

Esso Card Terms and Conditions

The following Terms and Conditions govern the use of the Esso Card.

1. Introduction

1.1 Definitions

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

"Agent" means Network Card Limited whose registered office is at Alexandra House, Lawnswood Business Park, Redvers Close, Leeds, LS16 6QY.

"Agent Agreement" means an agreement dated 29th March 2000 between Esso and the Agent which inter alia sets out the terms on which the Agent may provide Cards to Customers.

"Authorised Cardholder" means a person to whom the Customer has provided a Card.

"Card" means all Esso Cards issued to the Customer by the Agent.

"Ceiling Limit" means £750.00 (including VAT) or such other maximum value above which a Card transaction cannot be accepted, as may be specified by Esso from time to time.

"Credit Limit" is the maximum amount of unpaid transactions, whether invoiced or not, that can be outstanding on a Customer's account at any point in time.

"Customer" means a body corporate, firm, partnership, or other entity and not a private individual which is for the time being a customer of the Agent.

"Esso" means Esso Petroleum Company, Limited and its successor assigns and appointed agents.

"Goods" means any goods or services (excluding lottery tickets, lottery instants cards, mobile phone cards and stamps) available in connection with the Esso Card as may be available from time to time.

"PIN" means Personal Identification Number which may be issued for use with a Card.

"Purchase Limit" means a financial limit upon the total value of Card transactions that can be accrued by a Customer on its Cards over a period of time, as may be determined by Esso from time to time and which may apply at any or all Esso service stations*.

"Velocity Limit" means a limit on the total number of transactions accrued by a Customer on its Cards over a period of time, as may be determined by Esso from time to time and which may apply at any or all Esso Service Stations* .

* The Customer acknowledges that the Purchase Limit or Velocity Limit may be imposed by Esso to reduce Card fraud.

1.2 Subject to the Agent Agreement, Esso has authorised the Agent to provide Cards to Customers. The Agent is only entitled to provide the Cards subject to these Terms and Conditions and the Agent Agreement.

2. Acceptance of Terms and Conditions

2.1 Signature of and/or use of the Card by the Customer or Authorised Cardholder constitutes acceptance of these Terms and Conditions as set out below.

2.2 Where this Agreement refers to an obligation of an Authorised Cardholder, the Customer is obliged to procure compliance with that obligation by its Authorised Cardholders.

3. Issue and Use of Card

3.1 Cards are the Property of Esso

- (a) The Cards remain the property of Esso at all times and shall be returned by the Customer promptly at the request of the Agent to: Network Card Limited, Alexandra House, Lawnswood Business Park, Redvers Close, Leeds, LS16 6QY or such other address as the Agent may nominate.
- (b) For the avoidance of doubt, and without limitation to Clause 3.1(a), Esso and /or its Agent may cancel any Card which has not been used for a period of three (3) months.

3.2 Cards to Authorised Cardholders

- (a) The Customer may provide a Card to such Authorised Cardholders as the Customer shall determine. The Customer will determine (subject to Clause 3.4 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 the Agent.
- (b) The provision of a Card to an Authorised Cardholder shall be deemed as giving such Authorised Cardholder authority to use the Card as a duly authorised representative of the Customer. The Customer will ensure that the Authorised Cardholder will comply with these Terms and Conditions.
- (c) On receipt of a Card in the name of an Authorised Cardholder, the Customer must ensure that the reverse of the Card is signed by the Authorised Cardholder. No Card will be valid unless it has been so signed.
- (d) The Agent shall issue new Cards to a Customer shortly prior to the expiry of the Customer's then existing Cards, provided neither party has given notice to terminate this Agreement.
- (e) Upon receipt of any new Cards issued by the Agent in accordance with Clause 3.2(d) above, that Customer shall ensure that all existing Cards are immediately destroyed and replaced with the new Cards.
- (f) Notwithstanding the provisions of Clause 3.2(e), the Customer shall remain liable for all transactions on any existing Card(s).
- (g) If the Customer requires that an Authorised Cardholder no longer be authorised for purchasing Goods on the Card, the Customer should obtain and return the Card in accordance with Clause 5.2. If the Customer is unable to obtain the Card, the Card must be reported lost or stolen in accordance with Clause 5.1.
- (h) The Customer and the Authorised Cardholder shall take all due precautions to ensure the Card is safe from theft and is not used by any person other than the Authorised Cardholder.
- (i) 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.

