

# Terms & Conditions

JW Johnston Limited (Company Number SC540426)

## 1. Acceptance of Conditions

(a) These conditions apply to all Contracts between the Seller and Buyer. Any terms and conditions which the buyer seeks to impose or incorporate will be excluded and do not apply and not form any part of the Contract. Any attempt by the Buyer to limit or vary any these Terms and Conditions shall be void.

(b) Any variations to the Terms and Conditions will only apply if agreed in writing by one of the Seller's authorised employees please note that (this does not include any of the Seller's telephone sales staff).

(c) A Contract is formed between the Buyer and the Seller and comes into existence when the Buyer places an order with the Seller which is, in the opinion of the Seller, in acceptable terms.

(d) Once a Contract is formed, the Buyer agrees to adhere to and be bound by these Terms and Conditions.

## 2. Prices

(a) Products supplied will be charged at the price ruling on day of delivery. Quoted prices are only valid on the day they are issued by the Seller and may be withdrawn or amended at any time prior to acceptance.

(b) A quotation does not constitute an offer.

(c) Any order placed by the Buyer to the Seller is an offer to enter into a contract and as such may be accepted or rejected by the Seller at their discretion.

(d) Each order that the Buyer places with the Seller, which is accepted by the Seller, shall form a separate Contract between the parties.

## 3. Payment

(a) The price of the products shall be set out in the Contract.

(b) The Buyer shall pay the invoice in full and in cleared funds within 14 Days of receipt of the invoice from the Seller to the bank account of the

Seller or such date as intimated by the Seller to the Buyer by any means of communication..

(c) The price of the Products is exclusive of amounts of VAT. The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts of VAT as are chargeable on the supply of the Products.

(d) The Seller may withdraw from any agreed payment terms with the Buyer at any time without prior notice.

(e) Late payment of any invoice will render the whole account due and payable immediately.

(f) Late payment may result in the Seller cancelling or suspending any delivery of goods without prior notice.

(g) Late payment may incur interest being payable on the overdue account and any debt recovery fees incurred. The applicable per annum interest rate will be the greater of (a) 3% above Lloyds TSB base lending rate or (b) 8%. Such interest shall accrue on a daily basis from the due date until actual payment by the Buyer to the Seller of any debt recovery fees, interest due on the overdue account and the overdue account.

(h) The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except as required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing by the Buyer against any amount payable by the Buyer to the Seller.

(i) Any overdue arrears balance may be passed to a third party for further debt recovery action without any prior notification. Any fees incurred with the debt recovery will be payable in full by the buyer.

(j) If payment is made by Credit Card there will be an additional charge of 1.5% of the total sum due to the Seller plus VAT.

(k) In the event of a returned payment, Direct Debit or Cheque, the Seller will apply an administration fee of £15 plus VAT.

(l) If payment is made by credit or debit card at time of ordering goods, the Seller will collect payment from the Buyers bank within 5 working days of delivery. Should the goods delivered exceed the quantity ordered, the Seller may collect an additional payment from the Buyers bank, up to a maximum value of 15% above the original order value. If there is any

shortfall after this, the Buyer is responsible for payment in full of any balance owed.

#### **4. Quantity**

(a) Bulk deliveries will be measured by meter and the Sellers measurement shall be accepted in all cases by the Buyer.

(b) The Seller will not accept any responsibility in any circumstances for discrepancies in the Buyers measurements once delivery has been made.

#### **5. Delivery/Storage**

((a) The Seller will deliver the products to the address the Buyer specified when opening his account unless it is specifically stipulated by the Buyer to use an alternative delivery address ("Delivery Location").

(b) Delivery of the products shall be completed upon the completion of loading the Product at the Delivery Location.

(c) 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 the delivery of the Products caused by an event out with the Seller's control or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions relevant to the supply.

(d) The Seller will not be held responsible for any losses incurred by the Buyer if the delivery address provided by the Buyer is incorrect and/or delivery was made to a third party.

(e) The Seller shall have no liability for any failure to deliver the products to the extent that such failure is caused by an event out with the Seller's control or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions relevant to the supply.

(f) The Buyer must ensure that all necessary arrangements are in place to safely accept delivery from the Seller and the storage provided by the Buyer must meet all current and future rules and regulations.

(g) The Buyer is solely responsible for ensuring that there is sufficient ullage in the storage vessel to accept the quantity ordered by the Buyer.

(h) The Seller may terminate or delay delivery if they believe it to be unsafe until such time as they are satisfied that it is safe to proceed with the delivery.

(i) All risk associated with the Products will pass immediately to the Buyer upon completion of delivery notwithstanding that title to the products has not passed to the Buyer.

(j) The Seller reserves the right to apply charges where a delivery has been aborted through circumstances controlled by the Buyer

(k) The Seller will not accept any responsibility for any alleged spillages or measurement queries if the delivery is unattended.

(l) If 10 working days after the day on which the Seller notified the Buyer that the products were ready for delivery, the Buyer has not taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Products.

## **6. Property**

(a) Title to the products shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for the products and all debts due by the Buyer to the Seller.

