

Nicholl's (Fuel Oils) Ltd And Associated Companies
Terms and Conditions of Trading

1 Interpretation

- 1.1 "The Seller" means Nicholl Fuel Oils and/or its successors, assignees, sub-contractors and authorised agents acting within the terms of their agency agreement;
- 1.2 "The Buyers" means any person or persons, firm or firms, company or companies, authority or authorities who shall order or buy the Goods or Services, unless distinguished in these conditions as a commercial buyer or domestic buyer, or in succession a receiver, administrator, administrative receiver or judicial administrator;
- 1.3 "The Goods" means the goods and/or material supplied or sold by the seller to the buyer in accordance with the terms of any individual contract;
- 1.4 "The service" means any services provided by the seller in accordance with the terms of any individual contract;
- 1.5 "Order" means any order placed for the good or the services;
- 1.6 "The Contract" means the particular individual contract for the sale or supply of the good and/or services by the seller to the buyer;
- 1.7 "Point of Delivery" means the time specified in clause 6 in relation to any individual contract;
- 1.8 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- 1.9 Reference to any clause is to a clause of these Conditions of sale;
- 1.10 "Conditions" means the terms and conditions of sale set out in this document together with any amendments from time to time made and notified in writing and any special additional terms expressly agreed in writing by the seller;
- 1.11A Domestic Buyer is a buyer who purchases for home use only;
- 1.12A Commercial Buyer is a buyer who purchases for use by or on behalf of a commercial entity;

2 Application of Conditions

- 2.1 These conditions shall govern the contract to the exclusion of any terms or conditions, which the buyer purports to apply under any purchase order, confirmation of order, specification or other document and the Buyer waives any right which it might have to rely on such terms or conditions;
- 2.2 No variation to these conditions or any representation about the goods shall have effect unless expressly agreed in writing and signed by a duly authorised representative of the seller;
- 2.3 The seller is prepared to receive a buyers order by telephone but will accept no responsibility whatsoever for any error or omission arising there from;
- 2.4 No order placed by the buyer shall be deemed to be accepted by the seller until a written acknowledgement of order is issued by the seller or (if earlier) the seller delivers the goods to the buyer;
- 2.5 Any quotation is given on the basis that no contract will come into existence until the seller despatches an acknowledgement of the order to the buyer. Unless otherwise in writing, any quotation is subject to withdrawal and alteration by notice in writing to the buyer and if not so withdrawn or altered will be valid for a period of 30 days only from its date;

3 Prices

- 3.1 Unless otherwise agreed in writing by the seller the price of the good shall be the price ruling and the date of delivery irrespective of the date of the buyer's order or any confirmation of order by the seller;
- 3.2 Save as expressly stated otherwise by the seller in writing, prices quoted for goods and services are exclusive at VAT, which shall be due at the date ruling on the date of the seller's invoice;
- 3.3 Prices indicated in the seller's quotations, price lists and other advertising material shall not be binding on the seller;
- 3.4 In addition to the price of goods or services quoted, delivery charges may be imposed by the seller at the seller's discretion;
- 3.5 The seller reserves the right at any time to vary the price of any of the goods or the services;

