

Fuel Card Services Limited – Diesel Direct

TERMS AND CONDITIONS OF SALE

The following Terms and Conditions govern the use of the Fuel Card Services/Diesel Direct Card. FCS (as defined below) reserves the right to amend the following Terms and Conditions without prior notification.

1. DEFINITIONS

In these Terms and Conditions the following words, terms or expressions will have the following meanings:-

"**Authorised Cardholder**" means any person to whom the Customer has provided a Card;

"**Card**" means all Diesel Direct cards issued to the Customer by FCS including Wild Cards as defined in Clause 5.2.3 (as appropriate);

"**C H Jones**" means C H Jones Limited (No: 305804) whose registered office is situated at Premier Business Park, Queen Street, Walsall, West Midlands, WS2 9PB, and its successor, assigns and appointed agents;

"**C H Jones & FCS Agreement**" means an agreement between C H Jones and FCS which, inter alia, sets out the terms on which C H Jones may, subject to the C H Jones & FCS Agreement, have authorised FCS to issue cards to Customers. FCS is only entitled to provide such Cards subject to these Terms and Conditions and the C H Jones & FCS Agreement;

"**Contract**" means a contract created by the acceptance of an order made by the Customer for a Card and which incorporates these Terms and Conditions and any special conditions in the order;

"**Customer**" means a body corporate, partnership or individual which is a business and is for the time being a customer of FCS;

"**FCS**" means Fuel Card Services Limited (No: 2107821) whose registered office is Alexandra House, Lawnswood Business Park, Redvers Close, Leeds, LS16 6QY and its successor or assigns;

"**Lost Cards**" means Cards that are lost, stolen, mislaid, wilfully damaged, fraudulently reproduced or subject to such other similar circumstances.

2. ACCEPTANCE

2.1 Signature of and/or use of a Card by the Customer or an Authorised Cardholder constitutes acceptance of these Terms and Conditions which supersede and shall be taken to override any terms and conditions proposed or stipulated by Customer and any literature setting out the use of the Card provided by FCS and/or C H Jones.

2.2 All quotations or offers are made and all orders of the Card are accepted by the Customer subject to these Terms and Conditions. All prices quoted are subject to alteration or withdrawal by FCS from time to time without notice.

2.3 No binding contract is created between FCS and the Customer until confirmed in writing by FCS and all prior correspondence or oral communications are to be regarded as superseded and not forming part of the Contract. These Terms and Conditions shall apply to all repeat orders made by the Customer unless FCS notifies the Customer otherwise.

2.4 All drawings, brochures, descriptive matter, price lists or advertisements howsoever supplied are approximate only and intended for general guidance and information purposes only and shall not form part of the Contract. The parties hereby acknowledge and confirm that they have not entered into the Contract in reliance upon any representation or warranty or other undertaking not fully reflected in the terms of the Contract.

3. OWNERSHIP OF THE CARDS

3.1 The Cards remain the property of C H Jones under the C H Jones & FCS Agreement at all times and shall be returned by the Customer promptly at FCS's request.

3.2 The issue of Cards to the Customer shall authorise the Customer to use the Cards to obtain from authorised suppliers ("Suppliers") fuels and sundry lubricants and such other goods and/or services from time to time

("Goods and/or Services") from Suppliers. The Cards are to be used in the manner indicated by each Supplier.

3.3 The Customer acknowledges that use of a Card for the purchase of Goods and/or Services constitutes a purchase of such Goods and/or Services from FCS through the agency of C H Jones and the relevant Supplier of such Goods and/or Services.

3.4 Neither FCS nor C H Jones shall be liable in any way if the Supplier refuses to supply Goods and/or Services for any reason whatsoever.

4. ISSUE OF THE CARDS

4.1 The Customer may provide a Card to such Authorised Cardholders as the Customer shall determine. The Customer will determine (subject to Clause 5 below) whether or not the Card will bear the registration number of the vehicle to which the Card relates or whether it will bear the name of the Authorised Cardholder. Such information shall be provided to FCS. The provision of a Card to an Authorised Cardholder shall be deemed as giving such Authorised Cardholder authority to use the Card for the purchase of Goods and/or Services from the Supplier as a duly authorised representative of the Customer. The Customer will ensure that the Authorised Cardholder complies with all these Terms and Conditions. No Card will be valid unless the signature strip on the reverse of the Card has been completed in accordance with Instructions issued by C H Jones from time to time.

4.2 The Customer shall be solely responsible for the safe keeping and security of any Cards issued to it and for their correct use in accordance with these Terms and Conditions, whether by its Authorised Cardholder or by the Customer.

