or procure the delivery of the Product to the Customer. Where delivery is to be made other than to the Customer, the Customer will nevertheless remain responsible to the Seller for payment of the Price.

6.2 Any Product delivery date or time quoted is approximate only and dates and times for delivery shall not be of the essence and may not be made of the essence. The Seller may deliver Product in advance of the quoted delivery date upon giving reasonable oral or written notice to the Customer. The Customer acknowledges that the sale of Products is subject to considerable seasonal fluctuations in demand, particularly in the winter months when demand increases and driving conditions can also be poor. The Customer is advised to take this into account, to order in good time and allow extra time for deliveries.

6.3 The Seller shall be entitled without notice to the Customer to vary the amount of the Product delivered by an operational tolerance up to ten per cent (10%). Any variation exceeding ten per cent (10%) will only be made with the prior approval of the Customer.

6.4 If the Seller fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products of a similar description and quality in the cheapest market, less the price of the Products. The Seller shall not be liable for any delay in delivery of Product that is caused by a Force Majeure Event, the Customer's failure to provide the Seller with adequate delivery instructions or the delivery facilities set out in clause 7 or the suspension or cancellation of deliveries in accordance with clause 5.3.3 or 15.3.

6.5 Delivery of Product shall be completed when it passes the Delivery Point, or when Product is off-loaded from the delivery vehicle or when Products are collected by the Customer (whichever is applicable).

6.6 If no one is available at the Premises to take delivery, the Seller will deliver Product where it is possible for the Seller to access the Storage and the Customer agrees that the Seller shall be entitled to access the Premises for this purpose.

7. DELIVERY FACILITIES

7.1 In relation to each delivery of Products the Customer shall:

7.1.1 Ensure that all necessary arrangements are put in place for the safe acceptance of each delivery. This will include (without limitation) providing adequate and appropriate equipment for accepting delivery, ensuring delivery and storage access is clear and available for the Seller's delivery vehicles and ensuring that sufficient storage capacity is available, is safe and suitable for the Products, is clearly marked with product name (grade), safe working capacity and identification number, is provided with a safe means to check volume in tank before and during delivery and complies with any and all applicable laws and regulations;

7.1.2 In relation to motor spirit the Customer shall be responsible for ensuring that it is properly licensed by the appropriate local authority to store motor spirit; ensure that the connecting hose is properly and securely connected to the filling point; and observe all the conditions of the Petroleum Spirit Storage Licence (if any) and not allow any smoking, naked lights, fires, stoves or heating appliance of any description in the vicinity of the storage and the fill dip and vent pipes connected to it;

7.1.3 Inspect the Products to ensure that they conform to the Contract and make an authorised representative available to sign a delivery note (or equivalent documentation provided by the Seller) to confirm the Products are as ordered;

7.1.4 Notify the Seller of any concerns regarding the safety or suitability of the Storage before the Seller commences delivery (ensuring that any out of service equipment is clearly marked and isolated);

7.1.5 At all times act sensibly and with all due care and caution in relation to the Products, acknowledging that there are health and safety issues inherent in receiving and storing the Products, which if handed incorrectly can be dangerous. Where the Customer collects the Products from the Seller then the Customer shall comply with the Seller's policies and procedures regarding access to, and conduct at, the Seller's premises; and

7.1.6 where the Carriage of Dangerous Goods and Use of Transportable Equipment Regulations 2009/134B and/or any regulations amending or replacing the same apply, ensure that such regulations are complied with before and during delivery.

7.2 Where the Seller is delivering highly flammable Products or other similar products to the Customer, it is important (for the Customer's safety and for the safety of the Seller's staff making the deliveries) that the Customer is aware of and complies with any and all applicable laws and regulations in relation to the health and safety risks associated with such products. The Customer must raise any concerns as to the obligations referred to above with the health and safety department at the relevant local council who should provide further information. If the Seller believes that it would be unsafe to make a delivery of Products to the Customer then it may suspend the relevant delivery unless or until it is satisfied (acting reasonably) that it would be safe for it to proceed.