3.3 Use of Card

The Card may only be used:-

- (a) if the Customer and/or Authorised Cardholder presents or shows the Card to the relevant supplier prior to the purchase of Goods (for the avoidance of doubt, this means that pre-written and pre-printed transaction vouchers must not be used);
- (b) prior to the expiry date shown on the Card;

- (c) by a Customer and/or Authorised Cardholder to obtain Goods from a supplier thereof which accepts the Card;
- (d) to obtain Goods of a specified nature depending on whether or not there is a restriction relating to such Goods on the Card;
- (e) to obtain Goods up to the Ceiling Limit;
- (f) if it has not been reported as lost or stolen in accordance with Clause 5.1;
- (g) if the Customer has not been asked by the Agent to return the Card;
- (h) Within the Credit Limit; and
- (i) within the Purchase and Velocity Limits.

The Card may not be used:-

- (j) to fill up unauthorised containers.

Esso or the Agent may, from time to time, notify the Customer of Goods which are available from suppliers thereof which accept the Card.

3.4 Wild Cards and Site Lodged Cards

- (a) The Agent may, on request, issue to the Customer Cards which will not carry the registration number of any vehicle or the name of any Authorised Cardholder ("**Wild Cards**") and Customer Cards that are lodged at a Service Station ("**Site Lodged Cards**")
- (b) Notwithstanding any other provisions of this Agreement, the Customer will be liable in respect of any and all transactions made with the Wild Cards and Site Lodged Cards notwithstanding the fact that they may be, or may have been, reported lost or stolen.
- (c) The Customer will indemnify and keep indemnified the Agent in respect of and in relation to all costs, claims and demands arising out of or in connection with the use of Wild Cards and Site Lodged Cards.

3.5 Purchases from Esso through Agency

The Customer acknowledges that use of a Card for the purchase of Goods constitutes a purchase of such Goods from the Agent through the agency of Esso and the relevant supplier of such Goods.

3.6 Procedural Requirements

- (a) Whenever making purchases, the Customer and/or Authorised Cardholder shall comply with all procedural requirements of the supplier in respect of the relevant Card transaction and shall ensure that the Card is only used for the purposes set out in Clause 3.3.
- (b) If such procedures are not complied with or the Card is used for a purpose other than that set out in Clause 3.3, the Customer shall nevertheless remain liable to pay the Agent all amounts due to the Agent pursuant to the relevant Card transaction.

3.7 Customer Queries

- (a) In the event that the Customer queries any transaction, the Agent will consider what action (if any) to take but the Agent shall not be obliged to consider any queries from Customers which relate to a transaction more than three (3) months prior to the date when the query was notified to the Agent.
- (b) The Agent shall not be obliged to respond to any queries from Customers in relation to declined Card transactions pursuant to Clause 6 where such

a query is raised more than seven (7) days after the date of the transaction.

3.8 PIN

- (a) The Customer and Authorised Cardholder shall use the PIN if so required by a supplier or Esso.
- (b) The PIN shall only be used by the Customer and Authorised Cardholder to whom it is supplied and shall not be:
 - (i) disclosed by the Customer and/or the Authorised Cardholder to any other person;
 - (ii) written in such a manner as may be understood by someone else on any Card or sales voucher or on anything kept with the card or compromised in any other way; and
- (c) The PIN advice should be destroyed immediately after receipt.
- (d) If the PIN is compromised in any way, the Customer must immediately notify the Agent of that fact in accordance with Clause 5.1 and return the relevant Card to the Agent with the right hand corner cut off for security purposes.
- (e) A new Card and PIN can only be issued upon receipt of a written request from the Customer and will be despatched to the Customer separately by the Agent.
- (f) For security reasons, PIN numbers are computer generated and posted directly to the Customer by the Agent.
- (g) The customer may request NCL to provide a replacement PIN for their card. NCL shall be entitled to charge a fee of £5.00 plus VAT per Pin for this service.

