



## RETAIL GENERAL TERMS AND CONDITIONS

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In this Agreement:-

**"Affiliate"** means a company which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement. For this purpose control means the direct or indirect ownership of in aggregate fifty per cent or more of voting capital;

**"Applicable Laws"** means all national, supranational, foreign or local laws (including case law), legislation, European regulations, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time.

**"Branded Materials"** has the meaning set out in clause 11 of these Retail General Terms and Conditions;

**"collect"**, **"deliver"** or **"lift"** includes procure to be collected, delivered or lifted and the term collection, delivery or lifting shall be construed accordingly;

**"Commencement Date"** shall have the meaning given to it under the heading Duration in the Retail Motor Fuel Supply Agreement;

**"Delivery Promise"** means Essar's brochure (as may be updated and issued to the Retailer from time to time) relating to supply of the Motor Fuels and setting out details of such matters as ordering processes, delivery receipt, minimum order size, load premia and charges, and discounts;

**"Equipment"** means any equipment to be loaned to or purchased by the Retailer for use at the Premises, as set out in Schedule 4 (Equipment);

**"Essar Trade Marks"** has the meaning set out in clause 11 of these Retail General Terms and Conditions;

**"Force Majeure Event"** means any event or circumstance whatsoever whether in existence before, on or after the Commencement Date which is not within the reasonable control of Essar or the Retailer as the case may be, whether or not the affected party could foresee it happening, including, without limitation, any (or the apprehension of any) strike, lockout or labour dispute (whether or not the settlement shall be at the discretion of the party in question) or any Government order or restriction or compliance with any order or request of any national, super-national, provincial, port or any other public authority or any person purporting to act for such authority, or a Turnaround, or by failure, total or in part of any of Essar's or Essar's suppliers' existing or contemplated sources of supply of crude petroleum, Motor Fuel or any of them, or any other petroleum products or the means of delivery thereof howsoever such failure is caused. For the avoidance of doubt, the closure or standstill of production facilities, depots or other delivery facilities utilised by Essar shall be deemed a Force Majeure Event.

**"Intellectual Property"** means any patent, copyright, trade mark, service mark or trade name, utility model, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world;

**"Licensor"** means the owner of Essar Trade Marks and/or (as the context requires) any entity that licences the Essar Trade Marks to Essar and/or its Affiliates.

**"Minimum Quantity"** means the minimum quantity of Motor Fuel the Retailer shall order from Essar per week, month, Year or such other period of time, as set out in Schedule 1 (Commercial Terms);

**"Motor Fuel"** any and all such relevant grades of petrols and diesels that are and/or are to be supplied by or on behalf of Essar pursuant to this Agreement;

**"ppl"** means pence per litre;

**"Premises"** means the Retailer's premises as set out in Schedule 1 (Commercial Terms);

**"Services"** has the meaning set out in Schedule 2 (Retailer's Obligations);

**"Turnaround"** means a period of time during which Essar's oil refineries and/or other production facilities are closed, shut down and/or taken out of operation for refurbishment, renewal or any other upgrade maintenance work;

**"ullage"** means the airspace between the surface of the Motor Fuel in the receiving storage installation in the case of delivery or the collecting road tank wagon in the case of collection or lifting and the top of the storage installation or road tank wagon respectively;

**"Working Day"** means a day that is neither a Saturday, Sunday nor a public holiday in England; and

**"Year"** means a period of twelve months commencing on the Commencement Date and on each successive anniversary of the Commencement Date and ending on the day before each successive anniversary of the Commencement Date.

## 1 Quality

- 1.1 Any Motor Fuel and any service (to the extent that this Agreement includes the provision of any services by Essar) shall conform with any specification or description set out in Essar literature published in relation thereto as current from time to time, to the exclusion of all other specifications or descriptions. Motor Fuel will be fit for the purpose set out in such literature and not for any other purpose whatsoever.
- 1.2 The Motor Fuels supplied under the Agreement are not guaranteed or warranted by Essar to be suitable for any other purpose than use as fuel in a machine or apparatus designed to use the particular Motor Fuel.
- 1.3 The express terms and conditions of this Agreement shall apply in place of all warranties, conditions, 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 Payment

