



# Customer Agreement Terms and Conditions of Use

The following Terms and Conditions govern the use of the Esso Card by Customers.

## 1. INTRODUCTION

### 1.1 Definitions

In these Terms and Conditions the following words terms or expressions will have the following meanings:

"Agent" means Marine Fuels Limited whose registered office is at 5 Willis Way, Fleets Industrial Estate, Poole, Dorset BH15 3SS;

"Authorised Cardholder" means a person to whom the Customer has provided a Card;

"Card" means all Esso Cards issued to the Customer by the Agent;

"Customer" means a body corporate, firm, partnership, or other entity and not a private individual which is for the time being a customer of the Agent and to whom the Agent has issued Cards in accordance with this Agreement;

"Esso" means Esso Petroleum Company, Limited and its successor assigns and appointed agents;

"Esso Agents Agreement" means an agreement dated 20th March 2000 between Esso and the Agent, which inter alia sets out the terms on which the Agent may provide Cards to Customers;

"Goods" means any goods or services available in connection with the Esso Card as may be available from time to time;

"Outside Payment Terminal" means an automated unattended Esso Card payment facility located on or near the fuel pumps.

1.2 Subject to the Esso Agents Agreement, Esso has authorised the Agent to provide Cards to Customers. The Agent is only entitled to provide the Cards subject to these Terms and Conditions and the Esso Agents Agreement.

1.3 Where this Agreement refers to an obligation of an Authorised Cardholder, the Customer is obliged to procure compliance with that obligation by its Authorised Cardholders.

## 2. ACCEPTANCE OF TERMS AND CONDITIONS

Signature of and/or use of the Card by the Customer or Authorised Cardholder constitutes acceptance of these Terms and Conditions.

## 3. ISSUE AND USE OF CARD

### 3.1 Cards are Esso's Property.

(a) The Cards remain the property of Esso at all times and shall be returned by the Customer immediately at the Agent's request.

(b) The Customer shall be liable for the use of any Card by any Authorised Cardholder prior to receipt by the Agent of the returned Card cut in half in accordance with Clause 5.1(b).

### 3.2 Cards to Authorised Cardholders

(a) The Customer may provide a Card to such Authorised Cardholders as the Customer shall determine. The Customer will determine (subject to clause 3.4 below) whether or not the Card will bear the registration number of the vehicle to which the Card relates or whether it will bear the name of the Authorised Cardholder. Such information shall be provided to the Agent.

(b) The provision of a Card to an Authorised Cardholder shall be deemed as giving such Authorised Cardholder authority to use the Card as a duly authorised representative of the Customer. The Customer will ensure that the Authorised Cardholder will comply with these Terms and Conditions.

(c) No Card will be valid unless the signature strip on the reverse of the Card has been completed in accordance with instructions issued by Esso from time to time, which the Agent will, from time to time, forward to the Customer.

(d) The Agent shall issue new Cards to the Customer shortly prior to the expiry of the Customer's then existing Cards, provided neither party has given notice to terminate this Agreement.

### 3.3 Use of Card

The Card may only be used:-

(a) if it is a current Card, having not expired;

(b) by a Customer and/or Authorised Cardholder to obtain Goods from a supplier thereof which accepts the Card;

(c) to obtain Goods of a specified nature depending on whether or not there is a restriction relating to such Goods on the Card;

(d) to obtain Goods up to a maximum value of £400 (including value added tax) per transaction, or such other amount as the Agent shall from time to time specify;

(e) if it is not reported as lost or stolen;

(f) if the Customer has not been asked by the Agent to return the Card;

(g) if the Customer and/or Authorised Cardholder presents or shows the Card to the relevant supplier prior to the purchase or taking delivery of Goods;

(h) inside the United Kingdom. Esso or the Agent may, from time to time, notify the Customer of Goods which are available from suppliers thereof which accept the Card. For the avoidance of doubt, and without limitation to clause 3.1(a), either Esso or the Agent may cancel any Card which has not been used for a period of three months.

### 3.4 Blank Cards

(a) The Agent will on request issue Cards to the Customer which will not bear the registration number of any vehicle or the name of any Authorised Cardholder ("Blank Cards").

(b) Notwithstanding any other provision in these Terms and Conditions, the Customer will be liable in respect of all/any transactions made with the Blank Cards notwithstanding the fact that they may be, or may have been, reported lost or stolen.

(c) The Customer will indemnify and keep indemnified the Agent in respect of and in relation to all costs, claims and demands arising out of or in connection with the use of Blank Cards.