3.9 Card Fee

The Agent shall be entitled, at Esso's sole discretion, to charge the Customer a Card fee or other such reasonable amount as notified to the Customer by the Agent from time to time. Card charges are payable in advance at the prevailing rates which are reviewed periodically, and may be subject to increase.

4. Invoices

4.1 Dispatch of Invoices

- (a) The Agent will send invoices to the Customer every fourteen (14) days covering all purchases made by way of Card transactions and processed by the Agent to the date of the raising of the relevant invoice. An invoice will not be sent if no transactions have been processed in the relevant period.
- (b) Upon request by a Customer, the Agent may, at Esso's sole discretion, allow all fuel purchased with a Card by that Customer and/or Authorised Cardholder at any Esso service stations to be charged at the Esso Card schedule price, as prevailing at the date of the relevant Card transaction. The availability of schedule pricing may be withdrawn by Esso at any time without reason and shall be subject to any restrictions imposed by Esso from time to time. These restrictions will be passed on to the Customer by the Agent, with the date from which such restrictions are to be effective.
- (c) For the avoidance of doubt, any fuel purchased with the Card from non-Esso service stations will be charged at the relevant service station pump price.

- (d) In relation to the purchase of any product other than fuels, the Customer will be charged at the relevant Esso Card transaction value.
- (e) The Agent may at any time charge the Customer a fee or other charge as agreed by the Customer.

4.2 Direct Debit Mandate and Payment of Invoices

- (a) Upon entering into this Agreement, the Customer shall provide the Agent with a direct debit mandate in a form required by the Agent and the Customer shall ensure that a valid direct debit mandate exists at all times during the currency of this Agreement.
- (b) Payment of Esso Card invoices shall be due seven (7) days after the date of each invoice (the "**Due Date**"). The Customer will settle invoices by direct debit in respect of the total amount outstanding at the Due Date.

4.3 Interest

- (a) The Agent reserves the right to charge interest in the event that any amounts are not paid by the Due Date (notwithstanding and without prejudice to the Agent's rights to terminate this Agreement in such circumstances), such interest shall be payable for the period from the Due Date until actual payment of the unpaid amount or if the payment is made by cheque, until the date four (4) days after the date of receipt of the cheque by the Agent.
- (b) The rate and amount of interest payable pursuant to Clause 4.3(a) above shall be calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended by the Late Payment of Commercial Debts Regulations 2002).
- (c) The Customer shall be liable for all costs, charges and other liabilities reasonably and properly incurred by the Agent as a result of the failure by the Customer to pay any amount by the Due Date (including reasonable administration charges).

4.4 No set off

All payments by the Customer or any credits or refunds due to the Customer will be applied first in settlement of any interest due and secondly in reduction of the Customer's other indebtedness to the Agent. No claim by the Customer or any Authorised Cardholder against any supplier of Goods shall be the subject of any set-off or counter claim against the Agent.

5. Lost, Stolen or Cancelled Cards

5.1 Lost, Stolen or Compromised Cards

- (a) If a Card is lost or stolen, or the PIN compromised ("**Compromised Card**" – see Clause 3.8(b) above), the Customer must immediately notify the Agent at Alexandra House, Lawnswood Business Park, Redvers Close, Leeds, LS16 6QY or such address or telephone number as the Agent may specify from time to time and also report any lost or stolen Cards to, and obtain a crime number or lost property reference number from, the police. If notification to the Agent is given verbally, it must be confirmed in writing within two (2) business days.
- (b) The Customer shall be **LIABLE IN RESPECT OF ALL TRANSACTIONS** made with a lost or stolen Card **BEFORE THE AGENT HAS RECEIVED NOTIFICATION** in accordance with Clause 5.1(a) above. The Customer shall be **LIABLE IN RESPECT OF ALL TRANSACTIONS** made with a Compromised Card **BEFORE THE AGENT HAS RECEIVED BOTH NOTIFICATION** in accordance with Clause 5.1(a) above **AND THE COMPROMISED CARD** with the right hand corner cut off.

