

## Terms and Conditions of Fuel Sale

### General

These Terms and Conditions govern and are incorporated in to the Buyer's purchase of Fuel as specified in each Fuel Sale Agreement. It is Your responsibility to review these Terms and Conditions carefully before entering into any Fuel Sale Agreement.

Need to Fuel Proprietary Limited is an agent and authorised reseller of Bonolo Service Station CC and is selling fuel and fuel products on behalf of, under the authorisation of and through the licence of Bonolo Service Station CC.

The Buyer, to the extent that it is a juristic person, confirms that it has had sight of, acknowledges and agrees to the provisions of clause 7.

### IT IS AGREED AS FOLLOWS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Agreement, except where a different interpretation is necessary in the context, the words and expressions set out below shall have the following meanings:

- 1.1.1 **Affiliate** means in respect of:
  - 1.1.1.1 the Buyer, any of its Group Companies; and
  - 1.1.1.2 the Seller, any of its Group Companies.
- 1.1.2 **Balance** the excess amount paid by the Buyer for Fuel.
- 1.1.3 **Buyer** means the party defined as such in the Fuel Sale Agreement.
- 1.1.4 **Data Protection Legislation:** the Protection of Personal Information Act, 2013 and any other directly applicable regulation relating to privacy.
- 1.1.5 **Fuel** means petroleum products sold by the Seller to the Buyer under the Fuel Sale Agreement.
- 1.1.6 **Fuel Sale Agreement** means collectively:
  - 1.1.6.1 the Seller's application form for sale of fuel completed and signed by the Buyer and delivered to the Seller, which incorporates these Terms and Conditions;
  - 1.1.6.2 each Purchase Order, which incorporates these Terms and Conditions; and

1.1.6.3 the Seller's form of invoice issued by the Seller to the Buyer pursuant to each Purchase Order, which incorporates these Terms and Conditions.

1.1.7 **Group Company** means any subsidiary, subsidiary undertaking, holding company or holding undertaking of a relevant company, or any company or undertaking which has the same ultimate holding company or parent undertaking as such relevant company (whether directly or indirectly) as defined in the Companies Act 71 of 2008.

1.1.8 **Posted Price** means the standard price for Fuel quoted by the Seller.

1.1.9 **Purchase Order** means communication electronically by way of an order on the Seller's website or software application, in writing, by telephone or by email from the Buyer to the Seller to purchase Fuel, setting out:

1.1.9.1 the premises for delivery of Fuel; and

1.1.9.2 the volume of Fuel to be delivered.

1.1.10 **Seller** means the party defined as such in the Fuel Sale Agreement.

1.1.11 **Seller's Suppliers** means Bonolo Service Station CC, a close corporation with registration number 2005/030086/23, or any body or person by whom directly or indirectly the Fuel to be purchased and sold under the Fuel Sale Agreement is supplied to the Seller.

1.1.12 **Tanks** means storage tanks, containers or other receptacles to be used for storing Fuel provided by the Buyer to the Seller for the collection of Fuel.

1.1.13 **You** or **Your** means the Buyer.

## 1.2 Interpretation

1.2.1 Unless expressly provided to the contrary or inconsistent with the context, a reference in this Agreement to:

1.2.1.1 any one gender, whether masculine, feminine or neuter, includes the other two;

1.2.1.2 the singular includes the plural and vice versa;

1.2.1.3 a word or expression given a particular meaning includes cognate words or expressions;

1.2.1.4 any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day is a day that is not a Business Day, the next Business Day;

