

## Motive Fuels Ltd Limited

### Fuel Sale and Station Access Conditions (corporate and fleet customers)

#### PARTIES

- (1) Motive Fuels Ltd Limited a company incorporated and registered in England and Wales with company number 13290733 whose registered office is at AMP Technology Centre, Brunel Way, Rotherham, S60 5WG ("**Motive Fuels Ltd**"); and
- (2) the customer who is named in and has completed a customer registration form to register with Motive Fuels Ltd as a customer of Motive Fuels Ltd's hydrogen refuelling stations ("**Customer**"), each a "**Party**" and together the "**Parties**".

#### Background:

- A. These terms and conditions ("**Terms**") set out the terms on which Motive Fuels Ltd agrees to make available to the Customer and their Registered Users, and the Customer agrees to adhere to in accessing, the hydrogen refuelling stations operated by Motive Fuels Ltd ("**Stations**").
- B. This agreement also sets out the terms on which Motive Fuels Ltd may agree to sell and the Customer may agree to purchase hydrogen fuel from one or more of the Stations.
- C. These Terms represent the only basis on which Motive Fuels Ltd is willing to make the Stations available and sell hydrogen fuel to the Customer, and the Customer's access to and use of the Stations is strictly conditional on the Customer continuing to comply with these Terms.

#### The Terms:

#### 1 INTRODUCTION

- 1.1 These Terms apply to:
  - 1.1.1 all access by the Customer and their Registered Users to any Stations; and
  - 1.1.2 every supply of hydrogen fuel made by Motive Fuels Ltd to the Customer, to the exclusion of any other terms and conditions in each case unless alternative terms have been agreed under which (in writing and signed by both parties) these Terms expressly do not apply.
- 1.2 The Terms shall apply from the earlier of:
  - 1.2.1 the date that the Customer completes its customer registration with Motive Fuels Ltd, a condition of which is acceptance of these Terms; and
  - 1.2.2 the date on which the Customer first accesses a Station.
- 1.3 These Terms apply to corporate customers of Motive Fuels Ltd who utilise the Stations and purchase fuel on behalf of their organisation, their employees, or a corporate fleet or motor pool.
- 1.4 References to the Customer in these Terms shall be read as including all of the Customer's Registered Users (as defined in clause 4.6).

#### 2 ACCESS TO MOTIVE FUELS LTD STATIONS

- 2.1 Subject to Motive Fuels Ltd's compliance with the provisions of clauses 2.6 and 3, the Customer agrees that, in respect of the Registered Vehicles, the Customer is fully responsible for it and its Registered Users:
  - 2.1.1 safely operating the hydrogen refuelling equipment at any of the Stations;
  - 2.1.2 safely transferring and delivering hydrogen fuel from the hydrogen refuelling equipment to any vehicle operated by the Customer and its employees, contractors and agents at any of the Stations;