- (c) Subject to the Customer having complied with Clause 5.1(b), the Customer shall have no further liability for purchases subsequently effected with that Card except for purchases completed by the Authorised Cardholder. The Agent also reserves the right to make such reasonable charge as it deems appropriate if an Authorised Cardholder uses or attempts to use a Card which has been notified to the Agent as a lost or stolen Card (including, for the avoidance of doubt, a charge to compensate Esso for any payments it has made, whether directly or indirectly and including without limitation any taxation, to any person as a reward for confiscating such Card).

- (d) The Agent may invoice the Customer for transactions made with a lost, stolen or Compromised Card notwithstanding that the Agent has received notification in accordance with Clause 5.1(a). If the Agent is satisfied, in its sole discretion, that such transactions have not been incurred by the Authorised Cardholder or on the Customer's behalf, the Customer shall not be liable for those transactions and the Agent shall credit the Customer for the relevant amount

- (e) The Customer will give the Agent all the information in its possession as to the circumstances of the loss or theft of any Card and take all reasonable steps to assist the Agent to recover the lost or stolen Card.

5.2 Cancellation of Cards

- (a) Cancellation of a Card will stop the Card being renewed on expiry **AND MAY CEASE ACCEPTANCE OF THE CARD.**
- (b) The Agent will cancel a Card on the Customer's written request and the Customer must immediately return the cancelled Card to the Agent with the right hand corner cut off for security purposes.
- (c) The Agent may cancel or suspend any and all Cards at any time without notice or refuse to reissue, renew or replace any Card.
- (d) Notwithstanding any other provisions of this Agreement, **THE CUSTOMER WILL REMAIN LIABLE IN RESPECT OF TRANSACTIONS** made with any of its cancelled Card(s), **PRIOR TO THE RETURN OF THE RELEVANT CARD(S) TO THE AGENT.**

6. Declined Cards

- (a) Esso reserves the right to decline and retain a Card where the Credit Limit is or would be exceeded. In such circumstances, the Customer and/or Authorised Cardholder will be asked for an alternative means of payment.
- (b) Esso reserves the right to return to the Customer and decline (from time to time), a Card, if the transaction exceeds the Ceiling Limit or the Purchase Limit, or the Velocity Limit has been reached. In such circumstances, the Customer and/or Authorised Cardholder will be asked for an alternative means of payment.

7. Information

7.1 Inaccurate Information

Neither Esso, the Agent, nor any sub-contractor or agent of either of them shall be liable to the Customer in respect of any inaccurate information about purchases made by use of Cards, when such inaccuracy is caused by incorrect information provided by a Customer and/or Authorised Cardholder or supplier.

7.2 Disclosure by Esso and the Agent

Esso and/or the Agent may at any time disclose to their agents or subcontractors, any information necessary to enable Esso and/or the Agent to perform this Agreement and which is provided by the Customer or is in relation to the Customer's account.

7.3 Disclosure by Customer

The Customer shall forthwith notify the Agent of any changes in the Customer's address or bank details or any other details contained in the Application Form, including but not limited to any change in legal entity or name. The Agent reserves the right to renew or take up bank and/or trade references at any time.

7.4 Sales Vouchers and Copy Invoices

The Customer may request the Agent to provide:

(a) copies of sales vouchers concerning purchases made by Authorised Cardholders and copy invoices. The Agent shall be entitled to charge a fee of £10.00 plus VAT for each copy voucher and/or copy invoice (or such other reasonable fee as the Agent may from time to time specify). The Agent may limit the number of copies provided;

(b) fleet management reports on computer discs. The Agent shall be entitled to charge a fee of £25.00 plus VAT for each computer disc (or such other reasonable fee as the Agent may from time to time specify). The Agent may limit the number of computer discs provided; and

(c) fleet management reports via email, such fleet management reports to be provided free of charge (unless otherwise notified by the Agent from time to time).