- 1.2.1.5 references to a **person** include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 1.2.1.6 references to a **subsidiary** or a **holding company** shall be references to a subsidiary or holding company as defined in the Companies Act; and
- 1.2.1.7 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT.
- 1.2.2 All the headings and sub-headings in this Agreement are for convenience and reference only and shall be ignored for the purposes of interpreting it.
- 1.2.3 A term defined in a particular clause or annexure in this Agreement, unless it is clear from the clause or annexure in question that application of the term is to be limited to the relevant clause or annexure bears the meaning ascribed to it for all purposes of in this Agreement, notwithstanding that that term has not been defined in clause 2.1 (*Definitions*) and, where there is any inconsistency between any term defined in clause 2.1 (*Definitions*) and any term defined in any clause or schedule in this Agreement, then, for the purposes of construing such clause or schedule the term as defined in such clause or schedule prevails.
- 1.3 No rule of construction may be applied to the disadvantage of a Party because that Party was responsible for or participated in the preparation of this Agreement or any part of it.
- 1.4 The clause and paragraph headings and the table of contents used in this Agreement are inserted for ease of reference only and shall not affect construction.
- 1.5 These express Terms and Conditions shall apply in place of all guaranties, warranties, other conditions, other terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.

## 2. **DELIVERY**

- 2.1 Unless otherwise agreed, Fuel supplied under the Fuel Sale Agreement shall be delivered into the Tanks at the premises specified in the Purchase Order provided that the Buyer:
- 2.1.1 provides adequate and appropriate Tanks for accepting delivery;
- 2.1.2 ensures access to the Tanks is clear and available;
- 2.1.3 ensures the Tanks are safe and suitable for the Fuel; and
- 2.1.4 ensures the Tanks comply with any and all applicable laws and regulations.

- 2.2 Risk in and benefit to Fuel supplied under the Fuel Sale Agreement shall pass to the Buyer as the Fuel supplied passes the hose connection of the receiving Tank which the Buyer has provided for receiving delivery; or at the point otherwise agreed by Seller and Buyer in writing prior to delivery.
- 2.3 The Seller shall use all reasonable endeavours to deliver the Fuel by the date specified in the Purchase Order or, if no date is specified, within a reasonable period of time subject to operational requirements imposed by other delivery commitments.
- 2.4 In respect of any delivery made by the Seller, the Seller's measurements and quality analysis of the Fuel supplied shall be treated as conclusive, however, the conclusiveness of the results may be displaced to the extent that it can be shown that the results are incorrect. Any claim or complaint in respect of a shortage in quantity or defect in the quality of any Fuel supplied under the Fuel Sale Agreement shall only be considered by the Seller if notice in writing of such claim is received by the Seller within 14 days of the date of the delivery in question and such notice is followed by a fully documented claim to be received by the Seller within 60 days of the date of the delivery in question. If the Buyer fails to give notice or to submit any such claim within the time limits, the Buyer's claim shall be deemed to be waived and any liability on the part of the Seller extinguished.
- 2.5 Unless otherwise agreed, the Seller shall provide the Buyer at the time of delivery with a copy of a delivery receipt specifying the grade and quantity of Fuel delivered. Where possible, the delivery receipt shall be signed by the representatives of the Seller and the Buyer.

### 3. **PRICES, DUTIES, TAXES AND CHARGES**

- 3.1 Subject to the following provisions of this clause 3, the prices payable for Fuels to be supplied under the Fuel Sale Agreement shall be (as applicable) either:
- 3.1.1 those specified in the relevant Fuel Sale Agreement;
- 3.1.2 the Posted Price; or
- 3.1.3 as otherwise agreed by the Seller and Buyer in writing; and, in each case, shall, unless otherwise stated, be exclusive of applicable consumption tax, sales tax or any other tax of a similar nature that may be levied in the jurisdiction of the delivery premises.
- 3.2 Buyer shall (against the production of a valid tax or other invoice) pay any duty, tax, fee or charge of any kind imposed by any national, local or other authority on the supply, delivery, sale, inspection, storage or use of Fuels, or in respect of payment for Fuels supplied under the Fuel Sale Agreement and not included in the price for the Fuels, except for taxes on Seller's income and taxes on raw material. These duties, taxes, fees and other charges shall be charged in accordance with the relevant regulations in force, and at the rate current, at the time of making the supply and, to the extent allowed, stated by the Seller as separate items on the invoice for the account of Buyer.