7.3 Where the Customer or its agent collects the Product, the Customer will ensure: that the road vehicles or railway carriages which make any such collection are in full and proper repair and comply in all respects with all applicable Laws; and that the drivers or other personnel operating such road vehicles or railway carriages are fully competent to carry out any task assigned to them;

7.4 Where the Customer or its agent collects the Product, the Customer agrees to abide by the terms and conditions of any applicable loading agreements between the Seller and the third party terminal operator and any rules and regulations effective at such terminal.

8. MEASUREMENTS

8.1 The measurements provided by the Seller (either as evidenced by meter measurement or the bill of lading, as appropriate) with regard to quantities, quality and specification shall be conclusive for all purposes, save in the case of fraud or manifest error.

9. RISK AND TITLE

9.1 The risk in the Products (including, but not limited to, risk of contamination) shall pass to the Customer on completion of delivery in accordance with clause 6.5 except where the Customer fails to accept delivery of any of the Product in which case risk shall pass when the Products arrive at the Premises and risk shall only transfer back to the Seller where the Seller agrees in writing to accept the risk.

9.2 Notwithstanding delivery and the passing risk in the Product, title to any Product shall not transfer to the Customer until the earlier of:

9.2.1 the Customer's sale of Products, in which case title in those Products shall pass to the Customer at the time specified in clause 9.4; or

9.2.2 the Seller has received payment (in cleared funds) in full in respect of such Products and all other sums which are or which become due to the Seller from the Customer for sales of Products in which case title to such Products shall pass at the time of payment of all such sums.

9.3 Until such time as title to the Product transfers to the Customer, the Customer shall:

9.3.1 hold the Product (or an equivalent quantity of commingled product of the same type) on behalf of the Seller as the fiduciary agent and bailee of the Seller;

9.3.2 shall keep the Product properly stored and protected;

9.3.3 only commingle or mix the Products with products of the same type;

9.3.4 maintain the Product in satisfactory condition and insured against all risks for their full price from the date of delivery;

9.3.5 notify the Seller immediately if it becomes subject to any of the events listed in clause 15.2.

9.3.6 shall indemnify the Seller against any loss or damage and against all liability arising out of any actions, claims, demands or proceedings brought by any employee, agent, contractor or representative of the Seller, or by any third party, with respect to the Product while it is in the Customer's possession.

9.4 Notwithstanding and without prejudice to sub-clause 9.3 above, the Customer may remove the Product from storage for use or resale in the normal course of its business or in case of emergency but not otherwise. If the Customer resells the Product in the ordinary course of its business before title transfers to it, the Customer does so as principal and not the Seller's agent, accordingly title to the Product shall pass from the Seller to the Customer immediately before the time at which resale by the Customer occurs.

9.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Product which remains the property of the Seller.

9.6 If before title in the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 15.2, then, without limiting any other right or remedy the Seller may have, the Seller may at any time:

9.6.1 require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated so as to create another product (or an equivalent quantity of commingled product of the same type); and

9.6.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them (or equivalent commingled products).

9.7 Notwithstanding the provisions of Clause 9.2 the Customer shall be responsible for and shall indemnify and hold the Seller and its employees harmless from and against any and all liability for loss or damage sustained or incurred due to any cause whatsoever occurring after the Product has been delivered to the Premises including, without limitation:

9.7.1 any losses, leakage, shortages, contamination of or other damage to the Product occurring during storage, processing or any other handling by the Customer;

9.7.2 any indirect and consequential losses, loss of profit or reputation or damage to property; and

9.7.3 except to the extent provided otherwise by Law, any other claims arising directly or indirectly from any breach of any term of the Contract or as a result of the negligence of the Customer its servants or agents, all claims arising from the death of or injury to third parties, or loss or damage to third party property, or arising out of the death or injury of the Customer's employees occurring as a result of, or in connection with, the storage, processing or handling of the Product after it has been delivered.

9.8 Until title in the Products passes to the Customer, the Customer shall:

9.8.1 Keep the Product in storage insured to its full replacement value; and

9.8.2 Comply with all relevant Laws and the requirements of all applicable regulatory authorities with regard to the safe storage, handling and use of any Product. For the purposes of these Conditions the words "safe storage, handling and use", relate not only to the safety of those persons who may be affected by the acts or omissions of the Customer but also to the environment generally.