4.3 The embossing of a vehicle registration number on a card is for administration purposes only. It is not intended as a security measure and is not verified when the card is used.

5. USE OF THE CARDS

5.1 The Card may only be used:-

5.1.1 if it is a current Card and during the period of validity embossed on the Card;

5.1.2 by an Authorised Cardholder to obtain Goods and/or Services from a Supplier thereof which accepts the Card;

5.1.3 to obtain Goods and/or Services of a specified nature depending and in accordance with any restrictions relating to such Goods and/or Services embossed on the Card.

5.2 The right is reserved by FCS to unilaterally withdraw at any time any entitlement to purchase the Goods and/or Services for which the Card can be used and to issue to the Customer a new Card indicating the appropriate Goods and/or Services in replacement of the previous Card.

5.3 FCS will, on request, issue to the Customer, Cards which will not be embossed with the registration number of any vehicle or the name of any Authorised Cardholder (known as "**Wild Cards**"). In relation to such Wild Cards and notwithstanding any other provisions of these Terms and Conditions, the Customer will be liable in respect of all or any transactions made with the Wild Cards notwithstanding the fact that they may be Lost Cards and will indemnify and keep indemnified FCS in respect of and in relation to any and all costs, claims and demands arising out of or in connection with the use of such Wild Cards, whether by the Customer, Authorised Cardholders and/or a third party.

6. PURCHASE OF GOODS AND/OR SERVICES

6.1 Prior to agreeing to purchase or take delivery of Goods and/or Services, the Authorised Cardholder shall present or show his Card to the relevant Supplier.

6.2 Neither FCS nor C H Jones give any terms, conditions or warranties whether express or implied and whether arising by common law or statute in relation to any Goods and/or Services supplied to the Customer by the Supplier.

6.3 Whenever making purchases of Goods and/or Services with the Card, the Authorised Cardholder shall comply with all procedural requirements of the Supplier in respect of the relevant Card transaction and shall be liable to pay FCS for all amounts due to FCS pursuant to the relevant Card transaction.

7 INVOICES

7.1 An invoice will be sent to the Customer either weekly, fortnightly or monthly in arrears detailing all purchases on the Customer's account processed to the date of the raising of the relevant invoice. No invoice will be sent if no purchases have been made in a relevant period. Supplies of Goods and/or Services, other than diesel fuel, acquired with the Card by the Customer shall be invoiced at the price shown on the Customer's receipt plus a reasonable handling fee, details of which are available on request. The price for fuel shown on the first invoice from FCS will be the price agreed between the Customer and a duly authorised representative of FCS. Due to the volatility of the oil market and the impracticality of notifying each Customer, FCS may change the price of fuel from time to time without notice to the Customer.

7.2 The Customer may request FCS to provide copies of sales vouchers for transactions made on their Card provided that the transaction took place not more than 3 months prior to the date of the request. FCS shall be entitled to charge a fee of £10.00 plus VAT for each copy voucher. The above fee may be waived if the transaction is found not to be valid against the Customer's account.

7.3 The customer may request FCS to provide copies of sales invoices. FCS shall be entitled to charge a fee of £10.00 plus VAT. This fee covers up to 5 copy invoices in any 1 request; a request for more than 5 copy invoices would incur a charge of £20.00

8 PAYMENT

8.1 Payment of the invoice by the Customer in full and cleared funds will be made by one payment by the 15th of the month following the invoice by direct debit to such account as is notified by FCS to the Customer, unless agreed otherwise in writing by FCS and the Customer. Any such agreement shall provide that payments of the whole amount of credit shall be payable within specified periods and the number of repayments for the whole amount of credit shall not exceed one. For the avoidance of doubt, if the direct debit payment due date falls on a Saturday, payment will be taken on the preceding Friday. If the direct debit payment due date falls on a Sunday, payment will be taken on the following Monday.

8.2 If the Customer fails to pay their account by the due date FCS may (a) invalidate the Customer's Card and/or (b) terminate the Contract forthwith without notice at which point all amounts due to FCS, (whether invoiced or not) shall become immediately due and payable in full.

8.3 If a Customer's payment by direct debit fails or a cheque is not honoured, FCS shall be entitled to charge the Customer a fee of £20.00 plus VAT to cover administration costs for each failed presentation.

9 INTEREST AND CHARGES

9.1 FCS reserve the right to charge interest and/or reasonable debt recovery costs in the event that any amounts payable by the Customer to FCS under these Terms and Conditions are not paid by the due date (notwithstanding and without prejudice to FCS's right to terminate the Contract in such circumstances).