- 2.1 The Retailer shall pay invoiced amounts to Essar's nominated bank account, net of all bank charges, no later than the last day of the agreed payment term as set out in clause 8 of Schedule 1 (Commercial Terms) (subject only to clause 10.3 of the Retail Motor Fuel Supply Agreement). Essar may change any method of payment agreed by it by:
  - 2.1.1 not less than one month's notice; or
  - 2.1.2 summary notice which may be given upon any default in prompt payment in accordance with the other provisions of this Agreement.
- 2.2 If any delivery, collection or lifting of Motor Fuel is made to any Affiliate of the Retailer (whether or not such delivery is made knowingly by Essar to one of the Retailer's Affiliates) or delivery by Essar is to any depot or location agreed between Essar and Retailer, it shall be deemed to be a supply of Motor Fuel to the Retailer and the Retailer shall at all times remain liable to Essar under the terms of this Agreement in respect of such supply and delivery. Notwithstanding the above, Essar may submit the invoice to and accept payment in whole or in part from that Retailer Affiliate and no such submission or acceptance shall extinguish, limit or otherwise affect Essar's right to recover from the Retailer or the Retailer's liability to pay the price for all Motor Fuel supplied or to be supplied under this Agreement except to the extent of payments actually received by Essar. Every Retailer Affiliate shall be the agent of the Retailer to receive invoices in respect of deliveries made to that Affiliate.
- 2.3 Essar may at any time withhold and set off any sum due from Essar to the Retailer against any sum due from the Retailer or any of the Retailers Affiliates to Essar under this Agreement or

otherwise and for the purpose of this clause the price of all Motor Fuels supplied under this Agreement is due on delivery whether or not payment might otherwise be deferred under clause 10.2 of the Retail Motor Fuel Supply Agreement.

2.4 All amounts due from the Retailer shall be paid by the Retailer to Essar in full without any set off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable by Essar to the Retailer or any of the Retailers Affiliates under this Agreement or otherwise.

2.5 If at any time the reliability or the financial responsibility of the Retailer (or of any guarantor or other person furnishing security in support of the Retailer) should, in Essar's opinion, be or become impaired or unsatisfactory or should the Retailer exceed its credit limit, then Essar may do any one or a combination of the following:

2.5.1 require advance cash payment for any future deliveries;

2.5.2 require other security satisfactory to Essar in respect of each or any delivery, collection or lifting or any proportion thereof;

2.5.3 withhold any delivery or refuse collection or lifting and refuse access to Essar's premises until such payment or security shall have been received by Essar or the overdue amount has been received;

2.5.4 terminate this Agreement with immediate effect by giving notice in writing if the Retailer refuses to pay in advance or to provide security within a period of 7 days after such demand is made.

2.6 Essar will notify the Retailer in writing of the amount of the Retailers credit limit (inclusive of VAT) following a request by

the Retailer or if Essar deems it necessary. The credit limit may be reduced or withdrawn by Essar at its sole discretion at any time and without prior notification to the Retailer. Retailer acknowledges that Essar's withholding or termination of credit privileges does not constitute a constructive termination of this Agreement, nor does it relieve either party of any duties or obligations under this Agreement.

2.7 Time shall be of the essence in relation to all payment or repayment terms in this Agreement and any variations to those terms. If the Retailer fails to make any payment under this Agreement on the date it falls due then, Essar may terminate this Agreement with immediate effect at any time by notifying the Retailer in writing.

2.8 Without prejudice to clause 2.7 of these Retail General Terms and Conditions, if any payment for Motor Fuel is not made by the due date Essar shall reserves the right, at its absolute discretion to carry out any one or a combination of the following:

2.8.1 recover the Motor Fuel and its costs in so doing;

2.8.2 require advance cash payment for any future deliveries and/or suspend deliveries;

2.8.3 require other security satisfactory to Essar in respect of each or any delivery, collection or lifting or any proportion thereof;

2.8.4 maintain an action for the price and/or damages;

notwithstanding that title in Motor Fuel has not passed to the Retailer.

2.9 Essar reserves the right to claim interest on late payment and compensation for debt recovery costs to the maximum extent permitted under applicable law if payment is not made in accordance with the agreed terms.

2.10 If at any time a difference of opinion arises between the Parties as to the amount payable by Retailer to Essar for any Motor Fuel delivered or deliverable or lifted under this Agreement or as to any other charges, Essar may suspend all deliveries or liftings of Motor Fuel until the difference of opinion is settled to the satisfaction of Essar. Essar is not obligated to compensate or otherwise make up deliveries so suspended.