10. WARRANTIES

10.1 The Seller warrants to the Customer that at the time of delivery the Product will conform with the specifications offered by the Seller to the public in its ordinary course of business for the particular grade of Product and all relevant British Standards for that Product.

10.2 The Seller gives no warranty that the Product is fit for any particular purpose

10.3 The Seller shall not be liable for Products' failure to comply with the warranty set out in clause 10.1 in any of the following events:

10.3.1 the Customer makes further use of the Products after giving notice in accordance with clause 11.1; or

10.3.2 the defect arises as a result of wilful damage, negligence or abnormal storage or storage.

10.4 The Customer warrants to the Seller that it will not use the Product, nor will it permit the Product or any of it to be used, in contravention of any Law, whether by use as a fuel for a mechanically propelled vehicle or otherwise. Where re-selling the Product, the Customer warrants that it will not make reference to any trademarks or brand names of the Seller in promoting or effecting sale of the Product, without the prior written consent of the Seller.

10.5 All warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11. CLAIMS PROCEDURE

11.1 Any claim by the Customer (whether or not delivery is refused by the Customer) which is based on: (a) any manifest error in the measurements provided by the Seller shall be notified to the Seller no later than seven (7) days after the date of delivery; or (b) a defect in condition of the Product or its failure to correspond with the specification shall be notified to the Seller within twenty eight (28) days after the date of delivery. In the event of any such claim, the Customer shall further provide the Seller with detailed documentary evidence in support within twenty-one (21) days after the date of its written notification of claim to the Seller. If delivery is not refused, and if the Customer fails to notify the Seller in accordance with these provisions, the Customer shall not be entitled to reject the Product and the Seller shall have no further liability.

11.2 Where any claim is made in accordance with the above provisions, the Customer shall: secure permission for the Seller or its authorised representatives to enter upon the premises at which the Product is stored during business hours to take samples and/or carry out any other investigations which the Seller considers necessary; and not commingle or allow the Product in question to be commingled with any other petroleum or other product or substance pending a decision by the Seller with regard to the sustainability of the claim, unless expressly agreed otherwise between the parties.

11.3 Subject to clause 11.2 and 10.3, if the Seller accepts the Customer's claim, the Seller shall remove the defective Product and, at its option, replace the defective Products or refund the price of the defective Product in full.

11.4 Except as provided in this clause 11, the Seller shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 10.

12. FORCE MAJEURE

12.1 Neither party shall be liable for any failure or delay in performing its obligations as a result of any Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, including but not limited to strikes, lock-outs or other industrial action, 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, adverse weather causing dangerous driving conditions for the Seller's (or its agent's or contractor's) vehicles, inability to obtain product, equipment or transportation or failure of public or private telecommunications networks.

12.2 If, due to any Force Majeure Event, the Seller is unable to supply the total quantity of Product ordered, the Seller shall have the right, in sole discretion, to allocate its available supply among its customers, departments and divisions in a fair and equitable manner. Notwithstanding the foregoing, in no event shall a Force Majeure Event release the Customer from its obligation to pay, on a timely basis, for Products already delivered by the Seller upon the occurrence of such event.

13. LIMITATION OF LIABILITY AND CUSTOMER INDEMNITY

13.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

13.1.2 fraud or fraudulent misrepresentation;

13.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

13.1.4 defective products under the Consumer Protection Act 1987; or

13.1.5 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

13.2 Subject to clause 13.1:

13.2.1 the Seller shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, wasted overheads, loss of goodwill, loss of contracts, loss of anticipated savings, any increased cost of working or any indirect or consequential loss arising under or in connection with the Contract;

13.2.2 the Seller's total liability to the Customer in respect of loss or damage to physical property of the Customer caused by the Seller's negligence (or that of its employees, agents or subcontractors) shall not exceed £1,000,000 in respect of any one event or connected series of events; and

13.2.3 the Seller'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 price paid for the Products or £25,000 whichever is the greater.