- 3.3 Third party charges included in the price of Fuels at the date of this Agreement shall be as stated in the applicable Fuel Sale Agreement (if any) or as otherwise agreed between the parties from time to time in writing.
- 3.4 The prices of Fuels may be varied by the Seller to reflect wholly, and from the effective date, any changes in any duty, tax, fee or charge of any kind included in the prices of Fuels (or any new duty, tax, fee or charge of any kind to be included in the price of Fuels) that the Seller incurs in order to fulfil its obligations under this Agreement.
- 3.4 The Seller shall endeavour promptly to advise the Buyer of the imposition, or increase in, any duty, tax, fee or charge payable by the Buyer pursuant to clauses 3.2 or 3.4 when such information becomes known to the Seller but the Seller's inability so to do shall not excuse the Buyer from its obligation to pay any such duty, tax, fee or charge from its effective date of application.
- 3.5 In cases where the Buyer is entitled to a complete or partial exemption from or refund of any duty, tax, fee or charge referred to in clauses 3.2 or 3.4 deliveries shall, so far as may be reasonably practicable, be made by the Seller in the manner required for obtaining such exemptions or refund and the Buyer shall deliver to the Seller a valid exemption certificate in respect of the same.

#### 4. **PAYMENT**

- 4.1 Subject only to the deduction of any amount in dispute, which shall be notified before the due date for payment by the Buyer to the Seller in writing, payment of the full amounts shown on all invoices rendered by the Seller to the Buyer under the Fuel Sale Agreement shall be made in accordance with the Terms and Conditions set out in the applicable Fuel Sale Agreement (if any), failing which payment shall be due within fourteen days of the date of the invoice.
- 4.2 Unless required by law and unless the parties agree otherwise, all payments made by either party under the Fuel Sale Agreement shall be made in ZAR, free and clear of and without any deduction for or on account of any tax, set-off or counterclaim.

#### 5. **REFUND FOR UNUSED FUEL**

- 5.1 The Buyer shall place orders under the Fuel Sale Agreement on an estimated requirement.
- 5.2 If the Buyer requires less Fuel than ordered, the excess amount paid by the Buyer (the **Balance**) will be created to the Buyer's account.
- 5.3 Upon the Buyer's request through the Seller's application or website, the Balance will be Refunded to the Buyer's bank card, subject to deduction of any applicable taxes, fees, or charges incurred in processing the refund.
- 5.4 The refund will be processed within **[insert time frame]** working days of the request being made.

5.5 Alternatively, the Buyer may choose to retain the Balance as a credit in their account. This credit can be applied toward future orders placed by the Buyer with the Seller.

5.6 The Balance will not accrue any interest.

5.7 The Seller reserves the right to amend processing fees or conditions of refunds or credits or without prior notice to the Buyer.

## 6. DELIVERIES OUTSIDE NORMAL ARRANGEMENTS

6.1 If the Buyer requests the Seller to make deliveries:

6.1.1 by a different method than the one normally used for supplies of Fuels to the Buyer's tanks; or

6.1.2 outside the Seller's normal service hours (as published by the Seller from time to time),

6.1.3 then the Seller reserves the right to charge the Buyer the additional costs and expenses incurred by the Seller in making such deliveries.

## 7. LIABILITY

7.1 Except where expressly provided in these Terms and Conditions, neither the Seller nor the Buyer shall be liable to the other under or in connection with any Fuel Sale Agreement for the other party's:

7.1.1 loss of actual or anticipated profit;

7.1.2 losses caused by business interruption;

7.1.3 loss of goodwill or reputation; or

7.1.4 for any indirect, special or consequential cost, expense, loss or damage, even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the parties and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.