2.11 If at any time, payment of the whole or any part of any amount owed to Essar by the Retailer is not made by the due date for payment, all amounts then owing by the Retailer to Essar, and any amount that has not yet become due in respect of deliveries made before the relevant due date, shall become immediately payable by the Retailer to Essar.

### **3 Taxes**

3.1 Subject to clause 6.4 of the Retail Motor Fuel Supply Agreement, prices notified by Essar are exclusive of VAT but inclusive of all other taxes, imports and duties leviable by any fiscal authority in the U.K. in each case prevailing at the date of delivery, collection or ex rack lifting.

3.2 The Retailer warrants and undertakes that the Motor Fuels supplied under this Agreement will not be used in contravention of the Customs and Excise Management Act 1979 or the Hydrocarbon Oil Duties Act 1979 or of any amending or substituting legislation in relation to either such act.

3.3 The Retailer warrants and undertakes that it shall be liable to Essar for Retailer's and Retailer's customers' compliance with relevant customs or petrol tax regulations as well as for the procurement of and compliance with the required public permits and that should permits, in particular for a preferential delivery regarding tariffs and/or taxes, be revoked or fail to be issued, then Essar shall be authorised to adjust the purchase price accordingly.

### **4 Delivery**

4.1 Motor Fuel shall be delivered to the Retailer or procured to be delivered on days, between hours and in loads of minimum and/or maximum quantity as may from time to time be prescribed reasonably by Essar, and the Retailer will request deliveries in accordance with this Agreement and shall allow reasonable time for Essar or its contractor/s to deliver. Failure by the Retailer to meet the terms of the Agreement could result in suspension of deliveries by Essar.

4.2 The Retailer warrants and undertakes:

4.2.1 that at each bulk delivery point suitable bulk storage installation and safe facilities will be provided (including assistance and suitable hose connections) which comply with all applicable legal and regulatory requirements for Motor Fuel delivery without risk to property and persons;

4.2.2 that for each delivery there will be sufficient ullage for Motor Fuel at the delivery point (and, in the case of Petroleum Spirit, that the Retailer will procure certification to this effect) and that any connecting hose will be properly and securely fitted to the filling point for the safe and proper reception of the quantity of Motor Fuel ordered. The Retailer accepts responsibility for any loss, leakage or contamination of any Motor Fuel deliverable under this Agreement which may occur at the delivery point as a result of a breach by the Retailer of its obligations under this Agreement;

4.2.3 that for each delivery the Retailer will procure that a competent person is present to ensure compliance with clause 4.2.2 above unless Essar has specified that driver controlled deliveries will be carried out at the delivery point concerned;

- 4.2.4 that in the case of highly inflammable products and where otherwise applicable, it will observe strictly any regulations laid down by HM Government or other competent authority in respect of the avoidance of smoking, naked lights, fires, stoves or heating appliances of any description in the vicinity of any Motor Fuel storage facility and the fill, dip and vent pipes connected thereto; and
- 4.2.5 that all storage installations will be clearly and correctly labelled with the description of the grade of Motor Fuel stored and the tank capacity.
- 4.3 Essar reserves the right to effect delivery by means of a contractor and to refuse to deliver using public or private roadways which it considers unsafe.
- 4.4 Essar will provide its road tank vehicles with 9 metres of hose for the purposes of bulk discharge of Motor Fuel. Additional lengths of hose will be provided by Essar only by special arrangement and at an additional charge.
- 4.5 Ex-rack sales or other collection of Motor Fuel by the Retailer shall be subject to Essar's prior agreement. In respect of such sales:
- 4.5.1 the Retailer shall lift or collect or procure lifting or collection from Essar's premises on such days and between such hours as may from time to time be reasonably prescribed by Essar and in either case in accordance with Essar's operating and scheduling procedures;
- 4.5.2 the road tank wagons used by or on behalf of the Retailer shall meet Essar's safety and operational standards and undergo inspection as required at Essar's premises;
- 4.5.3 the drivers of such road tank wagons shall undergo training in the systems, operations and procedures of Essar's premises and as required; and
- 4.5.4 Essar shall have the right to reject any such road tank wagon if it does not meet the relevant safety or operational standards of Essar's premises. Essar shall not be liable for any costs, losses or expenses the Retailer may incur as a result of such rejection.
- 4.6 Any delivery, lifting or collection made under this Agreement is subject to such terms and conditions of sale as are specified on the back of the delivery ticket relating to such delivery, lifting or collection. In the event of any conflict between the provisions of this Agreement and the said terms and conditions of sale, the provisions of this Agreement shall prevail.
- 4.7 Essar shall be responsible for the safe off-loading of its vehicles for the delivery of Motor Fuel.
- 4.8 In the event that the Retailer is unable or unwilling to accept delivery of all or any part of a consignment of Motor Fuels ordered by the Retailer from Essar, the Retailer shall pay to Essar the "Product Left on Board" charge. Essar shall be entitled to amend the "Left on Board" charge at any time.