### 3.5 Purchases from Esso through Agency

The Customer acknowledges that use of a Card for the purchase of Goods constitutes a purchase of such Goods from the Agent through the agency of Esso and the relevant supplier of such Goods.

## 3.6 Procedural Requirements

(a) Whenever making purchases the Customer and/or Authorised Cardholder shall comply with all procedural requirements of the supplier in respect of the relevant Card transaction and shall ensure that the Card is only used for the purposes set out in Clause 3.3.

(b) If such procedures are not complied with or the Card is used for a purpose other than that set out in Clause 3.3, the Customer shall nevertheless remain liable to pay the Agent all amounts due to the Agent pursuant to the relevant Card transaction.

## 3.7 Customer Queries

In the event that the Customer queries any transaction, the Agent will consider what action (if any) to take but the Agent shall not be obliged to consider any queries from Customers which relate to a transaction detailed in an invoice dated more than 4 months prior to the date when the query was notified to the Agent.

## 4. INVOICES

### 4.1 Despatch of Invoices

(a) The Agent will send invoices to the Customer every 14 days detailing all purchases made by way of Card transactions and processed by the Agent to the date of the raising of the relevant invoice. No invoice will be sent if no transactions have been processed in the relevant period.

(b) In relation to the purchase of fuel at Esso service stations the Customer shall inform the Agent upon submission of a qualifying application for provision of a Card whether fuel purchased with a Card by that Customer and/or Authorised Cardholder at Esso service stations shall be charged at the Esso pump price or at the Esso Card schedule price prevailing at the date of the relevant Card transaction. The availability of schedule pricing shall be subject to any restrictions imposed by Esso from time to time. These restrictions will be passed on to the Customer by the Agent, with the date from which such restrictions are to be effective.

(c) For the avoidance of doubt any fuel purchased with the Card from non-Esso service stations will be charged at the relevant service station pump price.

(d) The Customer will be charged the relevant Esso Card transaction value for any product, other than fuel, purchased with the Card.

(e) The Agent may at any time charge the Customer a fee or other charge as agreed by the Customer.

### 4.2 Payment of Invoices

Payment of Esso Card invoices shall be due 11 days after the date of each invoice (the "Due Date"), or as otherwise agreed by the Agent and the Customer. The Customer will settle invoices by direct debit in respect of the total amount outstanding at the Due Date.

### 4.3 Interest

(a) The Agent reserves the right to charge interest in the event that any amounts are not paid by the Due Date (notwithstanding and without prejudice to the Agent's rights to terminate the Agreement in such circumstances) such interest shall be payable for the period from the Due Date until actual payment of the unpaid amount or if the payment is made by cheque, until the date four days after the date of receipt of the cheque by the Agent.

(b) The rate of interest shall be 5% above the base rate of National Westminster Bank Plc in force during the period for which such interest is payable, or such rate as shall, from time to time, be determined by the Agent and notified to the Customer. Such interest shall be charged to the Customer and paid to the Agent as the Agent shall, from time to time, determine.

(c) The Customer shall be liable for all costs, charges and other liabilities reasonably and properly incurred by the Agent as a result of the failure by the Customer to pay any amount by the Due Date (including reasonable administration charges).

### 4.4 Set off

All payments by the Customer or any credits or refunds due to the Customer will be applied first in settlement of any interest due to the Agent and secondly in reduction of the Customer's other indebtedness to the Agent. No claim by the Customer or any Authorised Cardholder against any supplier of Goods shall be the subject of any set-off or counter claim against the Agent.

## 5. LOST, STOLEN OR CANCELLED CARDS

### 5.1 Cancellation of Cards

(a) The Customer will immediately on the Agent's request return a Card to the Agent cut in half for security purposes.

(b) The Agent will cancel any Card on the Customer's written request and receipt of the relevant Card cut in half for security purposes.

(c) The Agent may cancel or suspend all/any Cards at any time without notice or refuse to reissue renew or replace any Card.

(d) Cancellation or suspension is without prejudice to the Customer's liability in respect of the use of Card(s) prior to receipt of the returned Card by the Agent in accordance with Clause 5.1(b) above.

### 5.2 Lost or Stolen Cards

(a) If a Card is lost or stolen the Customer must immediately notify the Agent at such address or telephone number as the Agent may specify from time to time and also report any lost or stolen Cards to, and obtain a crime number or lost property reference number from the police. If notification to the Agent is given orally it must be confirmed in writing within 2 business days.