## 8. DECLARATION AND WARRANTY

**The Buyer hereby declares and warrants that it is a juristic person whose asset value or annual turnover (calculated in accordance with the prevailing method of calculation prescribed pursuant to the provisions of section 6 of the Consumer Protection Act, No. 68 of 2008), at the time that it enters into this Agreement, equals or exceeds R2 000 000.00 (two million Rand) which is the prevailing threshold value determined by the Minister in terms of the said section 6.**

## 9. **FORCE MAJEURE**

- 9.1 Neither the Seller nor the Buyer shall be responsible for any failure to fulfil their respective obligations under this Agreement (other than the payment of money) if fulfilment has been delayed, hindered, interfered with, curtailed or prevented by:
- 9.1.1 any circumstances whatsoever which are not within the reasonable control of the Seller or of the Seller's Suppliers or of the Buyer as the case may be; or
  - 9.1.2 any curtailment, failure or cessation of the supplies of the Fuels from any of the Seller's or the Seller's Suppliers' sources of supply (whether in fact sources of supply for the purposes of the Fuel Sale Agreement or not); or
  - 9.1.3 any compliance with any order, demand or request of any international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency; or
  - 9.1.4 any strike, lock-out or labour dispute (whether or not the Seller, the Seller's Suppliers or the Buyer as the case may be are party to the same or would be able to influence or procure the settlement of the same).
- 9.2 If by reason of any of the causes referred to in clause 7.1 either the availability from any of the Seller's or the Seller's Suppliers' sources of supply of the Fuels or the normal means of transport of such Fuels is delayed, hindered, interfered with, curtailed, or prevented, the Seller shall be at liberty either to:
- 9.2.1 withhold, reduce or suspend deliveries under the Fuel Sale Agreement to such extent as the Seller may in its absolute discretion think fit in which case the Seller shall not be bound to purchase or otherwise make good shortages resulting from any such cause, although the Seller will endeavour to arrange an equitable distribution of supplies which continue to be normally available in the events referred to above; or
  - 9.2.2 offer the Buyer a restated price for supplies of the Fuels for deliveries with effect from the date (whether or not before the date of such restatement) on which the circumstances specified in clause 7.1 affected the deliveries concerned. If within 10 days of such notice the Buyer does not accept any restated price then the Seller may immediately terminate deliveries to the Buyer's premises but any such restated price shall, notwithstanding any failure to agree, be payable in respect of any Fuel delivered under the Fuel Sale Agreement from the date of the Seller's notice.
- 9.3 If the circumstances which have given rise to the operation of clause 7.2.2 become improved or cease, thereby enabling a revision to be made in whole or in part to the Seller's or the Seller's

Suppliers' normal sources of supply and/or routes and means of transportation, the Seller shall give written notice of the same to the Buyer together with appropriate adjustments to the restated price.

9.4 The performance of any obligation, whether arising out of any contract, arrangement or otherwise, by which any authority, agency, body or person is entitled to require and does require any of the Fuels by way of royalty in kind, shall be deemed to constitute a compliance with an order or request as provided in clause 7.1.3, notwithstanding any agreement on the part of the Seller or the Seller's Suppliers to repurchase the same or any part of the same.

9.5 If the Seller withholds, reduces or suspends deliveries of Fuels under the Fuel Sale Agreement pursuant to clause 7.2.1 the Buyer shall be free, for so long as deliveries under the Fuel Sale Agreement are withheld, suspended or reduced, to purchase from other suppliers on its own account any deficiencies in the supply of Fuels arising as a result.

## 10. **TERMINATION**

10.1 The Seller may terminate this Agreement by notice to the Buyer, without prejudice to any rights of action or claims that it may have under this Agreement or otherwise, if:

10.1.1 subject to clause 4.1, the Buyer:

10.1.2 fails to pay any invoice by its due date for payment; and/or

10.1.3 commits a breach of any of the other conditions or any other term of the Fuel Sale Agreement, the effect of which breach is material, and which is either incapable of remedy, or, if capable of remedy is not remedied within 30 days of service of notice by the Seller requiring remedy, whether or not such event or breach would otherwise qualify as a repudiatory breach at common law.