## **5 Essar's Principles and Policies**

Retailer and Essar will base their relationship on mutual respect, honesty, and integrity. Neither party may accept or solicit gifts, entertainment, or other social favours to influence business decisions. Courtesies of nominal value and social invitations customary and proper under the circumstances are not unethical as long as they imply no business obligation whatsoever or do not involve significant or out-of-the-ordinary expense. The Retailer shall ensure that it acts in accordance with: (a) any relevant anti-bribery and anti-corruption laws and guidance (including

the UK Bribery Act 2010); (b) good ethical trading practices and standards in compliance with the Modern Slavery Act 2015 and in a manner reflecting a commitment to safety and human rights in the workplace; and (c) Essar's codes of business conduct, charters, guidelines and commitments to sustainable development and social responsibility in force from time to time (copies of which can be provided to the Supplier on request)

## **6 Risk and Title**

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| <p>6.1 The risk in Motor Fuel delivered under this Agreement shall pass to the Retailer:</p> <p>6.1.1 in the case of any delivery by road tank wagon, when on discharge the Motor Fuel passes the hose connection of the storage tank provided by or for the Retailer or any Retailer Affiliate for receiving that delivery; or</p> <p>6.1.2 in the case of ex-rack sales of other collection of Motor Fuel, when the Motor Fuel passes the hose connection to or is otherwise loaded onto the Retailer's road tank wagon at the loading rack.</p> <p>6.2 Subject to clause 6.3 below, title to Motor Fuel supplied shall pass to the Retailer on payment of all debts due and owing by the Retailer to Essar.</p> <p>6.3 In Scotland the property in any Motor Fuel shall pass to the Retailer when payment for delivery has been made in full provided however that in the case of delivery of Motor Fuel which is in-mixed with any other Motor Fuel supplied by Essar for which payment in full has not yet been made, the property therein shall not pass until payment has been made in full for the whole quantity of Motor Fuel with which it is in-mixed.</p> <p>6.4 Whilst Motor Fuel supplied remains the property of Essar under this clause, the Retailer may use the Motor Fuel in the ordinary course of business as long as</p> | <p>the Retailer is not in default of this Agreement.</p> <p>6.5 The Retailer shall not provide the Motor Fuel as a security or collateral nor pledge it or use it as a lien.</p> <p>6.6 Until such time as title in Motor Fuel passes to the Retailer, the Retailer shall hold Motor Fuel as Essar's fiduciary agent and bailee (or in Scotland as custodian), and shall keep Motor Fuel properly protected and insured and identified as Essar's property.</p> <p>6.7 Until ownership of the relevant Motor Fuels has passed to the Retailer, the Retailer shall:</p> <p>6.7.1 store and maintain the Motor Fuels in satisfactory condition and in accordance with the terms of this Agreement;</p> <p>6.7.2 from the date of delivery insure (and keep insured) the Motor Fuels for their full supplied price on Essar's behalf for the benefit of Essar against all risks a prudent business person would insure against and provide a copy of the insurance policy to Essar on request;</p> <p>6.7.3 hold the Motor Fuel on a fiduciary basis as Essar's bailee;</p> <p>6.7.4 store the Motor Fuels separately from all other goods of the Retailer or any third party (as far as practically possible) so that they remain readily identifiable as Essar's property;</p> <p>6.7.5 not remove, deface, destroy or obscure any identifying mark or packaging on or relating to the Motor Fuel; and</p> <p>6.7.6 deliver up the Motor Fuel on written demand from Essar.</p> <p>6.8 The Retailer's right to possession of the Motor Fuel shall terminate immediately in the following circumstances:</p> |
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- 6.8.1 if the Retailer has a bankruptcy order made against him or if the Retailer makes an arrangement or composition with his creditors, or convenes a meeting with all or any class of its creditors (whether formal or informal);
- 6.8.2 the Retailer enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, a receiver and/or manager, administrator or administrative receiver is appointed or a notice is given or documents are filed with the Court for the appointment of an administrator of the Retailer or a notice of intention to appoint an administrator is given by the Retailer or its directors or by a qualifying floating charge holder (as defined in Paragraph 14 of Schedule B1 to the Insolvency Act 1986);
- 6.8.3 a resolution is passed or a notice is given or a petition is presented to any Court or an order is made for or in connection with the winding up of the Retailer or for the granting of an administration order in respect of the Retailer;
- 6.8.4 any proceedings are commenced relating to the insolvency, bankruptcy or possible insolvency or bankruptcy of the Retailer;
- 6.8.5 the Retailer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 6.8.6 the Retailer ceases trading or threatens to cease all or substantially the whole of its business;
- 6.8.7 the Retailer encumbers or in any way charges any of the Motor Fuel or Equipment;
- 6.8.8 a creditor or encumbrancer of the Retailer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Retailer's assets and such attachment or process is not discharged within 14 calendar days;
- 6.8.9 there is a change of control of the Retailer (within the meaning of section 840 of the Income and Corporation Taxes Act 1988); or
- 6.8.10 any event occurs or proceeding is taken in respect of the Retailer in any jurisdiction to which it is subject that has the same or a similar effect to any of the events listed in clauses 6.8.1 to 6.8.9 (inclusive).
- 6.9 When any payment is overdue Essar will be entitled to enter the Retailer's premises and secure or uplift and remove Motor Fuel supplied. All costs and expenses reasonably so incurred by Essar shall be paid by the Retailer.
- 7 Motor Fuel Discrepancy**
- 7.1 In the event of any claim by the Retailer of short delivery or non-receipt Essar will investigate the circumstances if the Retailer notifies Essar in writing within 7 days of the delivery date or expected delivery date of the consignment concerned.
- 7.2 Essar will not be liable to rectify damaged Motor Fuel/short deliveries notified outside the time limits referred to in clause 7.1 above.
- 7.3 Bulk fuel returns will only be accepted by Essar if there has been a contamination