- 2.1.3 safely using hydrogen fuel at and from any of the Stations; and
- 2.1.4 safely operating vehicles which use hydrogen fuel from any of the Stations.
- 2.2 in respect of the Registered Vehicles operated by the Customer or the Registered Users at any of the Stations, the Customer shall bear all responsibility for:
  - 2.2.1 operating the hydrogen dispensing equipment for the purposes of refuelling; and
  - 2.2.2 transferring, storing and using hydrogen fuel in vehicles,
- 2.3 The Customer shall carry out its or their obligations set out in these Terms safely and with the best care, skill and diligence.
- 2.4 **Hydrogen fuel from Motive Fuels Ltd's equipment and premises can cause serious damage if used in vehicles that are not correctly designed or adapted for the use of hydrogen fuel.** Without limiting the generality of Clauses 2.1 and 2.2, the Customer shall without limitation:
  - 2.4.1 co-operate with Motive Fuels Ltd in all matters relating to the Customer's obligations set out in this Clause 2.2 and comply with all of Motive Fuels Ltd's written or verbal instructions in relation to access to the Station or the purchase of hydrogen fuel, including obeying all safety notices displayed at any Motive Fuels Ltd premises;
  - 2.4.2 transfer and deliver hydrogen fuel only to those hydrogen fuel cell electric vehicles (or, other hydrogen-fuelled vehicles as applicable) that:
    - (i) meet all requirements specified in writing by Motive Fuels Ltd and provided to the Customer; and
    - which the Customer has registered with and been issued fuel cards for by Motive Fuels Ltd, ("**Registered Vehicles**")
  - 2.4.3 notify Motive Fuels Ltd if any Registered Vehicle is modified in a way that it no longer meets the compatibility requirements specified by Motive Fuels Ltd.
  - 2.4.4 observe all health, safety and security instructions and requirements that apply to any of Motive Fuels Ltd's equipment and premises (including those provided during training and those which are indicated by way of signage at a Station).
- 2.5 The Customer shall pay Motive Fuels Ltd's reasonable costs of ensuring that vehicles nominated by the Customer meet (or continue to meet, in the case of modification) Motive Fuels Ltd's requirements under clause 2.4.
- 2.6 Motive Fuels Ltd shall:
  - 2.6.1 make available suitable training materials to the Customer's nominated representatives detailing the importance of and how to carry out the Customer's obligations set out in Clauses 2.1, 2.2 and 2.4;
  - 2.6.2 Provide to the Customer in writing all necessary instructions for use, and all relevant and appropriate health and safety information and security requirements to enable the Customer to comply fully with the Customer's obligations set out in clauses 2.1 to 2.5; and
  - 2.6.3 Ensure that the refuelling equipment is and the Motive Fuels Ltd premises are (during periods where they are open to the public for use) safe to use when used in compliance with the instructions and training made available to the Customer and Customer's obligations set out in clause 2.1 to 2.5.