4 Title

- 4.1 Until the buyer has paid in full for the goods including all VAT and delivery charges, the goods remain the sole and absolute property of the seller as legal and equitable owner;
- 4.2 In the event of any collection or delivery of the goods prior to the passing of the title in them, the buyer shall be in possession of the goods solely as bailee and fiduciary agent for the seller until such time as the title in them has passed pursuant to clause 4.1.
- 4.3 The Buyer shall insure to their full value and goods wherein the risk but not the title has passed to it and shall indemnify the seller for loss, damage to or destruction of any such goods and shall hold any insurance monies payable in respect of the goods in trust for the seller;
- 4.4 Until title to the Goods shall pass pursuant to clause 4.1;
- 4.4.1 The Buyer shall, at no cost to the seller, store and label the goods in such a manner that they shall at all times remain separate from other goods in the buyer's possession and be readily identifiable as the seller's goods.
- 4.4.2 The Buyer shall be bound at the request of the Seller to deliver up the Goods to the Seller and for such purpose the Seller may at any time (and whether or not the Buyer shall be in default in making payment under contract) in its absolute discretion recover from the Buyer those goods being in the Buyer's possession and for the purpose of such recovery, the Seller's servants and agents may enter upon the land or building upon or in which the Goods are situated;
- 4.4.3 The Seller agrees to permit the Buyer as fiduciary agent of the Seller to dispose of the Goods in the course of the Buyer's business and to pass good title to the Goods to its own customer (being a bona fide purchaser of value without notice of the Seller's rights).
- 4.4.4 In the case of all disposals of Goods pursuant to clause 4.4.3 such disposal shall be by the Buyer as principal in relation to its own customer, and the buyer shall have no right to commit the Seller to any contractual relationship with or liability to any such customer.
- 4.4.5 The permission contained in Clause 4.4.3 may be revoked at any time by the Seller and shall automatically and without notice be revoked upon the commencement of liquidation proceedings (compulsory or voluntary) of the Buyer or the appointment of a Receiver, Administrator, Administrative Receiver or Judicial Administrator over any part of the Buyer's assets or if the Buyer commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer.
- 4.4.6 In the event of a disposal of the Goods pursuant to Clause 4.4.3 the buyer shall hold the proceeds of sale thereof on trust for the Seller and shall account to the Seller forthwith for the proceeds of the sale as fiduciary owner thereof notwithstanding that the period of credit allowed to the buyer thereunder may not have expired and the Seller shall have the right to trace the proceeds thereof.
- 4.5 Notwithstanding any purported appropriation by the Buyer contrary, the Seller shall be entitled to appropriate payment or payments for goods made by the Buyer to the Seller to such Goods on account as it shall deem fit.
- 4.5.1 The provision of this Clause 4 shall apply notwithstanding that the Goods shall have been added to or incorporated in any goods and that the process by which they have been added to or incorporated in the Buyer's goods is reversible.
- 4.5.2 The provisions of this Clause 4 shall apply notwithstanding that the Goods shall have been added to or incorporated in the goods of any third party, provided that the Goods remain identifiable as discrete goods and that the process by which they have been added to or incorporated in the third party's goods is reversible.

4.6 If the Buyer has not received payment for any disposal under Clause 4.4.3 Then the Buyer shall upon notice in writing by the Seller assign to the Seller all its rights against its customer in respect of that disposal, and shall do or cause to be done all things required to be done by statute or otherwise to ensure that such assignment is fully effective.

4.7 In the event that the Seller exercises its right of ownership so as to recover possession of the Goods or any of them, the risk in the Goods retaken shall revert to the Seller on possession being retaken by the Seller, its servants or agents and the Seller shall have full and unencumbered right to dispose of the goods free of any rights whatsoever on the part of the buyer to the Goods or the proceeds of the sale thereof.

4.8 The Buyer shall utilise or dispose of the Goods insofar as the Orders it receives allow on a first-in first-out basis.

4.9 The Seller shall have a general lien against the Buyer of any goods of the Buyer for the time being in possession of the Seller for amounts overdue on any contract. If any lien is not satisfied within 3 months of aforesaid payment becoming overdue the Seller may sell such goods as agent for the buyer and apply the proceeds towards the monies due and the expenses of the sale and shall upon accounting to the buyer for the balance remaining (if any) be discharged from all liability whatsoever in respect of such goods.

4.10 If in breach of 4.4.1 the buyer commingles goods purchased from the seller for which payment has not been made, with identical goods of the seller, buyer or third party whether paid for or not, the seller its servants and agents shall be at liberty, in the event that the said goods have not been paid for under the payment terms contained herein, to enter upon the land or buildings in which the goods are situated and recover possession of the goods from the identical commingled goods on a pro-rata basis without distinction as to paid or unpaid goods or ownership.

4.11 The buyer shall not be at liberty without the permission of the seller in writing to create or allow to be created any charge, lien or debenture over the goods until they have been paid for in full. If the buyer breaches this condition and the buyer is a limited company then such an act will constitute acceptance by the directors of the buyer that they jointly and severally accept personal liability for payment of the goods in full.

4.12 It is expressly stated that title to the goods will not pass to a receiver, administrator, administrative receiver or judicial administrator on their appointment without the written permission of the seller.