(b) The Customer shall be liable in respect of any transactions made with the lost or stolen Card before the time when the Agent receives notification in accordance with clause 5.2(a) above. Provided that the Agent has been properly notified of any loss or theft the Customer shall have no further liability for purchases subsequently effected with that Card except that the Agent reserves the right to make such reasonable charge as it deems appropriate if a Customer and/or Authorised Cardholder uses or attempts to use a Card which has been notified to the Agent as a lost or stolen Card (including, for the avoidance of doubt, a charge to compensate Esso for any payments it has made, whether directly or indirectly and

including without limitation any taxation, to any person as a reward for confiscating such Card).

(c) The Customer will give the Agent all the information in its possession as to the circumstances of the loss and take all reasonable steps to assist the Agent to recover the lost or stolen Card.

## 6. INFORMATION

### 6.1 Inaccurate Information

Neither Esso, the Agent, nor any sub-contractor or agent of either of them shall be liable to the Customer in respect of any inaccurate information about or in connection with any purchases made by use of Cards when such inaccuracy is caused by incorrect information provided by a Customer and/or Authorised Cardholder or supplier.

### 6.2 Disclosure by the Agent

Esso and/or the Agent may at any time disclose to their agents or subcontractors any information which is provided by the Customer, or is in relation to the Customer's account, which is necessary to enable Esso and/or the Agent to perform their obligations under these Terms and Conditions and/or the Esso Agents Agreement.

### 6.3 Disclosure by Customer

The Customer shall forthwith notify the Agent of any changes in the Customer's address or bank details or any other details relating to the Agreement. The Agent reserves the right to renew or take up bank references at any time.

### 6.4 Sales Vouchers

The Customer may ask the Agent to provide copies of sales vouchers concerning purchases made by Customers and/or Authorised Cardholders. The Agent shall be entitled to charge a fee of £7.50 plus VAT for each copy sales voucher provided (or such other reasonable fee as the Agent may from time to time specify).

### 6.5 Repayment of Monies

Without prejudice to the provisions of Clause 7.1 below all monies due and owing by the Customer to the Agent shall become due and payable forthwith if the Agent discovers that any of the information provided by the Customer to the Agent is materially inaccurate or the Customer is in material breach of any of the terms of these Terms and Conditions.

## 7. TERMINATION

### 7.1 This Agreement may be terminated:-

(a) by either party at any time by giving not less than 4 weeks prior written notice to the other party;

(b) by the Agent with immediate effect and without notice in the event that

(i) the Customer is in material breach of any of this Agreement;

(ii) if the Customer (as applicable) goes into or is reasonably perceived by the Agent as likely to enter into receivership, administration, bankruptcy, liquidation or similar proceedings are taken against the Customer, or any other event occurs which, in the opinion of the Agent, may affect the ability of the Customer to comply with any or all of its obligations, or meet any of its liabilities under this Agreement;

(iii) the Agent receives a credit reference (which the Customer hereby agrees the Agent may carry out from time to time on the Customer) which in the Agent's opinion is unsatisfactory and such termination shall become effective upon notification to the Customer by such means as the Agent considers appropriate in the circumstances.

### 7.2 Automatic Termination

This Agreement shall automatically terminate upon the termination for any reason whatsoever of the Esso Agents Agreement and such termination will be confirmed by notification to the Customer by Esso or the Agent by such means as they shall consider appropriate in the circumstances.

### 7.3 Effect of Termination

In the event of termination pursuant to Clause 7.1 or 7.2 above the total outstanding balance of the Customer's account shall (at the Agent's discretion) become due and payable in full to the Agent and the right of the Customer and all Authorised Cardholders to use a Card shall terminate (but without prejudice to the Customer's liability for use of the Card after termination or to the rights of the Agent already accrued at the date of such termination).

## 8. LIABILITY

### 8.1 Exclusion of Liability

Neither the Agent nor Esso gives any warranty, express or implied, whether arising by common law, or statute, in relation to any Goods supplied to the Customer. Neither the Agent nor Esso shall be liable for any loss, or damage suffered by the Customer and/or the Authorised Cardholder in connection with any such Goods, save to the extent that such liability cannot be limited or excluded by virtue of the Unfair Contract Terms Act or any other relevant statute be limited or excluded.

### 8.2 Refusal of Supplies

Neither the Agent nor Esso shall be liable to the Customer and/or Authorised Cardholder in any way if a supplier refuses to supply Goods for any reason.

### 8.3 Wilful Misconduct, Negligence, etc

Neither the Agent nor Esso shall be liable in any way to the Customer and/or Authorised Cardholder for any and all claims, losses, damages and expenses arising out of or in consequence of this Agreement, save to the extent that such claims, losses, damages and expenses are caused by the negligence or wilful misconduct of Esso, its employees or agents and provided that Esso shall in no event be liable for any consequential or indirect loss howsoever arising, save to the extent that liability cannot be excluded by law.