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- 2.7 Unless waived by Motive Fuels Ltd, the Customer shall pay Motive Fuels Ltd's reasonable costs of issuing fuel cards to the Customer in respect of Registered Vehicles.
- 3 SUPPLY OF HYDROGEN FUEL**
- 3.1 This clause 3 sets out the terms of each and every purchase of hydrogen fuel by the Customer at a Station.
- 3.2 Each attempt to refuel by the Customer or a Registered User shall constitute an offer to buy the fuel made from Customer to Motive Fuels Ltd at the price indicated at the relevant Station, and each supply of hydrogen fuel from Motive Fuels Ltd to Customer (into a Registered Vehicle) shall constitute an acceptance by Motive Fuels Ltd of the offer to purchase the amount of fuel delivered to Customer.
- 3.3 Motive Fuels Ltd warrants that:
- 3.3.1 Motive Fuels Ltd shall, at the point of sale, have good title and right to transfer the hydrogen fuel sold at Stations;
- 3.3.2 fuel sold at Stations shall be delivered free of encumbrances; and
- 3.3.3 fuel sold at Stations shall (subject to the Customer's compliance with clause 2.4) be fit for the purpose of use as fuel in the Customer's Registered vehicle.
- 3.4 Motive Fuels Ltd gives no warranty or guarantee as to the availability of any of the Stations, nor that hydrogen fuel will be available for purchase during the operating hours of the Station or at any other times.
- 4 FUEL CARDS AND PAYMENT**
- 4.1 Motive Fuels Ltd shall issue the Customer with a fuel card for each Registered Vehicle approved by Motive Fuels Ltd for the purposes of enabling the Customer to refuel that Registered Vehicle at Stations.
- 4.2 When the fuel card is issued a credit limit will be applied to the fuel card and the Customer will be notified of this credit limit.
- 4.3 If a fuel purchase exceeds the amount of available credit on the fuel card the Customer will be directed to contact Motive Fuels Ltd to provide alternative payment details for the excess purchase amount. Motive Fuels Ltd reserves the right not to supply fuel if there is no available credit on the fuel card.
- 4.4 Motive Fuels Ltd shall charge the Customer for all fuel supplied at a hydrogen refuelling station allocated to fuel cards registered to that Customer. Motive Fuels Ltd may treat use of a fuel card as evidence of the user's authority to purchase hydrogen fuel on behalf of the Customer, unless the Customer has previously notified Motive Fuels Ltd that the fuel card has been lost or stolen in accordance with clause 4.9.
- 4.5 The balance on each fuel card will be invoiced to the Customer on a monthly basis and payment is due within 30 days of the date of invoice.
- 4.6 If the Customer fails to pay any invoice by the due date for payment and after being reminded to do by Motive Fuels Ltd then the fuel card will be blocked and no further purchases will be possible using the fuel card.
- 4.7 If the Customer fails to make a payment due to Motive Fuels Ltd by the due date, then, without limiting the Supplier's remedies under clause 7, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 4.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 4.8 The Customer must ensure that fuel cards are used only:
- 4.8.1 In respect of the Registered Vehicle for which they were issued; and
- 4.8.2 By persons who have been notified to Motive Fuels Ltd and who have received, reviewed and understood the training materials referenced at clause 2.6 ("Registered Users").
- 4.9 Breach by the Customer or any Registered User of this clause 4.8 is a material breach of these Terms. In the event the Customer or a Registered User becomes aware a fuel card issued to them has been lost or stolen, the Customer must notify Motive Fuels Ltd without delay. Motive Fuels Ltd may charge the Customer its reasonable costs in issuing a replacement card.
- 4.10 Save in relation to interest payable in clause 4.7, no interest or charges shall be added to any amounts charged to the fuel card.
- 4.11 Motive Fuels Ltd is not authorised by the Financial Conduct Authority and the provision of fuel cards do not constitute a regulated activity or payment services.
- 5 AUDIT**
- 5.1 Motive Fuels Ltd may, at any time it reasonably considers necessary, carry out a safety or risk assessment audit of the Customer's conduct at Motive Fuels Ltd's premises, including the Stations.
- 5.2 Motive Fuels Ltd shall use its reasonable endeavours to ensure that the conduct of any such audit does not unreasonably disrupt the Customer.
- 5.3 The Customer shall at all times provide all reasonable co-operation, access and assistance in relation to each audit.
- 5.4 The Customer acknowledges that any safety or risk assessment audit conducted by Motive Fuels Ltd does not relieve the Customer of any of its safety obligations and is for the purposes of Motive Fuels Ltd's internal health, safety and security compliance procedures only.
- 5.5 In the event an audit carried out under this Clause 4.11 identifies that the Customer (or any Registered User) is not complying with these Terms or is otherwise not using the Stations safely, Motive Fuels Ltd may by written notice terminate this agreement and the Customer shall have no entitlement to receive (and Motive Fuels Ltd shall have no obligation to supply) hydrogen fuel. Alternatively Motive Fuels Ltd may require that one or more of the Registered Users no longer use the Stations and/or are retrained at Customer's expense.
- 6 VARIATION OF THE TERMS**
- 6.1 These Terms may be varied by Motive Fuels Ltd from time to time, and Motive Fuels Ltd shall publish such revisions on the Company's website, and the Customer acknowledges that it has notice of changes published in this way.
- 6.2 If the Customer does not agree to revised Terms issued under this clause 6, as varied, the Customer may elect to terminate this agreement by issuing a notice to Motive Fuels Ltd in writing under clause 7.2.