5 Payment

5.1 Unless the Buyer has an approved credit account (which the seller may remove or rescind at any time) agreed in writing by the Seller, all deliveries for the Goods shall be paid for in cash on delivery. An approved credit account is an account approved by the Seller up to a credit limit from time to time approved by the Seller.

5.2 The Commercial Buyer shall pay for the Goods and/or Services in full by Cheque by the 10th day or direct debit by the 15th day of the calendar month following the point of delivery or sooner as provided for in Clause 4.4.6 (if applicable). The Company understands and will exercise its statutory rights to claim interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to agreed credit terms

5.3 Any delay or default by the Commercial Buyer in making payment in accordance with condition 5.2 shall render all sums owing to the Company on any account whatsoever including the costs of recovery of such sums, due and payable forthwith without requirement for any notice to be given to the Buyer, and interest will be charged in accordance with condition 5.2 with immediate effect until the date of actual payment

5.4 The Domestic Buyer will pay on Cash on Delivery basis or in full within 28 days from the date of delivery.

5.5 Notwithstanding the provisions of clauses 5.2 and 5.3 the Seller reserves the right to require payment in full for the Goods and/or Services on or before the point of delivery.

5.6 In the event of any delay in payment beyond the date payment is due, the Buyer shall pay the Seller interest on a daily basis at the rate of 5% over and above the base lending rate of Allied Irish Banks Limited from time to time for the period that the payment is overdue or at the rate of 2.5% per month, whichever is higher, Interest shall accrue at such rate both before and after Judgement until payment in full.

5.7 The Buyer shall make no deduction from the invoice price of the Goods and/or Services on account of any set-offs or claims

5.8 The Seller shall be entitled to a general lien on all goods of the Buyer in the Seller's possession (including goods of the Buyers which have been paid for) for the unpaid price of all Goods and/or Services sold to the buyer by the Seller under this or any other contract.

5.9 The Seller shall be entitled to impose a charge if the Buyer's cheque and/or direct debit tendered in payment for Goods and/or Services are dishonoured by the bank in the amount of 50.00 euro per cheque/direct debit for each time it is dishonoured.

5.10 Any Buyer wishing to pay their account by credit card should note that credit card payments are subject to a 2% invoice surcharge

6 Delivery

6.1 Delivery of the Goods shall take place at the Seller's place of business or by the Seller delivering or arranging delivery of the Goods to the Buyer's premises.

6.2 If delivery is to be effected by the Seller delivering the goods to the Buyer's premises, the delivery shall be made by the Seller's road tank wagon. The Buyer shall provide and promptly indicate to the Seller's driver a sound, proper and safe route for the passage and manoeuvring of the Seller's vehicle between the public roadway and the actual point of unloading. The Buyer hereby indemnifies the Seller and the Seller's driver against any damages, losses, proceedings, claims, costs or expenses whatsoever (including any damage to the surface or structure of the route) from any failure by the Buyer to provide a sound, proper and safe route as aforesaid, condition.

6.3 The Buyer shall, prior to the Seller's vehicle leaving the Seller's premises, accurately indicate the place of delivery and shall provide appropriate and adequate storage and handling facilities so as to enable the full quantity of the Goods ordered to be delivered to the Seller's vehicle at the Buyer's premises. The Buyer shall indemnify the Seller to be delivered safely and promptly into storage upon arrival of the Seller for any costs, losses or expenses suffered or incurred or paid by the Seller as a result of the breach of this

6.4 Any date specified by the Seller for delivery of the Goods is an estimate only and time for delivery shall not be made of the essence by notice. If no date has been so specified, delivery will be within a reasonable time.

6.5 Subject to the other provisions of these Conditions, the Seller shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods nor will any delay entitle the Buyer to terminate or rescind the Contract.

6.6 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, the Seller shall be free to sell the Goods to a third party and the Buyer shall pay to the Seller on demand any shortfall between the price paid by the third party and the price payable by the Buyer for the Goods including any costs incurred by the Seller in making such sale.

6.7 Deliveries in Bulk. Nicholl (Fuel Oils) Ltd ('the company') does not accept responsibility for the dipping, checking or testing of the Buyer's tanks. This together with the obligation to see that the truck operator is provided with written instructions providing the relevant storage tank details for each grade of product to be discharged into the Buyer's tanks rests entirely upon the Buyer. The Buyer shall also be responsible for ensuring that the storage into which the delivery is to be made will accommodate the full quantity ordered.

