

Bulk Delivery: Terms and Conditions of Trading

1. Definitions in these Conditions of Sale:-

1.1 "the Seller" means "MAXOL DIRECT" and/or its successors, assignees, sub-contractors and authorised agents acting within the terms of their agency agreement;

1.2 "the Buyer" 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;

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 Services" 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 Goods or the Services;

1.6 "the Contract" means the particular individual contract for the sale or supply of the Goods and/or the 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 of 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.

1.11 A domestic buyer is a buyer who purchases for home use only.

1.12 A commercial buyer is a buyer who purchases for use by or on behalf of a commercial entity.

2. Applicability of terms.

2.1 Unless otherwise expressly agreed in writing by an authorised representative of the Seller every contract shall be governed in all respects by these Conditions of Sale.

2.2 No contract shall take effect unless and until an Order is accepted by an authorised representative of the Seller.

2.3 The Seller is prepared to receive the Buyer's Order by telephone but will accept no responsibility whatsoever for any error or omission arising therefrom.

2.4 By placing an Order subsequent to its receipt of, or its referral to, these Conditions of Sale the Buyer acknowledges that these Conditions of Sale shall prevail over any qualification or condition purported to be imposed by the



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Buyer and any previous course of dealing between the Buyer and the Seller.

3. Prices

3.1 Save as otherwise agreed in writing by an authorised representative of the Seller, all Goods and Services will be charged at prices current at the point of delivery.

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.

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 ensure to their full value any 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, where possible store and label the Goods in such 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 buildings 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 disposal 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 (to be kept separately from the Buyer's own monies and those of third parties in a separate bank account in which a credit balance shall be at all time maintained) and shall account to the Seller forthwith for the proceeds of 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 to the 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 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.

5. Payment

5.1 The Seller shall be entitled to submit an invoice to the Buyer for the Goods and/or Services at any time on or after the point of delivery.

5.2 The Commercial Buyer shall pay for the Goods and/or Services in full by the 18th day of the calendar month following the point of delivery or sooner as provided for in Clause 4.4.6 (if applicable).

5.3 The Domestic Buyer will pay in full within 28 days from the date of delivery.

5.4 Notwithstanding the provisions of Clauses 5.1 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.

5.5 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 3% over and above the base lending rate of Northern Bank Limited from time to time for the period that payment is overdue or at the rate of 2.5% per month, whichever is the higher. Interest shall accrue at such rate both before and after Judgement until payment in full.

5.6 The Buyer shall make no deduction from the invoice price of the Goods and/or Services on account of any set-offs or claims unless both the validity and the amount thereof have been admitted by an authorised representative of the Seller in writing.

5.7 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.

5.8 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 is dishonoured by the bank in the amount of £25.00 per cheque for each time same is dishonoured.

6. Delivery

6.1 Where the Buyer states a specified delivery date the Seller shall if it accepts the Order pursuant to Clause 2.2 above use all reasonable endeavours to comply but shall be under no obligation to make delivery at any specified time. Time shall not be of the essence with respect only to the

Seller's delivery obligations and there shall be no liability on the Seller in respect of any loss incurred by the Buyer arising from any delay in delivery of the Goods or performance of the Services or any part thereof.

7. Passing of risk.

7.1 Risk in the Goods shall pass to the Buyer at the point of delivery.

8. Delivery by instalments.

8.1 The Seller shall be entitled to deliver the Goods by instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between the Seller and the Buyer.

8.2 Any failure, suspension or delay by the Seller in respect of any part-delivery of the Goods or the discovery of any defect in any of the Goods so delivered shall not entitle the Buyer to cancel the remainder of the contract and shall not affect the obligation of the Buyer to pay the price of the Goods or Services.

9. Force Majeure

The Seller shall not be under any liability to the Buyer in respect of any failure to perform or delay in performing any of its contractual obligations to the Buyer attributable to any cause of whatsoever nature beyond the Seller's reasonable control and no such failure or delay shall be deemed for any purpose to constitute a breach of contract.

10. 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 to observe all statutory provisions relating to the supply and storage of chemical and flammable materials.

11. Failure to accept delivery when tendered.

If for any reason the Buyer fails to take delivery of the Goods or permit performance of the Services when tendered by the Seller without giving 10 days notice to the Seller then in addition to and without prejudice to the Seller's other rights and remedies the Buyer shall reimburse the Seller on demand all costs and expenses it may have incurred in such attempt to make delivery of the Goods or perform the Services.

12. Liability.

12.1 All terms, conditions, warranties, statements or representations whatsoever, whether express or implied,

statutory or otherwise and all obligations and liabilities whatsoever of the Seller (save as provided for in Clause 12.2 and 12.4) relating to the quality, merchantability, fitness for purpose, suitability or other properties of the Goods are hereby expressly excluded.

12.2 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 of these Conditions of Sale or connected in any way with the Goods or any use of them by the Buyer or any third party or the Services (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.

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

12.4 The exclusion of liability referred to in this Clause 12 does not apply so as to exclude or restrict the Seller's liability for:-

12.4.1 death or personal injury resulting from the negligence of the Seller, its servants or agents; or

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

13. Variation of price.

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

14. Samples

14.1 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.

14.2 Except where specifically agreed in writing by the Seller (and in all cases subject to the limitation of liability in Clause 12) 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.

15. 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.

16. 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.

17. Cancellation.

The Seller shall be entitled without liability to the Buyer whatsoever to withhold or suspend delivery of the Goods or performance of 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.

18. Assignability.

No contract is assignable without the prior written consent of the Seller save that the Buyer and the Seller may assign the benefit and burden undertaken by them to a subsidiary of their respective ultimate holding company on the condition that such subsidiary remains associated with the assigning party.

18.1 After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

18.2 No Goods delivered to the Buyer which are in accordance with the contract shall be accepted for return by the Seller without the prior written approval of the Seller on terms to be determined at the Seller's absolute discretion.

19. Waiver

Any failure on the part of the Seller to take any action for enforcement of a contract in consequence of any breach of the Buyer shall not operate as a continuing waiver of the breach in question or prevent the Seller from subsequently enforcing its rights in respect of any continuing or like breach.

20. Proper Law

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



MAXOLDIRECT

Maxol Direct Head Office,
48 Trench Road, Mallusk,
Newtownabbey,
Co. Antrim, BT36 4TY
Tel +44 (0) 28 9084 8586
Fax +44 (0) 28 9050 6500
Email fuelmgmt@maxoldirect.com