of Motor Fuel by Essar or its agents. All return requests must be submitted by telephone and agreed by Essar in writing before returning to the authorized depot. The Retailer shall pay all costs, charges and expenses incurred by Essar in respect of the return of such Motor Fuels where the contamination arose as a result of the Retailer or its agents' default.

## **8 Availability**

Essar may at any time change the grade, specifications, characteristics, delivery package, brand name, or other distinctive designation of any Motor Fuel, and such Motor Fuel as so changed shall remain subject to this Agreement. Essar reserves the right at any time to discontinue supplying any such Motor Fuel covered by this Agreement or to substitute a different Motor Fuel or grade(s) of Motor Fuel. In the event any substitution is made, any maximum and minimum quantities applicable to the substituted Motor Fuel shall apply to such replacement Motor Fuel or grade(s) of Motor Fuel and the price shall be Essar's applicable price for such replacement Motor Fuel. Thereafter, Essar shall be relieved of any further liability or obligation to furnish the discontinued Motor Fuel or grade(s) of Motor Fuel.

## **9 Measurement and quantity**

Essar shall be responsible for measurement of the quantity of Motor Fuel delivered for the purposes of preparing accounts which shall be conclusive and binding in the absence of manifest error on the part of Essar. It is the responsibility of the Retailer to check that the Motor Fuel has been fully discharged from the delivery vehicle by checking the site glasses on the delivery vehicle or the vehicle delivery meter (as the case may be). Essar does not accept any responsibility whatever for discrepancies in the Retailer's tanks, dip rods or other measuring devices or any discrepancies arising there from.

The quantity of bulk Motor Fuel actually delivered may vary by up to 5% (either

way) from the quantity ordered by the Retailer. Essar will charge the price for the quantity delivered but any load concessions agreed with the Retailer for which the order might otherwise have qualified will still be applied.

## **10 Health, Safety and Environment**

10.1 Essar is committed to the promotion of health and safety and to proper regard for the environment in respect of all its activities. Essar issues health and safety data sheets for Motor Fuel and the Retailer shall be responsible for ensuring that its employees, contractors and Retailers read and observe the instructions and recommendations in these. Replacement health and safety data sheets may be obtained by writing to: Marketing Department, Essar Oil (UK) Ltd, Stanlow Manufacturing Complex, PO Box 3, Ellesmere Port, South Wirral, CH65 4HB, or such other address as Essar may from time to time notify to the Retailer in writing.

