

TERMS AND CONDITIONS OF SALE JULY 2006

1. **BASIS OF SALE**

- 1.1 We, Goodall Bates and Todd Limited shall sell and you, the Customer named overleaf, shall buy the Goods and Services subject to these Conditions which govern the contract between us to the exclusion of any other terms which you may ask us to sign or which you may supply. No terms or conditions endorsed upon, delivered with or contained in your order document will form part of the contract simply as a result of such document being delivered to us or referred to in the contract.
- 1.2 These Conditions constitute the entire agreement between us for the supply of the Goods and Services.
- 1.3 Any variation to these Conditions is of no effect unless agreed in writing by our authorised representative.
- 1.4 "Goods" means the goods which we are supplying and "Services" means the services (including any repair work or instalments) which we are to perform in each case in accordance with these Conditions.
- 1.5 You are responsible for ensuring that your order is accurate and for giving us all the information we need to complete the order.
- 1.6 Your order is not accepted until we confirm in writing or (if earlier) we supply the Goods to you.
- 1.7 We reserve the right to make any changes in the specification of the Goods or Services which are required for the Goods or Services to conform with any applicable safety or other statutory or EU requirements or where the Goods or Services are to be supplied to your specification, which do not materially affect their quality or performance.

2. **DESCRIPTION**

All our descriptions and illustrations are intended to present a general idea of the Goods and/or Services described and do not form part of the contract between us. Whilst every effort will be made to supply the Goods in accordance with the quality of samples submitted or quoted for, this cannot be guaranteed and no condition or warranty to this effect shall be implied. No representation is made as to the quality or fitness for purpose of the Goods and/or Services. Alterations and modifications or improvements may from time to time and without notice be carried out on the Goods.

3. **CANCELLATION AND DELAY**

- 3.1 Once accepted, an order may not be cancelled without our written agreement and on terms that you indemnify us against all loss (including loss of profit), costs, (including the cost of all labour and material used), damages, charges or expenses incurred by us because of cancellation.
- 3.2 We will not be liable to you or be in breach of contract by reason of delay or failure to perform any of our obligations if the delay or failure was due to any cause beyond our reasonable control including but not limited to Act of God, war or threat of war, sabotage,

insurrection, civil disturbance or requisition, acts of terrorism, regulations, restrictions, by-laws, prohibitions or measures of any kind import or export regulations or embargoes, strikes, lock-outs or other industrial action, or trade disputes, or difficulties in obtaining raw materials, labour or fuel.

4. **PRICE**

- 4.1 Prices quoted by us are exclusive of any applicable VAT.
- 4.2 Quotations are not offers and are valid for 30 days only and subject to withdrawal at any time by us. We reserve the right at any time before delivery or performance to amend the price of the Goods or Services to take into account any variation to our costs.

5. **PAYMENT**

- 5.1 If you are not an account holder and another method of payment such as a bankers draft or cash on delivery is not specified on the invoice, you must pay for any Goods and/or Services within seven days of the date of the invoice. Where stated on your invoice, you will be entitled to a discount of 2p per litre excluding VAT on the supply of Products provided that you pay for such Products on or before the settlement date agreed at the time of order and confirmed on your invoice. Time of payment shall be of the essence and no payment shall be deemed to have been received until we have received it in clear funds. Payment is due without deduction or set-off. However, payment is due and payable immediately upon cancellation or termination of the contract between us.
- 5.2 If you fail to pay on the due date, the total price of the Goods and/or Services becomes due and payable without demand and we may cancel the contract between us, suspend further deliveries and/or claim statutory interest and debt recovery costs. We may also appropriate any payment made by you under other contract between you and us as we think fit.
- 5.3 Interest at an annual rate of 8% above Bank of England base rate from time to time will accrue daily both (before and after judgment) and be calculated on a daily basis on overdue accounts from the due date of payment until payment. If a payment is returned due to lack of funds, we will re-invoice you our standard administration charge as notified to you from time to time.
- 5.4 Heating oil Products are priced in various separate brackets including 500 litres and 900 litres. Where you order 500 litres but take delivery of less than the quantity ordered, you agree to pay for the quantity ordered. Where you order 900 litres but take delivery of less than the quantity ordered, you agree to pay for the quantity ordered.

6. **DELIVERY AND PERFORMANCE**

- 6.1 Delivery of the Goods shall be made by us delivering the Goods or, where by applicable by you collecting the Goods from us once notified that they are ready for collection.
- 6.2 Any dates for delivery and/or performance are approximate only.
- 6.3 Where Goods are supplied by instalments, each instalment is a separate contract.
- 6.4 Where Products are delivered in bulk through a hose, you accept that the quantity shown by the meter shall be conclusive evidence of the quantity delivered. We cannot accept any responsibility for discrepancies between our meter and any other measuring device used by

you. Where we are delivering fuel oil we will attempt to deliver the quantity ordered, however, we shall not be in breach of our contract with you if we deliver up to 10% more or less than the amount you ordered and subject to clause 5.4 you agree to pay for the Products delivered at the pro rata contract rate.

6.5 Wherever delivery takes place it will be your responsibility:-

6.5.1 to provide safe and suitable receptacles for the Goods which comply in all respects with all relevant requirements and regulations made by H M Government or any other competent authority;

6.5.2 to ensure that the storage into which delivery is to be made will accommodate the full quantity ordered, and if appropriate, to procure certification to that effect;

6.5.3 to ensure that your representative will attend at the place at which delivery has been requested at the time of delivery. If you fail to ensure your representative is present at delivery, we reserve the right to make an absentee delivery.

