

TERMS AND CONDITIONS FOR THE SALE OF GOODS

The Buyer's attention is drawn in particular to the provisions of clause 9.

1. Interpretation

1.1. The definitions and rules of interpretation in this clause apply in these conditions.

"Business Day"	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
"Conditions"	means the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6;
"Contract"	means the contract between the Owner and the Seller including the Order Acknowledgment, any quotation giving in accordance with clause 7.1 and the Order for the sale of the Goods in accordance with these Conditions;
"Buyer"	means the person or firm who purchases the Goods from the Seller;
"Force Majeure Event"	has the meaning given in clause 10;
"Goods"	means the storage tanks (and any parts of them) set out in the Order to be supplied to the Buyer by the Seller;
"Order"	means the request made by the Buyer for purchase of the Goods;
"Order Acknowledgment"	means the acceptance of the Order by the Seller which incorporates these conditions and any special terms agreed in writing and signed by an authorised representative of each party;
"Seller"	means Treloar Tanks LLP a limited liability partnership registered in England and Wales with registration number OC403102 whose registered office is at Ashley Glebe Farm, Kings Somborne, Stockbridge, Hampshire, United Kingdom, SO20 6RJ.

1.2. In these Conditions, the following rules apply:

- 1.2.1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. A reference to a party includes its personal representatives, successors or permitted assigns.

- 1.2.3. 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.
- 1.2.4. Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5. A reference to **writing** or **written** includes faxes and e-mails.

2. Basis of contract

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions and the quotation given by the Seller in accordance with clause 7.1. The Buyer is responsible for ensuring that the terms of the Order submitted by the Buyer are complete and accurate.
- 2.3. Any Order for the purchase of the Goods sent to the Seller by the Buyer shall be accepted entirely at the discretion of the Seller, and if so accepted will only be accepted upon the terms and conditions of these conditions and by means of the Seller's Order Acknowledgment, at which point the Contract shall come into existence.
- 2.4. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 2.5. Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force and this is not a sale by sample.

3. Goods

- 3.1. The Goods are described in the Seller's Order Acknowledgment.
- 3.2. The Seller reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. Delivery

- 4.1. The parties shall agree whether the Seller shall deliver the Goods to the Buyer or whether the Buyer shall collect the Goods from the Seller's premises (or such other location notified by the Seller to the Buyer) and the terms of delivery shall be set out in the Order Acknowledgment.
- 4.2. Where the parties have agreed that the Goods shall be delivered to the Buyer by the Seller, delivery shall take place at the location set out in the Order Acknowledgment or such other location as the parties may agree at any time after the Seller notifies the Buyer that the Goods are ready.
- 4.3. Where the parties have agreed that the Buyer shall collect the Goods from the Seller's premises (or such other location notified by the Seller to the Buyer) delivery shall take place at that location. In these circumstances, the Buyer shall take delivery of the Goods when the Seller notifies the Buyer that the Goods are ready for delivery and shall be responsible for providing suitable facilities and adequate labour (at its own cost) to load or unload the Goods.

- 4.4. Delivery of the Goods by either the Buyer or the Seller (or a subcontractor of the Seller) shall be made subject to the Buyer procuring:
- 4.4.1. that the provisions of Road Vehicles (Authorisation of Special Types) (General) Order 2003, and Regulation 81/82 of The Road Vehicles (Construction and Use) Regulations 1986 and any other applicable Road Traffic Acts are complied with;
 - 4.4.2. compliance with the Health and Safety at Work Acts;
 - 4.4.3. consent from the local Highways Authority and/or Police to the delivery of the Goods;
 - 4.4.4. (where delivery is by the Seller) consent from any third parties for the Seller to access the Buyer's site;
 - 4.4.5. any other work permits, certificates, documentation and consents as deemed necessary by the Seller;
 - 4.4.6. (where delivery is by the Seller) that there be suitable access to the Buyer's site for the Seller to enable delivery of the Goods; and
 - 4.4.7. (where delivery is by the Seller) that there is sufficient operating space for delivery of the Goods at the Buyer's site for the delivery vehicles to position the Goods immediately beside the delivery vehicle.
- 4.5. The Buyer undertakes that it will on the date of the Order inform the Seller of any obstructions to the Goods being delivered.
- 4.6. Should the Buyer fail to satisfy the conditions in clause 4.4, the Seller shall not be held liable for the failure of delivery and the Buyer shall be required to arrange a new date for delivery and pay all costs or expenses incurred by the Seller (including any demurrage, storage, insurance, repair, transport, crane, legal and remarketing costs) or alternatively the Contract shall terminate and the Buyer shall pay to the Seller on demand all fees and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 7.9 together with any costs and expenses incurred by the Seller (including any storage, insurance, repair, transport, legal and remarketing costs).
- 4.7. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.8. If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.9. If the Buyer fails to accept or take delivery of the Goods within three Business Days of the Seller notifying the Buyer that the Goods are ready, then:
- 4.9.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and

- 4.9.2. the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 4.10. If 10 Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods.