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<b>7</b>	<b>SUSPENSION, TERMINATION AND REMEDIAL ACTION</b>	8.3.4	arising under Section 2(3) Consumer Protection Act 1987; or
7.1	Without prejudice to any other rights and remedies provided by law, if Motive Fuels Ltd becomes aware (whether through an audit or otherwise) that the Customer has failed, or is likely to fail, to perform its obligations pursuant to these Terms, Motive Fuels Ltd may:	8.3.5	for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
7.1.1	by notice in writing immediately suspend or terminate these Terms and Motive Fuels Ltd's obligation to allow access to Stations (and any related agreements for Motive Fuels Ltd to supply, and the Customer to receive, hydrogen fuel) pursuant to any agreement or arrangement between Motive Fuels Ltd and the Customer; and/or	8.4	Neither Party will have any liability to the other Party for any for any loss of profit or loss of reputation or any indirect or consequential loss or damage which arises out of or in connection with this Agreement,
7.1.2	without prejudice to Motive Fuels Ltd's rights pursuant to Clause 7.1.1, require the Customer to undertake any reasonable remedial action that Motive Fuels Ltd may specify within any reasonable timeframe specified by Motive Fuels Ltd. The Customer shall use its reasonable endeavours to ensure that such remedial action has been completed to Motive Fuels Ltd's satisfaction by the deadline specified by Motive Fuels Ltd.	<b>9</b>	<b>PERSONAL DATA</b> Motive Fuels Ltd will only use personal information relating to the Customer and Registered Users as set out in our privacy policy, which is available separately on the Motive Fuels Ltd website.
7.2	Either Party may, by not less than 1 months' written notice to the other Party, terminate these Terms for convenience.	<b>10</b>	<b>GENERAL</b>
7.3	On any suspension or termination of these Terms for any reason the Customer shall cease to use the Stations.	10.1	Notices shall be deemed served (i) in the case of a notice delivered personally, at the time of delivery; (ii) in the case of a notice sent by post, on the third day after the day of posting; and (iii) in the case of a notice that may be sent by email, at the time of transmission.
7.4	On any termination of these Terms for any reason the Customer shall return to Motive Fuels Ltd all fuel cards issued to the Customer by Motive Fuels Ltd, or any other equipment or documents provided by Motive Fuels Ltd in connection with the subject matter of these Terms.	10.2	Motive Fuels Ltd may assign, transfer or charge any of its rights, liabilities or obligations under these Terms without the prior written consent of the Customer.
7.5	Termination of these Terms shall not affect the Customer's obligation to make payments to Motive Fuels Ltd in respect of fuel supplied by Motive Fuels Ltd to the Customer prior to the date of termination.	10.3	The Customer may not assign, transfer or charge any of its rights, liabilities or obligations under these Terms without the prior written consent of Motive Fuels Ltd. Breach by the Customer of this clause 10.3 is a material breach of these Terms.
<b>8</b>	<b>INDEMNITY</b>	10.4	The rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.
8.1	Subject to clauses 5.3 and 5.4, the Customer shall at all times indemnify Motive Fuels Ltd and keep Motive Fuels Ltd indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct losses, and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Motive Fuels Ltd arising from any breach by the Customer or any Registered User of its obligations under these Terms. Subject to clauses 8.3 and 8.4, the Customer's maximum aggregate liability under this Agreement will be limited to £50,000 per Registered User.	10.5	Any condition, warranty, representation or other term concerning the performance of any party's obligations which might otherwise be implied into or incorporated in these Terms, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.
8.2	Subject to clauses 8.3 and 8.4, Motive Fuels Ltd's maximum aggregate liability under this Agreement will be limited to £50,000.	10.6	A failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Terms or by law shall prevent or restrict the further exercise of that or any other right or remedy.
8.3	Nothing in this Agreement will operate to exclude or restrict one Party's liability to the other:	10.7	If any provision or part-provision of these Terms 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 such modification is 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 these Terms.
8.3.1	for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable;	10.8	Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
8.3.2	for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;	10.9	Any person who is not a party to these Terms may not enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
8.3.3	for breach of its obligations arising under section 12 Sale of Goods Act 1979;	10.10	These Terms and any dispute or claim arising out of or in connection with them (including non-contractual

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disputes and claims) shall be governed by and construed in accordance with the laws of England and each Party submits to the exclusive jurisdiction of the courts of England.