



## Standard Terms & Conditions of Sale

Version: **LO 01.02** Date: **01/01/2020**

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# Standard Terms & Conditions of Sale

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## TERMS OF SALE

### 1 Interpretation

#### 1.1 In these Terms:

"Buyer" means:

- i) "Buyer" means the person who accepts the Seller's Written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller;
- ii) "Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms;
- iii) "Seller" means New Era Fuels Ltd Registered in England under number 07378045 whose registered office is situate at LYNTON HOUSE ,7-12 TAVISTOCK SQUARE , LONDON , WC1H 9BQ
- iv) "Contract" means the contract for the sale and purchase of the Goods;
- v) "INCOTERMS" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;
- vi) "Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
- vii) "Writing", and any similar expression, includes facsimile transmission and electronic mail, but not text messages.

1.2 Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

### 2 Basis of purchase

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller's Written quotation (if accepted by the Buyer), or the Buyer's Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 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 Seller shall be subject to correction without any liability on the part of the Seller.

2.6 The Buyer warrants that they and all employees and servants are familiar and have had all necessary training in respect the necessary and relevant Health and Safety legislation and industry guidance of the sale, use, storage and delivery of the Goods in particular the Buyer shall at all times meet the requirements as recommended by the CA Control of Major Accident Hazards (COMAH) Containment Policy and any other regulations or recommended practices issues by the Health and Safety Executive.

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### 3 Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a drawing, design or specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's drawing, design or specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

### 4 Price of the goods

4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted are valid at time of order. The Seller reserves the right to amend the prices quoted which may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.4 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, and customers are responsible to disposal. The Seller shall not accept returned of any packaging containers and the like.

### 5 Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods upon delivery or within 18 days of the date of the Seller's invoice at the Seller's option (and which shall be stated on the Invoice and any confirmation of order), and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

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5.3 Payment by form of credit card will be taken for the price of the order plus a 5% ringfence which will be released back to the buyer if the number of litres taken does not exceed the original order value. If the buyer takes more litres than originally ordered, the ringfence value will be allocated against this and be kept by the seller and any further litre costs will be recovered.

5.4 Any overpayments relating to proforma invoices will remain on the buyers account and can be allocated to the next order.

5.5 If the buyer takes less litres than originally ordered the value of the pence per litre may increase.

5.6 If the volume ordered or taken by the buyer is below 500 litres, this will incur a £50 below minimum charge.

5.7 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 5 per cent per annum above Barclays Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6 Delivery

6.1 Delivery of the Goods shall be either, by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 The Buyer shall be solely responsible for the off loading of the goods for the provision of suitable means and facilities for the reception of the goods and for the storage after delivery.

6.3 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.

6.4 Delivery of goods made by hose shall be effected at the delivery end of the hose of the seller or the seller's agent or authorised distributor, as the case maybe.

6.5 Delivery of the goods where it shall be made at premises other than those of the Seller or the Sellers' authorised distributor, as the case maybe, shall be when the goods or the package or packaging in which the goods are contained are offloaded from the vehicle of the seller the Sellers's agent or authorised distributor.

6.6 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

6.7 Deliveries in Bulk.

- i) Where the road tank wagon is fitted with a metering device, the quantity of fuel delivered is to be ascertained by reference to such meter.
- ii) Where no meter fitted quantity is to be ascertained by measurements of the contents of the Seller's road tank wagons by means of the gauge dip rod provided with each wagon.
- iii) The Buyers shall be at liberty to check the correctness of the Seller's calculations and to be represented at the measurement if they so wish, but in the absence of such representation the Sellers shall be entitled to commence delivery and in this case the weight and measurement ascertained by them shall be accepted by the Buyers as correct.
- iv) The onus of responsibility for ensuring that sufficient ullage exists when the Seller delivers any bulk product shall be that of the Buyer. (The customer will ensure that the delivery will fit into the tank).

6.8 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

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6.9 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.10 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:

6.10.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage and any re delivery costs as maybe reasonably incurred; or

6.10.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 7 Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Seller has received payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. The Buyer may resell or use the Goods in the ordinary course of its business, but this right shall cease automatically on the occurrence of any of the events referred to in clause 10.1.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

## 8 Warranties and liability

8.1 Subject to the following provisions the Seller warrants that the Goods will correspond with their specification at the time of delivery

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval;

8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.3 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of

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delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.5 The Buyer warrants that they shall take proper and appropriate care of the goods to appropriate industry standards of the goods and that shall prevent any contamination of the goods subsequent to delivery.

8.6 Subject to clause 8.5 where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.

8.7 The Seller provides a Fuel Contamination Testing Service, upon potential contamination, the seller will attend the Buyers site to test whether contamination has occurred. The Seller will charge for this service of which is ringfenced via credit or debit card prior to attendance. If the contamination can be proven to be at the seller's responsibility, the charge will be released, and attendance will be free of charge. If the contamination cannot be proven to be the seller's responsibility, then the charge will remain.

8.8 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.9.1 Act of God, explosion, flood, tempest, fire or accident;

8.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.9.4 import or export regulations or embargoes;

8.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.9.7 power failure or breakdown in machinery.

## 9.0 Indemnity

9.1 If a claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

9.1.1 the Seller is given full control of any proceedings or negotiations in connection with the claim;

9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

9.1.3 except pursuant to a final award, the Buyer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

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9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

9.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

9.1.6 without limiting any duty of the Buyer at common law, the Seller may require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

### 10. Insolvency of buyer

10.1 This clause 10 applies if:

10.1.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or

10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### 11.0 General

11.1 Where the Seller is a member of the group of companies whose holding company is New Era Holdings Ltd and accordingly the Seller may perform any of its obligations or exercise any of its rights under the Contract by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.

11.2 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.4 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

11.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

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