## 9. NOVATION OF CUSTOMER AGREEMENTS

The Customer will, if required by Esso, immediately enter into an agreement with Esso and the Agent in such form as Esso requires whereby Esso is substituted for the Agent for all future purposes of this Agreement.

## 10. CONTRACTUAL RIGHTS ENFORCEABLE BY ESSO

**10.1** Where this Agreement expressly refers to Esso and either confers a right on Esso or excludes or limits Esso's liability, then the Agent and the Customer agree that Esso may enforce that right or avail itself of that exclusion or limitation in accordance with the Contracts (Rights of Third Parties) Act 1999.

**10.2** If for any reason the Customer fails to pay the Agent sums due to the Agent in accordance with this Agreement, and Esso is unable to obtain payment for the Goods from the Agent in accordance with the Esso Agents Agreement, then Esso may recover directly from the Customer such sums for the Goods which the Customer has received from an Esso service station for which it has paid neither Esso nor the Agent.

**10.3** For the avoidance of doubt, any failure by the Customer to make payments within seven days of a demand by Esso for payments due to Esso in accordance with clause 10.2 above will constitute a breach of a contractual obligation which Esso may enforce in accordance with the Contracts (Rights of Third Parties) Act 1999.

## 11. USE OF ESSO CARD AT OUTSIDE PAYMENT TERMINALS

**11.1** If the Card is used at an Outside Payment Terminal the Card may only be used:

(a) to obtain Goods up to a maximum daily value of £600 (including value added tax) or such other amount as Esso shall, from time to time, specify;

(b) a maximum of three times per day;

(c) by an Authorised Cardholder to obtain a maximum volume per transaction of:

(i) 300 litres of Auto-diesel at HGV fast flow pumps; and/or

(ii) between 100 and 150 litres of Auto-diesel at normal flow pumps; and/or

(iii) 75 litres of Motor Gasoline

or such other volume as Esso shall, from time to time, specify.

**11.2** For the avoidance of doubt, the Card limits detailed in clause 11.1 above shall operate in addition to the terms and conditions which govern the use of Card transactions at non-Outside Payment Terminals and shall only apply in relation to use of the Card at Outside Payment Terminals.

**11.3** The Card limits detailed in sub clauses (a), (b) and (c) of Clause 11.1 above shall not apply to the use of the Card at Outside Payment Terminals at Esso forecourts located at Tesco Express sites.

**11.4** Authorised Cardholders will not be required to sign or authorise any sales voucher in relation to any transactions made at an Outside Payment Terminal nor will any sales vouchers be supplied by Esso in relation to any Card transactions made at an Outside Payment Terminal.

**11.5** A transaction receipt will at the time of the Card transaction be available on request of an Authorised Cardholder at Outside Payment Terminals.

**11.6** Where CCTV surveillance operates on site this surveillance is primarily for security and safety purposes but the CCTV records may also be used by Esso for any purpose in connection with site operation or in the event of any Card transaction queries.

## 12. MISCELLANEOUS

### 12.1 Variation

(a) Upon request by Esso the Agent may vary, add to, or delete any of these Terms and Conditions, including for the avoidance of doubt the terms contained in any written correspondence and may impose new terms and conditions for any other fuel card scheme which substitutes the Esso Card scheme which is essentially the same as and replaces the Esso Card scheme (whether or not such other scheme shall be operated by Esso itself or by a nominated third party on Esso's behalf) and any conditions set out in any schedule to the Agreement at any time.

(b) The use of any Card after notice has been given by the Agent of any variation of these Terms and Conditions shall be deemed to be an acceptance of such varied terms and conditions by the Customer.

### 12.2 No Transfers

This Agreement is personal to the Customer and the Agent and the Customer shall not be entitled to assign or transfer all or any of its rights interests or obligations hereunder, except in accordance with clause 9.

### 12.3 Joint and Several Liability

Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such Customer shall be joint and several obligations of such persons.

### 12.4 Headings

The headings used in this Agreement are for convenience and shall not affect its interpretation.

### 12.5 Notices

Subject to the requirement of any statute or other publication, notification by such means as the Agent may select will constitute effective notice to Customers.

### 12.6 Governing Law and Jurisdiction

These Terms and Conditions and any supplies of Goods made in conjunction with the use of the Card shall be governed by English law and be subject to the exclusive jurisdiction of the English courts.