5. Quality of Goods

- 5.1. The Seller warrants, where it is the manufacturer of the Goods, that on delivery the Goods shall:
 - 5.1.1. conform in all material respects with their description;
 - 5.1.2. be free from material defects in design, material and workmanship; and
 - 5.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2. Subject to clause 5.4, if:
 - 5.2.1. the Buyer gives notice in writing to the Seller within a reasonable time of discovery that some or all of the Goods do not comply with their respective warranties set out in clause 5.1 and 5.2;
 - 5.2.2. the Seller is given a reasonable opportunity of examining such Goods; and
 - 5.2.3. the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost

the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3. The Seller shall not be liable for Goods' failure to comply with the warranties set out in clause 5.1 or 5.2 in any of the following events:
 - 5.3.1. the Buyer makes any further use of such Goods after giving notice in accordance with clause 5.2.1;
 - 5.3.2. the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.3.3. the Buyer alters or repairs such Goods without the written consent of the Seller;
 - 5.3.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 5.3.5. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4. Except as provided in this clause 5, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranties set out in clause 5.1 and 5.2.
- 5.5. In so far as the Goods comprise or contain equipment or components which were not manufactured or produced by the Seller, the Buyer shall be entitled only to such warranty or other benefit as the Seller has received from the manufacturer.

- 5.6. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7. These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

6. Title and risk

- 6.1. The risk in the Goods shall pass to the Buyer on completion of delivery.
- 6.2. Title to the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for the Goods.
- 6.3. Until title to the Goods has passed to the Buyer, the Buyer shall:
 - 6.3.1. hold the Goods on a fiduciary basis as the Seller's bailee;
 - 6.3.2. store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
 - 6.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.5. notify the Seller immediately if it becomes subject to any of the events listed in clause 8.2; and
 - 6.3.6. give the Seller such information relating to the Goods as the Seller may require from time to time

but the Buyer may resell or use the Goods in the ordinary course of its business.

- 6.4. If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 8.2, or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly the following provisions shall apply:
 - 6.4.1. if the Goods have been delivered in accordance with clause 4 and have not been resold, or irrevocably incorporated into another product by the Seller, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them; or
 - 6.4.2. if the Goods have not yet been delivered, but a deposit has been paid by the Buyer in accordance with clause 7.7, for the avoidance of doubt, title of the Goods will remain with the Seller until payment in full is made in accordance with clause 7.8 and the Seller shall be entitled to retain possession of the Goods until such time as payment in full is made.

7. Price and payment

- 7.1. Any quotation is given on the basis that no Contract shall come into existence until the Seller provides the Buyer with the Order Acknowledgment in accordance with clause 2.3. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 7.2. Prices quoted in the Seller's quotations or price lists are those then current and shall not be binding on the Seller.

- 7.3. The prices quoted are exclusive of:
- 7.3.1. Value Added Tax or any other tax, levy, duty or
 - 7.3.2. any surcharges whether imposed before or after making the contract; and
 - 7.3.3. the cost of delivery, insurance, licence fees and carriage
- and these costs shall be invoiced to the Buyer in addition to the price quoted for the Goods.
- 7.4. If no quotation is given, the price of the Goods shall be the price set out in the Order.
- 7.5. The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 7.5.1. any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 7.5.2. any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered; or
 - 7.5.3. any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 7.6. The price of the Goods is exclusive of amounts in respect of value added tax ("**VAT**"). The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.7. The Buyer shall on the date of the Order Acknowledgment pay to the Seller a non-refundable deposit of 30% of the net price of the Goods as quoted.
- 7.8. The balance of the price of the Goods will be due before dispatch of the delivery of the Goods to the Buyer. Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence.
- 7.9. If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment ("**due date**"), then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 7.10. The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

8. Buyer's insolvency or incapacity

- 8.1. If the Buyer becomes subject to any of the events listed in clause 8.2, or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Seller and in addition to the rights contained in clause 6.4, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Seller without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.

- 8.2. For the purposes of clause 8.1, the relevant events are:
- 8.2.1. the Buyer 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) 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;
 - 8.2.2. the Buyer 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;
 - 8.2.3. (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 Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - 8.2.4. (being an individual) the Buyer is the subject of a bankruptcy petition or order;
 - 8.2.5. a creditor or encumbrancer of the Buyer 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;
 - 8.2.6. (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 Buyer;
 - 8.2.7. (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 8.2.8. a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
 - 8.2.9. any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.8 (inclusive);
 - 8.2.10. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
 - 8.2.11. the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - 8.2.12. (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. Limitation of liability

- 9.1. Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 9.1.2. fraud or fraudulent misrepresentation;
 - 9.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 9.1.4. defective products under the Consumer Protection Act 1987; or
 - 9.1.5. any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 9.2. Subject to clause 9.1:
- 9.2.1. the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
 - 9.2.2. the Seller shall under no circumstances be liable to the Buyer for contamination of fuels, products, liquids or any other substances stored in the Goods by the Buyer;
 - 9.2.3. the Seller's total liability to the Buyer 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 by the Buyer for the Goods.

10. Force majeure

The Seller shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Sellers or subcontractors.

11. General

11.1. Assignment and subcontracting

- 11.1.1. The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.

11.2. Notices

- 11.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered

personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

11.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

11.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3. Severance

11.3.1. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.3.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.4. Waiver

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.5. Contracts (Rights of Third Parties) Act 1999

11.5.1. A person who is not a party to these conditions shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

11.5.2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under these conditions is not subject to the consent of any person that is not a party to these conditions.

11.6. Variation

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller.

11.7. Governing law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.