9.2 Interest shall be chargeable and payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, or at such lower rate as FCS may decide in its absolute discretion from time to time.

9.3 Reasonable debt recovery costs shall include all third party debt recovery costs, charges and other liabilities reasonably incurred by FCS including collection agency costs and any costs incurred in ascertaining the location of the Customer.

9.4 FCS reserves the right in the alternative to claim interest and reasonable recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 as amended.

9.5 All payments by the Customer or any credits or refunds due to the Customer will be applied first in settlement of any interest owed to FCS by the Customer and secondly in reduction of the Customer's other indebtedness to FCS. No claim by any Customer or Authorised Cardholder

against any supplier shall entitle the Customer to set off or counterclaim against the amounts due to FCS.

9.6 The Company may charge a fee to the Cardholder for issue of the Card either on setting up of the Cardholder's account or upon replacement or renewal of the Card depending on particular circumstances. Card charges are payable in advance at the prevailing rates which are reviewed periodically, and may be subject to increase.

10 TERMINATION

10.1 Unless agreed in writing the Contract may be terminated by either party at any time by giving not less than 30 working days prior written notice to the other party.

10.2 FCS shall be entitled to treat the Contract as terminated with immediate effect and without notice in the event that:-

10.2.1 the customer is in breach of any of these Terms and Conditions;

10.2.2 if the Customer goes into, or is perceived by FCS as likely to enter into (as appropriate) receivership, administration, bankruptcy, liquidation or similar proceedings or makes any arrangements with its creditors against the Customer or any other event occurs which in the opinion of FCS may affect the ability of the Customer to comply with any or all of its obligations or meet any of its liabilities under the Contract.

10.3 The Contract shall automatically terminate upon the termination for any reason whatsoever of the C H Jones & FCS Agreement and such termination will be confirmed by written notice to the Customer by C H Jones or FCS.

11 CONSEQUENCES OF TERMINATION

In the event of termination the Customer shall cut in half Cards supplied and return them to FCS and the whole outstanding balance of the Customer's account shall (at FCS's discretion) become due and payable in full and cleared funds to FCS and the right to use the Card shall terminate (but without prejudice to the Customer's liability for the use of the Card after termination or to the rights of FCS already accrued at the date of such termination).

12 CANCELLATION

12.1 Cancellation of a Card will only prevent renewal of the Card on expiry. It will not prevent the Card from being used.

12.2 FCS will cancel a Card on the Customer's written request. The Customer must immediately return the cancelled Card to FCS with the right hand corner cut off for security purposes.

12.3 FCS may cancel or suspend any or all Cards at any time without notice and reserves the right to refuse to reissue, renew or replace any Card.

12.4 Notwithstanding any other provisions of this Agreement, the Customer will remain liable in respect of any transactions made with the Card after its cancellation but prior to its return to FCS in accordance with 12.2 above.

13 STOLEN CARDS

13.1 If the Card becomes a Lost Card or not received by the Customer when due, the Customer must immediately notify FCS at Alexandra House, Lawnswood Business Park, Redvers Close, Leeds, LS16 6QY and FCS may, at its sole discretion either (a) terminate the Contract forthwith or (b) provide the Customer with a replacement Card.

13.2 The Customer will provide FCS with all information in its possession as to the circumstances relating to the Lost Card.

13.3 The Customer shall be liable for payment for any Goods and/or Services acquired from Suppliers by the use of a Card until FCS is able to place the Lost Card on stop to ensure that no further Goods and/or Services can be purchased. Where FCS is notified of a Lost Card prior to 2.00 pm on any day then FCS shall place such Lost Card on stop within 72 hours from notification and where FCS is notified after 2.00 pm place such Lost Card on stop within 72 hours from the commencement on the next working day.