13.3 Notwithstanding any provision to the contrary, the Customer shall indemnify the Seller against any loss or damage to its property or that of its employees, agents or subcontractors and against all liability arising out of any actions, claims, demands or proceedings brought by any employee, agent, contractor or representative of the Seller, or by any third party on account of death or personal injury and/or damage to property or equipment of any kind arising out of or in connection with any deliveries made by or on behalf of the Seller hereunder, or any product collections made by or on behalf of the Customer, to the extent that the same shall either directly or indirectly be caused by, or as a consequence of, any failure by the Customer to comply with its obligations hereunder or at law, including negligence, notwithstanding any negligence or breach of statutory or other duty of the Seller, its employees, subcontractors or agents.

14. ASSIGNMENT

14.1 The Customer may not assign or otherwise transfer all or any of its rights and obligations under the Contract to any third party without the prior written consent of the Seller, such consent not to be unreasonably withheld.

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

15. TERMINATION

15.1 The occurrence of any of the following events, without limitation, shall constitute a "Default" by the Customer. Upon Default by the Customer, the Seller may terminate any Contract or Order with immediate effect by giving written notice to the Customer.

15.2 For the purposes of clause 15.1, the relevant events are:

15.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its 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) has any partner to whom any of the foregoing apply;

15.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

15.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

15.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

15.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

15.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

15.2.7 (being an individual) the Customer is the subject of a bankruptcy petition or order;

15.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

15.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.1 to clause 15.2.8 (inclusive);

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

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

15.2.12 the Seller's trade or credit insurance provider withdraws cover generally or specifically in relation to the Customer; and

15.2.13 where the Customer fails to pay any amount under this Contract on the due date for payment

15.3 Without limiting its other rights or remedies, the Seller may suspend provision of the Products under any Contract without notice if the Customer becomes subject to any of the events listed in clause 15.2.1 to 15.2.13, or the Seller reasonably believes that the Customer is about to become subject to any of them. Where the Seller suspends provision of Product in accordance with this clause, all monies due under or in respect of the Contract shall become immediately due and payable by the Customer to the Seller.

15.4 On termination of a Contract or Order for any reason the Customer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

15.5 Termination of a Contract or Order, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

15.6 Upon termination arising from the default of the Customer, the Seller shall be entitled to compensation from the Customer for the cost of, and loss incurred by entering into a replacement transaction, the cost of storing or disposing of undelivered products, and the cost of maintaining, terminating and/or re-establishing any hedge or related trading positions (and discounted to present value or bearing interest, as appropriate), in each case, as determined by the Seller in any commercially reasonable manner.

15.7 On Default by the Customer, the Customer shall also indemnify the Seller against costs and expenses (including but not limited to professional costs and expenses) suffered or incurred by the Seller arising out of or in connection with the Default and/or the Seller's subsequent Termination of the Contract or Order.

15.8 Clauses which expressly or by implication survive termination of a Contract or Order shall continue in full force and effect.

16. GENERAL

16.1 **Notices.** Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing (which for the purposes of this clause shall not include email), and sent to the other party at its registered office or principal place of business or such other address as may at the relevant time have been duly notified to the party giving the notice. A notice shall be deemed to have been duly received at the time of delivery, if delivered personally or by courier, or 2 Business Days after posting for an address in the United Kingdom and 5 Business Days after posting for any other address. In this clause '**Business Days**' shall mean a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business

16.2 Confidentiality.

16.2.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 16.2.2.

16.2.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16.2; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.2.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

16.3 **Severability.** If any provision or part-provision of these Conditions, any 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 these Conditions or the Contract, as applicable .

16.4 **Waiver.** Any waiver of the Seller's right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

16.5 **Third party rights.** A person who is not a party to the Contract between the Seller and the Customer shall not have any rights to enforce its terms.

16.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing (which for the purposes of this clause shall not include email) and signed by the Seller.

16.7 **Governing law.** The Contract, including these Conditions, any Order or Sales Confirmation and any dispute or claim arising out of or in connection with then or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

16.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract, these Conditions, the Order and any Sales Confirmation or their subject matter or formation (including non-contractual disputes or claims).