6.6 If you fail to take delivery of the Goods or we are unable to deliver the Goods on time because you have not provided adequate instructions, documents, licences or authorisations, or payment, then we will invoice you our standard failed delivery charge as notified to you from time to time.

7. **RISK AND PROPERTY**

YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

7.1 The Goods remain our property until:-

7.1.1 their full price has been received by us; and

7.1.2 all other sums which are or which become due from you on any account with us have been received.

7.2 If payments received from you are not stated to refer to a particular invoice we may appropriate such payments to any outstanding invoice.

7.3 The Goods are at the risk of you from the time of delivery.

7.4 Until ownership of the Goods passes to you, you must:-

7.4.1 store them at your own cost on your premises separately from any other goods and in a manner which makes them readily identifiable as our goods.

7.4.2 not destroy, deface or obscure any identifying mark or packaging of the Goods;

7.4.3 maintain the Goods in a satisfactory condition insured on our behalf for their full price against all risks; and

7.4.4 hold the proceeds of insurance referred to in condition 7.4.3 on trust for us and not mix them with any other money, nor pay the proceeds into an overdrawn account.

7.5 We may, so as to discharge any overdue payment recover or resell the Goods.

- 7.6 In order to verify your compliance with its obligations under condition 7.4 and to exercise our rights under condition 7.5, you grant us an irrevocable licence to enter your premises without notice or such other premises where the Goods are stored.
- 7.7 If you sell the Goods before payment is made, that part of the proceeds of sale which represents or is equivalent to the amount owed by you to us shall be held by you upon trust for us and shall be paid into a separate bank account designated for that purpose. We shall be entitled to trace the proceeds of any such sale(s) into such bank account (or wherever such proceeds may in fact be located) and you authorise us to make enquiries of its bankers (or otherwise as appropriate) relating to such proceeds.
- 7.8 You shall ensure that the Goods are not incorporated in or mixed with or used as part of other goods before full payment for the Goods has been made to us, although if such incorporation or mixing takes place, the property in those Goods which remain identifiable and/or severable from such other goods shall remain with us until payment has been made or such other goods have been sold and all of our rights in the Goods shall extend to such part of those other goods and to their proceeds of sale, which shall be held by you in accordance with condition 7.7.

8. **RESALE OF GOODS**

- 8.1 If any item comprised in the Goods is resold, you must bring to the purchaser's attention all our instructions and/or recommendations for use which are packed with or appearing on the Goods or which have been notified to you.
- 8.2 It is your responsibility to ensure that:-
- 8.2.1 Goods are rotated so that the oldest are sold first; and
- 8.2.2 Goods are sold before their marked "best before date".

9. **LIMITATION OF LIABILITY**

YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 9.1 The following sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents or subcontractors) to you in respect of any breach of these Conditions and any representation, statement, act or omission (including negligence) arising under or in connection with the contract between us and in respect of any contemplated performance or lack of performance.
- 9.2 All warranties, conditions or other terms implied by statute, common law or trade usage are excluded to the fullest extent permitted by law but this exclusion does not apply to any implied condition that we have the right to sell the Goods or when ownership is to pass or where the Goods are sold to a person dealing as a consumer, any implied term relating to the conformity of the Goods with their description or sample or as to their quality or fitness for a particular purpose.
- 9.3 You warrant and undertake that where we have supplied duty rebated Goods, you will not use them other than in strict accordance with the current Customs and Excise Regulations controlling the same and any statute or regulation relating to such from time to time being in force.

- 9.4 Nothing in these Conditions excludes or limits our liability for death or personal injury caused by our negligence or for fraudulent misrepresentation.
- 9.5 Subject to conditions 9.2 and 9.4:-
- 9.5.1 our 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 between us shall be limited to the contract price; and
- 9.5.2 we shall not be liable to you for:-
- (a) any loss of profit, loss of production, depletion of goodwill; and
- (b) any indirect loss, damage, costs or expenses whatsoever
- in each case which arise out of or in connection with the contract between us.
- 9.6 No claim for non-delivery or shortages will be considered unless you give written notice within seven days of the date when the goods would, in the ordinary course of events, have been received.
- 9.7 Any claim by you which is based on any defect in quality or condition or failure to correspond with specification must be notified to us within seven days from date of delivery or within a reasonable time after discovery of the defect or failure. If no such notification is received, you are not entitled to reject the Goods and/or Services and must pay their price.
- 9.8 Where any valid claim in respect of any of the Goods and/or Services is notified to us in accordance with these Conditions, we shall be entitled to (in the case of Goods) repair or replace them (or the part in question) free of charge and (in the case of Services) carry out the Services again (or the part in question) free of charge or (in each case) refund to you their price (or a proportionate part).
- 9.9 The statutory rights of consumers are not affected.

10. **INDEMNITY**

You agree to indemnify us against any damages, losses, costs, claims or expenses incurred by us towards a third party arising out of or in connection with the Goods or Services supplied by us or their operation or use and whether by reason of your negligence, breach of these conditions or otherwise.

11. **GENERAL**

- 11.1 If any provision of these Conditions is found to be invalid or unenforceable, the remainder shall not be affected.
- 11.2 Any waiver by us of any breach by you is not a waiver of any subsequent breach.
- 11.3 These Conditions and the contract between us do not create, confer or purport to confer any benefit or right enforceable by any person not a party to it.
- 11.4 We have a general lien (together with a power of sale) on all property owned by you in our possession in satisfaction of any payment due or owing by you on any account.

12. **ENGLISH LAW**

These Conditions and the contract between us are subject to English law and the exclusive jurisdiction of the English courts.