6.8 The Company's measurements of quantity shall be accepted by the Buyer, and in the case of preheated oils shall be corrected to standard gallons at 60°F or litres at 15°C the Company's reading of which shall be conclusive and binding upon both parties.

7 Non Delivery

7.1 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless they can provide conclusive evidence proving the contrary.

7.2 The Seller shall not be liable for any non-delivery of Goods unless written notice is given to the Seller within 3 working days of delivery.

7.3 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods .

8 Suitability of Storage and Offloading facilities

The Seller reserves the right at any time to refuse to make delivery of the goods or any part of them if in its sole opinion the storage and offloading facilities proposed by the Buyer are inadequate, unsuitable or unsafe for the Goods. All reasonable costs incurred by the Seller in attempting to make delivery shall be for the account of the Buyer. Where any of the Goods are delivered by the Seller or the Seller's agent such delivery shall in no way constitute a commitment or representation by the Seller as to the suitability or safety of the Buyer's storage or offloading facilities so that the Seller shall be under no liability in respect of the storage or offloading facilities used by the Buyer. The buyer is expected to satisfy himself as to the suitability of storage and offloading facilities provided and the Seller will accept no claims in respect of damage or loss to the Buyer as a result of inadequate, unsuitable or unsafe storage or offloading facilities. The Buyer is expected to acquaint himself fully and observe all statutory provisions relating to the supply and storage of chemical and flammable materials.

9 Force Majeure

The Seller reserves the right to defer the date of delivery or to cancel the Contract or to reduce the volume of the Goods ordered by the Buyer (without Liability to the Buyer). If the Seller is prevented from or delayed in the carrying on of its business due to circumstance beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials

10 Liability

10.1 All terms, condition, warranties, statements or representations whatsoever, whether express or implied, statutory or otherwise and all obligations and liabilities whatsoever of the Seller (save as provided in clause 10.2 and 10.4) relating to the quality, merchantability, fitness for purpose, suitability or other properties of the Goods are hereby expressly excluded.

10.2 In the event of any claim (except as provided for under Section 16 of the Unfair Terms Act 1977) the Seller's liability shall be totally and exclusively limited to the replacement of the Goods or, at the option of the Seller, to the refund of any purchase price received in respect thereof, and in no event shall the Seller be liable for any special consequential or incidental loss or damage to the Buyer under any contract or condition of sale connected in any way with the Goods or any use of them by the Buyer or any third party or the service (including, but not limited to economic loss, loss of profits or revenue or costs arising from the use of the Goods) whether such liability arises in contract or in tort (including by reason of any negligence of the Seller) or otherwise.

10.3 Notwithstanding the foregoing, the Seller shall be under no liability whatsoever to the Buyer after the point of delivery.

10.4 The exclusion of liability referred to in this Clause 10 does not apply so as to exclude or restrict the Seller's liability for:-

10.4.1 Death or personal injury resulting from the negligence of the Seller, its servants or agents; or

10.4.2 Breach of the Seller's implied undertaking as to title to Goods contained in Section 12 Sale of Goods Act 1979.

11 Variation of Price

The Seller reserves the right at any time to vary the price of any of the Goods or the Services.

12 Samples

12.1 Except where the Goods are specifically ordered against samples supplied by the Seller, any and all samples supplied by the Seller are supplied for information only.

12.2 Except where specifically agreed in writing by the Seller (and in all cases subject to the liability in Clause 10) the provision of a sample by the Seller shall in no way be taken to imply any warranty or condition as to quality, merchantability, fitness for purpose, suitability or other properties of the Goods.

12.3 The supply of any samples does not constitute any contract for sale or agency for any product except where agreed to in writing by the seller.

13 Returns

The Seller will be under no obligation to accept Goods for return. Goods accepted for return will be credited at cost less 10% handling charge.

14 Claims

The Buyer shall inspect the Goods as soon as is practicable after the point of delivery and shall give to the Seller and/or the carrier within three (3) days of delivery notice of any claim for any shortages or damage or loss to the goods whilst in transit (and the delivery note must be endorsed accordingly), failing which the Goods shall be conclusively presumed to have been received and accepted by the Buyer.