13.4	If any Lost Card is subsequently retrieved it shall not be used and it shall be returned forthwith to FCS at the address shown above in Clause 13.1.	16.5	In Clauses 16.1 to 16.4 above, references to "the Customer" shall be deemed to include (without limitation) officers, employees, contractors and agents in relation to which FCS receives personal data arising out of or in connection with the Customer's dealings with FCS.
14	LIABILITY	17	GENERAL
14.1	Neither FCS nor any employee, representative, sub-contractor or agent of FCS shall be liable to the Customer in respect of any inaccurate information about purchases of Goods and/or Services made by use of the Cards when such inaccuracy is caused by incorrect information provided by an Authorised Cardholder or Supplier.	17.1	The Customer shall forthwith notify FCS in writing of any changes in the Customer's name, address, bank details, or any change of control of the Customer, including any change of legal entity.
14.2	The Customer shall indemnify and keep indemnified FCS from and against any and all losses, claims, costs, demands or expenses (including legal expenses and disbursements) which FCS may incur as a result of the Card being used by a third party other than the Customer and/or its Authorised Cardholders or by reason of any negligence of dishonest or criminal conduct relating to the use of the Card by the Customer's employees, agents, representatives and/or sub-contractors. This indemnity shall continue in force notwithstanding the termination of the Contract.	17.2	When the Customer consists of two or more persons such expression throughout shall mean and include such two persons and each or any of them. All obligations on the part of such Customer shall be joint and several obligations.
15	EXCLUSION OF LIABILITY	17.3	Without prejudice to the provision of Clause 15 above, all monies due and owing by the Customer to FCS shall become due and payable forthwith if FCS discovers that any of the information provided by the Customer to FCS is inaccurate or the Customer is in breach of any of these Terms and Conditions.
15.1	Nothing in these Terms and Conditions shall exclude or limit FCS' liability for death or personal injury caused by its negligence or for fraudulent misrepresentation.	17.4	The Contract is personal to the Customer and the Customer shall not be entitled to assign or transfer all or any of its rights, interests or obligations hereunder.
15.2	Subject to Clause 15.1, FCS shall not be liable for any loss whether arising from breach of contract, tort (including without limitation, negligence) statutory duty or otherwise, whether flowing naturally and directly from such breach, tort, statutory duty or otherwise, or not, for the following:	18	FORCE MAJEURE
15.2.1	Loss of revenue;		If the performance of the Contract by FCS shall be delayed by any circumstances or conditions beyond the reasonable control (including without limitation, fire, flood, war, acts of terrorism, acts of God, government actions, strikes, lock outs and fuel shortages) of FCS, FCS shall have the right at its option (a) to suspend further performance of the Contract until such time as the cause of the delay shall no longer be present or (b) to be discharged from further performance of and liability under the Contract.
15.2.2	Loss of profit;	19.	NOTICE
15.2.3	Loss of anticipated savings;		Any notice required to be given under the Contract shall be in writing and delivered personally or sent by facsimile, or by first class post to the registered office of the other party or such other address as notified by the parties in writing. Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, 48 hours after posting or if sent by facsimile, 12 hours after proper transmission.
15.2.4	Loss of goodwill;	20.	THIRD PARTY RIGHTS
15.2.5	Loss of reputation;		A person who is not a party to the Contract shall have no rights pursuant to the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
15.2.6	Loss of anticipated contracts;	21	SEVERANCE
15.2.7	Loss special to the particular circumstances of the Customer;		If any of these Terms or Conditions shall be deemed void for any reason whatsoever, but would be valid if part of the wording were deleted any such Terms or Conditions shall apply with such modifications as may be necessary to make it valid and effective.
15.2.8	Loss resulting from conditions, quality or sufficiency of any fuel or other Goods and/or Services under these Terms and Conditions.	22	WAIVER
	The sub-clauses of this Clause 15 are intended by the parties to be severable.		Failure by FCS at any time to enforce any breach by the Customer of these Terms and Conditions or the Contract shall not be construed as a waiver by FCS of such Terms and Conditions or the Contract and FCS shall be entitled to enforce such breach at any time.
16	DATA PROTECTION	23	HEADINGS
16.1	FCS shall comply with the requirements of the Data Protection Act 1998 (as amended from time to time) and shall not disclose or allow access to any personal data provided by the Customer or acquired by FCS during the course of the Contract other than to a person employed or engaged by FCS, as required by law or as provided under Clause 16.2 below.		The headings in these Terms and Conditions are for convenience only and shall not affect the interpretation of these Terms and Conditions or the Contract.
16.2	The Customers hereby expressly consent to FCS processing the Customer's personal data for the specific purpose of the Contract. FCS may request personal data from third parties for example, credit reference agencies. Where credit is granted, FCS may also disclose details about the Customer's account with FCS and the Customer's conduct of the account to such credit reference agencies or to other agencies or debt collection agencies. This information may be searched by credit granters and used and provided in assessing applications for future credit facilities and for debt collection, fraud prevention and other purposes.	24	LEGAL CONSTRUCTION
16.3	Any use, disclosure or access to personal data allowed under Clauses 16.1 and 16.2 shall be made in confidence and shall extend only so far as that which is specifically necessary for the purposes of the Contract.		The Contract and these Terms and Conditions shall be construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.
16.4	FCS shall take appropriate technical and organisation measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.		October 2008