## 11. **ASSIGNMENT**

11.1 The Buyer shall not transfer or assign the Fuel Sale Agreement or any benefit or rights under the Fuel Sale Agreement without the consent in writing of the Seller. The Seller may assign its rights and obligations under this Agreement to its Affiliate. Any such assignment shall be effected by notice in writing from the assignor countersigned by the assignee to signify its acceptance of the obligations under the Fuel Sale Agreement.

11.2 Except as provided in clause 9.1 the Seller shall not transfer or assign the Fuel Sale Agreement or any benefit or rights under the Fuel Sale Agreement without the consent in writing of the Buyer.



## 12. **CONFIDENTIALITY**

The Fuel Sale Agreement, the information that it contains and all information exchanged relating to it are confidential between the Buyer and the Seller. Neither the Buyer nor the Seller shall, without the other's written consent, disclose such information on any basis to any person other than its employees, its Affiliates or its Affiliates' employees except to the extent that disclosure may be compulsory under applicable law or to any governmental authority. Any disclosure by the Buyer or the Seller to their employees, or their Affiliates shall be on a confidential basis.

## 13. **INFORMATION, DATA PROTECTION & DATA PROCESSING**

- 13.1 Where the Seller or the Seller's Affiliates receive, collect or handle personal information or data in the course of processing and administering the Buyer's account, the Seller shall ensure that it and its Affiliates have taken and continue to take all reasonable technical and organisational measures against unauthorised or unlawful processing or disclosure of the personal information and data.
- 13.2 All personal information and data supplied by You and/or collected by the Seller or the Seller's Affiliates will be used and processed:
  - 13.2.1 in accordance with applicable laws;
  - 13.2.2 with these Terms and Conditions; and
  - 13.2.3 with the Seller's Privacy Policy [[insert link to Privacy Policy](#)]. You warrant that any data provided by You is accurate.
- 13.3 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 13.4 The Buyer hereby gives consent to the Seller and its Affiliates to process their personal information for all purposes related to this Agreement, in accordance with the provisions of the Data Protection Legislation.

## 14. **WAIVER**

- 14.1 The rights, powers and remedies conferred on any party by the Fuel Sale Agreement and the remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.
- 14.2 Any party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in the Fuel Sale Agreement by the other party without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.

- 14.3 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under the Fuel Sale Agreement or otherwise.

**15. VARIATIONS**

No purported variation of the Fuel Sale Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

**16. NOTICES**

- 16.1 Every notice or other communication made under a Fuel Sale Agreement shall unless otherwise stated be in writing (including by written electronic communication) in English and shall be given to the respective party at its address, email, or facsimile number set out in the Purchase Order, or such other contact address or details as advised from time to time by one party to the other.

- 16.2 Every notice or other communication shall be deemed to have been received:

- 16.2.1 in the case of a letter when delivered personally or two days after its posting by first class post; and

- 16.2.2 in the case of an electronic communication when sent.

**17. GOVERNING LAW**

- 17.1 Unless otherwise agreed between the Seller and the Buyer in writing, these Terms and Conditions, any Fuel Sale Agreement and any dispute or claim of whatever nature, whether contractual or non-contractual, arising out of or in connection with it is to be governed by the laws of the Republic of South Africa.

- 17.2 Nothing contained in this Agreement shall prohibit a Party from approaching any court of competent jurisdiction for urgent relief.

**18. THIRD PARTY RIGHTS**

- 18.1 No term or condition contained in the Fuel Sale Agreement shall be enforceable by any person who is not a party to this Agreement.

- 18.2 The Fuel Sale Agreement may be varied or terminated by the parties without notice to or the consent of any third party.

**19. ENTIRE AGREEMENT**

The Fuel Sale Agreement and all of the documents referred to in it, in the agreed form, sets out the entire agreement and understanding between the parties and supersedes all prior agreements,

understandings or arrangements (whether oral or written) in respect of the subject matter of the Fuel Sale Agreement.

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