7.5 Repayment of Monies

Without prejudice to the provisions of Clause 8.1 below, all monies due and owing by the Customer to the Agent shall become due and payable forthwith if the Agent discovers that any of the information provided by the Customer to the Agent is materially inaccurate or the Customer is in material breach of any of these Terms and Conditions.

8. Termination

8.1 This Agreement may be terminated:-

(a) by either party at any time by giving not less than four (4) weeks prior written notice to the other party.

(b) by the Agent with immediate effect and without notice in the event that:-

(i) the Customer exceeds its Credit Limit;

(ii) the Customer fails to settle by the Due Date;

(iii) the Customer is in material breach of any of the terms of this Agreement.

(iv) if the Customer goes into or is reasonably perceived by the Agent as likely to enter into receivership, administration, bankruptcy, liquidation or is referred to third party collection services or similar proceedings are taken against the Customer, or any other event occurs which, in the opinion of the Agent, may affect the ability of the Customer to comply with any or all of its obligations, or meet any of its liabilities under this Agreement; and

(v) the Agent receives a credit reference (which the Customer hereby agrees the Agent may carry out from time to time on the Customer) which in the Agent's opinion is unsatisfactory.

Such termination shall be notified to the Customer by such means as the Agent considers appropriate in the circumstances.

8.2 Termination of the Agent Agreement

This Agreement shall automatically terminate upon the termination for any reason whatsoever of the Agent Agreement and such termination will be confirmed by notification to the Customer by Esso and/or the Agent by such means as they shall consider appropriate in the circumstances.

8.3 Effect of Termination

In the event of termination pursuant to Clause 8.1 or 8.2 above, the total outstanding balance of the Customer's account shall (at the Agent's discretion) become due and payable in full to the Agent and the right of the Customer and any Authorised Cardholder to use a Card shall terminate (but without prejudice to the Customer's liability for use of the Card after termination or to the rights of the Agent already accrued at the date of such termination).

9. Liability

9.1 Exclusion of Liability

Neither the Agent nor Esso gives any warranty, express or implied, whether arising by common law or statute, in relation to any Goods supplied to the Customer other than that relating to the title of the Goods supplied. Neither the Agent nor Esso shall be liable for any loss or damage suffered by the Customer or the Authorised Cardholder in connection with any such Goods save to the extent that such liability cannot by virtue of the Unfair Contract Terms Act or any other relevant statute be limited or excluded.

9.2 Refusal of Supplies

Neither the Agent nor Esso shall be liable in any way to the Customer or an Authorised Cardholder if a supplier refuses to supply Goods for any reason.

9.3 Fraud, Negligence, Wilful Misconduct etc

Neither the Agent nor Esso shall be liable in any way to the Customer and/or Authorised Cardholder for any and all claims, losses, damages and expenses arising out of or in consequence of this Agreement, save to the extent that such claims, losses, damages and expenses are caused by the fraud, negligence or wilful misconduct of the Agent or Esso respectively, its employees, contractors or agents and their respective employees (but, for the avoidance of doubt, neither the Agent nor Esso shall be liable in any way to the Customer or Authorised Cardholder for the fraud, negligence or wilful misconduct of any third party service provider) save to the extent that liability cannot by law be excluded, and provided that neither the Agent nor Esso shall in no event be liable for any consequential or indirect loss howsoever arising.

10. Novation of Customer Agreements

The Customer will, if required by the Agent and/or Esso, immediately enter into an agreement with Esso and the Agent in such form as Esso requires whereby Esso is substituted for the Agent for all future purposes of this Agreement.

11. Contractual Rights Enforceable by Esso

Where this Agreement expressly refers to Esso and either confers a right upon Esso or excludes or limits Esso's liability, then the Agent and the Customer agree that Esso may enforce that right or avail itself of that exclusion or limitation in accordance with the Contracts (Rights of Third Parties) Act 1999.