10.2 The Retailer shall ensure that all installations and equipment used with Motor Fuel is installed, maintained and operated in such manner to avoid accidents which could have reasonably been anticipated and shall do everything necessary to prevent Motor Fuel, used or unused, to enter drainage, sewage systems, water courses or soil. The Retailer is required to co-operate, so far as it can reasonably, with Essar in implementing measures designed to improve health, safety and environmental performance.

## **11 Essar Trade Marks, Specifications and Formulations**

11.1 In this clause the 'Essar Trade Marks' shall mean the name 'Essar', Essar's 'Positive Action' (P.A) symbol, and/or any trade mark, trade name, distinctive colour scheme or other marketing indicia or item of Intellectual Property owned by the Licensor, or Essar or any of its Affiliates (whether it contains the word "Essar" or not) and "Branded Materials" shall include any advertising materials, signs or other items or materials bearing Essar Trade Marks.



- 11.2 The Retailer shall use Essar Trade Marks and Branded Materials only in such a manner as Essar may direct from time to time and nothing in this Agreement shall give the Retailer any proprietary interest in or title, claim or right whatsoever to any of Essar Trade Marks or Branded Materials.
- 11.3 In the case of supply in bulk nothing in this Agreement, except as may be expressly provided, shall be deemed to confer any right on the Retailer to apply any of Essar Trade Marks to any Motor Fuel or to use Essar Trade Marks in relation to the Motor Fuel. This shall apply accordingly to Motor Fuels repackaged by Retailer.
- 11.4 Retailer shall promptly notify Essar of any actual, threatened or suspected infringement or wrongful use which comes to its notice, of any of the Essar Trade Marks relating to the Motor Fuels and shall provide Essar or the Licensor or other relevant Affiliate with such assistance as Essar or any such Affiliate may reasonably require in attempting to put to an end such infringement or wrongful use. Essar shall reimburse Retailer for any reasonable out-of-pocket expenses incurred by Retailer in providing such assistance provided that such expenditure has been approved in advance by Essar. For the avoidance of doubt, Essar or the Licensor shall, in its absolute discretion, determine what action, if any shall be taken.
- 11.5 The Retailer shall not do anything, nor cause or authorise anything to be done:
- (i) which shall or may impair, damage or be detrimental to the reputation or goodwill associated with the Essar Trade Marks;
  - (ii) which may adversely affect the value of the Essar Trade Marks; or
  - (iii) which may jeopardise or invalidate any registration or application of the Essar Trade Marks.

- 11.6 Essar shall be entitled to recover losses, damages and costs arising from the infringement of, or loss of goodwill in, the Essar Trade Marks, on behalf of its Affiliates and/or the Licensor as though any such loss, damage or costs were suffered by Essar itself. For the avoidance of doubt, the Retailer's liability under this clause shall not be limited or excluded.