15 Cancellation

15.1 The Seller shall be entitled without liability to the Buyer whatsoever to withhold or suspend delivery of the goods or performance for the Service or any part thereof if the Buyer's accounts with the Seller are outstanding to an extent which the Seller considers unreasonable or if the Seller considers that the buyer will fail to make payment or will fail to perform any other obligation undertaken by it in terms of the contract.

15.2 No cancellation or variation of an order shall be accepted unless written notice of such cancellation or variation is received at the Seller's premises before the Goods have been loaded on to the Seller's or the Buyer's vehicle as appropriate. The Buyer indemnifies the Seller against all costs, losses or expenses suffered or incurred or paid by the seller as a result of any such cancellation or variation received after the Goods have been loaded.

16 Fire Precautions

The Buyer shall strictly observe all of the conditions of the Buyer's Petroleum Storage Licence (if any) and will not, in any circumstances allow any smoking or naked lights nor permit any stoves, electric or gas fires or radiators to function in proximity to a tank, or inlet pipe into which a delivery of Goods is being made or vent pipe connected to such tank and the Buyer indemnifies the Seller against all damages, losses, claims, proceedings, costs or expenses whatsoever suffered or incurred or paid by the Seller as a result of or arising from any breach of this condition howsoever caused.

17 Warranty

17.1 The Seller warrants (subject to the other provisions of these Conditions) that upon delivery the goods will comply with the Seller's specification for the Goods.

17.2 The Seller shall not be liable for a breach of the Warranty in condition 17.1 unless:

17.2.1 The Buyer gives written notice of any defect to the Seller within 3 working days of delivery; and

17.2.2 The Seller is given a reasonable opportunity of examining the Goods and the Buyer (if asked to do so by the Seller) returned the goods to the Seller's place of business at the Buyer's expense for the examination to take place there.

17.3 The Seller shall not be liable for a breach of the warranty in condition 17.1 if;

17.3.1 The Buyer makes any further use of the Goods or part of the goods after giving notice of any defect; or

17.3.2 The defect arises because the Buyer failed to follow the Seller's instruction as to the storage or use of the Goods; or

17.3.3 The Buyer alters the Goods without the written consent of the Seller.

17.4 Subject to conditions 17.2 and 17.3, if any of the Goods do not conform with the warranty in condition 17.1 the Seller shall at its option replace such Goods (or the defective part) or refund the price of such Goods at the pro rata contract rate and shall have no further liability for breach of the warranty in condition 17.1 in respect of such Goods, If the Seller so requests, the Buyer shall, at the Buyer's expense, return the Goods or the parts of such Goods which are defective to the Seller.

18 Limitation of Liability

18.1 Subject to condition 17, the following provisions set out the entire liability of the seller (including any liability for the act or omissions of its employees, agents and sub-contractors) to the buyer in respect of:

18.1.1 Any breach of these conditions; and

18.1.2. Any representation, statement or tortious act or omission including negligence arising under or in connection with the contract.

18.2 All warranties, condition and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract.

18.3 Nothing in these conditions excludes or limits the liability of the seller for death or personal injury caused by the seller's negligence or fraudulent misrepresentation.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 18.4.

18.4 Subject to conditions 18.2 and 18.3:

18.4.1 The seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the price of the goods.

18.4.2 The seller shall not be liable to the buyer for loss of profit, goodwill or business opportunity or production downtime or any type of indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (however caused) which arise out of or in connection with the contract.

19 Law

This contract is subject to the Law of Ireland and all disputes arising out of the contract shall be subject to the exclusive Jurisdiction of the Courts of Ireland

20 General

20.1 The Buyer shall not assign the Contract or any part of it without the prior written consent of the Seller.

20.2 The Seller shall be entitled to assign the Contract or any part of it to any person, firm or company.

20.3 The Buyer shall not use the Seller's name, logo or other intellectual property rights in advertising or publicity without the Seller's prior written consent.

20.4 If any provision of the contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

20.5 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

20.6 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

20.7 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its 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 notice.

20.8 Nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions except that a person who is the permitted successor to or assignee of the rights of a party is deemed to be a party to the Contract.