12. Promotions

The Customer and/or any Authorised Cardholder shall not be entitled to participate in any Esso retail promotions unless otherwise invited.

13. Force Majeure

Esso shall not be liable for any failure to fulfil any term of this Agreement if fulfillment is delayed, hindered or prevented in whole or in part by any circumstances whatsoever which are not within Esso's immediate control, including but without limitation to the generality of the foregoing:

- (a) strikes, lock-outs, labour disputes of any kind, partial or general stoppages of labour (including working to rule), refusals to perform any kind of work (whether or not any of the foregoing are lawful, or relate to that party's own employees or others);
- (b) war, hostilities, terrorist activity, or any local, national or international emergency;
- (c) any regulation, order or request of, or interference by, or restriction imposed by any international, national, provincial, port or other public authority or any person purporting to act for such authority;
- (d) breakdown of or accident to plant, machinery or facilities;
- (e) failure of or hindrances to transportation;
- (f) Esso's fuel stocks falling below levels which Esso in its absolute discretion considers necessary; and
- (g) the threat or reasonable apprehension of any of the foregoing events.

14. Data Protection Act 1998

- (a) Esso 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 (including the Customer's officers, employees, contractors and agents) or acquired by Esso during the course of this Agreement, other than to a person employed or engaged by Esso, as required by law or as provided under Clause 7.2.
- (b) The Customer hereby expressly consents to Esso processing the Customer's personal data for the specific purpose of this Agreement. Esso may request personal data from third parties for example, credit reference agencies.
- (c) The Customer hereby expressly agrees to comply with the requirements of the Data Protection Act 1998 (as amended from time to time).

15. Miscellaneous

15.1 Variation

- (a) Upon request by Esso, the Agent may vary, add to, or delete any of these Terms and Conditions, including for the avoidance of doubt the terms contained in any written correspondence and may impose new terms and conditions for any other fuel card scheme which substitutes the Esso Card Scheme which is essentially the same as and replaces the Esso Card Scheme (whether or not such other scheme shall be operated by Esso itself or by a nominated third party on Esso's behalf).
- (b) The use of any Card after notice of any variation of these Terms and Conditions has been given by the Agent shall be deemed to be an acceptance of such varied terms and conditions by the Customer.

15.2 No Transfers

This Agreement 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.

15.3 Assignment by Esso

Esso shall be entitled to assign or otherwise transfer the benefit and burden of this Agreement at any time to any company which is, at the time of such assignment or transfer, a member of the ExxonMobil group of companies.

15.4 Joint and Several Liability

Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such Customer shall be joint and several obligations of such persons.

15.5 Headings

The headings used in this Agreement are for convenience and shall not affect its interpretation.

15.6 Notices

Subject to the requirement of any statute or other publication, notification by such means as the Agent may select will constitute effective notice to Customers.

15.7 Governing Law and Jurisdiction

This Agreement and any supplies of Goods made in conjunction with the use of the Card shall be governed by the laws of England and Wales and be subject to the exclusive jurisdiction of the English courts.

15.8 Waiver

The failure of Esso at any time to enforce any of the terms of this Agreement shall not be construed as a waiver of this Agreement or of the right of Esso to enforce any of its rights under this Agreement at any time.

15.9 Severability

Each of the clauses in this Agreement is independent and severable and shall not in the event of any declaration of invalidity affect the construction or effect of any other clause in this Agreement or of the Agreement as a whole.

15.10 Entire Agreement

This Agreement shall form the entire agreement between Esso and the Customer in relation to the use of the Esso Card and supersedes all other agreements and understandings (whether written or oral) in relation thereto. However, nothing in this Agreement purports to exclude liability for any fraudulent misrepresentation.

15.11 Contract (Rights of Third Parties) Act 1999

A person who is not a party to this Agreement may not enforce any of its terms and conditions under the Contracts (Rights of Third Parties) Act 1999.

October 2008