(b) Until title to the products has passed to the Buyer, the Buyer shall store the product separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property and remain separable from any other goods stored in the Buyer's premises and insure the products to their full replacement value. (c) If the Seller delivers the products to the Buyer prior to payment of the price for the products and/or if any other sum is due by the Buyer to the Seller and the Buyer sells the products to a third party, the Buyer shall make such sale only as trustee for the Seller and the proceeds of that sale shall be identified and kept separate from the Buyer's general bank accounts as monies to be held upon trust and payable on demand to the Seller. (d) The Buyer must notify the Seller immediately if it becomes subject to any of the events listed in clause 8(b).

(e) If before title to the products passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 8(b), or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the products have not been resold, or irrevocably incorporated into another product, 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 products and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the products are stored in order to recover them.

## **7. Credit Check**

(a) The Seller reserves the right to carry out credit checks on the Buyer through a Credit Reference Agency who will keep a record of that search.

(b) Details of how the Buyer conducts its account with the Seller may be disclosed to the Seller's said Credit Reference Agency.

(c) The Seller may perform a Credit Check on an individual, partner or director associated with the Buyer.

## **8. Termination and Suspension**

(a) If the buyer becomes subject to any of the events listed in clause 8(b), the Seller may within a reasonable time thereafter, defer or cancel any further deliveries or services, stop any products in transit and treat the Contract of which these Conditions form part as determined but without prejudice to its rights to the full purchase price for products delivered and damages for any loss suffered in consequence of such determination, or terminate the Contract with immediate effect by giving written notice to the Buyer.

(b) For the purposes of clause 8(a), the relevant events are (i) failure by the Buyer to make any payment when it becomes due; (ii) breach by the Buyer of any of the terms or conditions of the Contract; (iii) the Buyer's proposal for or entry into any composition or arrangement with creditors; (iv) the presentation against the Buyer of any Petition for a Bankruptcy Order, Administration Order, Winding-Up Order, or similar process; (v) the appointment of an Administrative Receiver or Receiver in respect of the business or any part of the assets of the Buyer; (vi) the Seller forming the reasonable opinion that the Buyer has become or is likely in the immediate future to be-come unable to pay his, her or its debts (adopting, in the case of a Company, the definition of that term set out in Section 123 of the Insolvency Act 1986) or the Buyer being a partnership has any partner to whom any of the foregoing apply; or (vii) 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.

## **9. Limitation of Liability**

(a) Nothing in these Conditions shall limit or exclude the Seller's liability for (i) death or personal injury caused by its negligence, or the negligence or its employees, agents or subcontractors (as applicable); or (ii) fraud or fraudulent misrepresentation.

(b) The Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any interdict or consequential loss arising under or in connection with the contract.

## **10. Environmental**

(a) The Buyer shall be solely responsible to maintain storage tanks and associated equipment and ensure that they are installed to legal requirements.

(b) If the storage tanks or associated equipment are the cause of any environmental pollution as a result of leakage or spillage the Buyer has sole responsibility to clean up the damage to the standard required by the relevant statutory authority and for all costs incurred by them in relation thereto.

(c) The Buyer shall indemnify the Seller against any costs, fines or expenses of any kind incurred by or upon the Seller as a result of the Buyer's tanks or equipment or as a result of any damage caused by the Buyer's tanks or equipment.

(d) The Seller will ensure that the delivery truck and associated equipment is properly maintained so as not to cause environmental pollution through spillage

## **11. Notification of Loss or Damage**

(a) The Buyer must notify the Seller in writing within one day of the date of delivery of any partial loss, damage or non-delivery of whole consignment.

(b) The Seller will not uphold any claims that are outwith this time frame.

## **12. Resale**

(a) All products supplied by the Seller to the Buyer must be for the Buyer's own use exclusively.

(b) The Buyer will not resell or dispose of any products supplied by the Seller unless previously agreed with the Seller in writing

## **13. Refusal to Deliver – Downtime of Labour, Plant and/or Equipment**

(a) The Seller reserves the right not to make delivery by the expected date for reasons of health and safety, environmental, credit, site access, product availability and/or weather.

(b) The Seller will not accept any charges or claim for downtime of labour, plant and/or equipment from the Buyer.

#### **14. Force Majeure**

Neither party shall 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 (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 air 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 suppliers or subcontractors).

#### **15. Notices**

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 or principal place of business or such other address and that party may have specified and shall be delivered personally or sent by first class recorded delivery post.

#### **16. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

#### **17. Waiver**

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver or 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent the further exercise of any other right or remedy.

## **18. Variation**

Except as set out in these Conditions, no variation of the Contract including the introduction of any additional terms and conditions shall be effective unless it is in writing and signed by the Seller.

## **19. 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 the law of Scotland.

Each Party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

## **20. Cancellation of Order**

You have a right to cancel a Contract for any reason, including if you change your mind, up to 24 hours after you have placed the order.

## **21. Refunds**

We will make any refund due to you using the same method originally used by you to pay for your purchase. You will not incur any fees as a result of the reimbursement.

### **If you cancel the Contract within 24 hours for any reason.**

We will refund the price that you paid for the Product in full, including any costs of standard delivery (if you have selected a different delivery option, we will only refund up to the amount of our usual standard delivery costs).