## **12 Liability and Indemnity**

- 12.1 The Retailer will indemnify, defend, and hold harmless Essar, its Affiliates, directors and employees, against any liability (whether strict, absolute or otherwise) for any claim, loss, damage, cost, and expense and other costs of litigation on account of any injury, disease or death of persons (including, but not limited to, the Retailer's employees) or damage to property (including, but not limited to, Retailer's property) arising out of or in connection with:
- (i) the Retailer's unloading, storage, handling, sale, use or disposal of the Motor Fuel except to the extent caused by Essar's negligence; and/or
  - (ii) the Retailer's negligence or any failure by the Retailer to comply with any of its obligations under this Agreement; and/or
  - (iii) any failure by the Retailer to disseminate safety and health information as provided in clause 10, Health, Safety and Environment.
- 12.2 neither party shall be liable to the other party under or in connection with this Agreement for the other party's 1) loss of actual or anticipated profit 2) losses caused by business interruption 3) loss of goodwill or reputation (excepting any loss of goodwill or reputation suffered in respect of the Essar Trade Marks) 4) or 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.
- 12.3 Neither party excludes or limits its liability for fraud or death or for personal injury arising from its negligence or any liability to the extent the same may not be excluded or limited as a matter of law. This clause shall not affect the indemnities given in this Agreement.
- 12.4 Notwithstanding anything to the contrary in this Agreement, Essar's total liability to the Retailer in respect of all losses, damages or claims arising under or in connection with this Agreement, whether as a result of breach of contract, breach of warranty, misrepresentation, breach of statutory duty, restitution, negligence or other tort, shall be limited to:
- (i) £50,000 in respect of any individual event or a series of related events; and
  - (ii) £250,000 in aggregate in respect of all claims arising under or in connection with this Agreement.
- 12.5 Any indemnity or relief from or limit of liability in favour of Essar or Retailer shall extend to and apply for the benefit of their respective Affiliates, directors, and employees.
- 13 Force Majeure**
- 13.1 Neither Essar nor the Retailer shall be liable for any failure or delay in performance of any obligations (except for those in relation to payment) under this Agreement (and the date for performance of the obligations affected will be extended accordingly) as a result of a Force Majeure Event.
- 13.2 The parties acknowledge that an inability to pay any sums due or other economic distress shall not be a Force Majeure Event.
- 13.3 If as a result of a Force Majeure Event the availability from any of Essar's or Essar's suppliers' sources or contemplated sources of supply (wherever situated) of crude petroleum, the Motor Fuels or any of them or other petroleum products is so curtailed or interfered with as either to delay or hinder Essar in or to prevent Essar from supplying the quantity of the Motor Fuels to the Retailer then Essar shall be at liberty to withhold, reduce or suspend deliveries under this Agreement to such extent as Essar may in its absolute discretion think fit and Essar shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers.
- 13.4 Any additional quantities which Essar does acquire from other suppliers or from alternative sources may be used by Essar at its complete discretion and need not be taken into account by Essar for the purpose of determining the extent to which it is to withhold, reduce or suspend deliveries under this Agreement.
- 13.5 The Retailer shall be free to purchase from other suppliers any deficiencies of deliveries caused by the operation of this clause but Essar shall not be responsible for any additional cost incurred by the Retailer.
- 13.6 Essar reserves the right to increase the price charged for any Motor Fuel (whether the price was originally determined by reference to Essar's prices or separately agreed in writing) if there is any increase in the costs incurred or to be incurred by Essar in making the relevant supply due to factors which are beyond the control of Essar. These factors include without limitation any increased taxes, duties, the making of any law, order, bye-law, or other regulation, the occurrence of any currency fluctuation affecting the cost of any imported items. .
- 14 Termination**
- 14.1 Without prejudice to any other rights or remedies, either party shall be entitled to terminate this Agreement summarily by written notice to the other if the other has committed a material breach of any of its obligations under this Agreement or any other agreement between the Retailer

- and Essar and the other party has failed to remedy such breach within 14 days of a notice having been served on it by the first party specifying the breach and requiring its rectification.
- 14.2 Without prejudice to any other rights or remedies Essar shall be entitled to terminate this Agreement summarily on written notice if the Retailer:-
- 14.2.1 is an individual, and the Agreement has been entered into in England, Wales or Northern Ireland, and he is declared bankrupt, or a receiver or manager is appointed in respect of his assets, or a receiving order is made against him, or he enters into any composition or arrangement with creditors generally, or he is unable to pay his debts as they fall due or, where this Agreement is entered into in Scotland, he is sequestrated or becomes either bankrupt or insolvent, or grants a Trust Deed for creditors, or enters into a composition with creditors generally; or
- 14.2.2 is a company and it makes a composition or arrangement with its creditors, or a winding-up order is made or a resolution for voluntary winding-up is passed in respect of it, or a provisional liquidator, receiver, administrator or manager of its business or undertaking is appointed, or a petition is presented applying for an administration order to be made in respect of it, or it is unable to pay its debts as they fall due or possession is taken of any of its assets on behalf of the holders of any debentures of such company which are secured by a floating charge, of any property comprised in or subject to the floating charge; or
- 14.2.3 fails to pay any sum due under this Agreement by the date it is due or in the circumstances set out in 2.5.4 of these Retail General Terms and Conditions; or
- 14.2.4 is a company and there is a change of ownership of its shares resulting in 50 per cent or more of the issued share capital of the company becoming legally or beneficially the property of a new owner.
- 14.3 Essar shall be entitled to terminate this Agreement immediately by giving written notice to the Retailer if:
- 14.3.1 the Retailer defaults in payment of any sums due and owing under this Agreement within 14 calendar days after invoice or other written notice from Essar that payment has fallen due and that Essar intends to terminate the Agreement;
- 14.3.2 in the event of any repeated breach of the Retailer's obligations under this Agreement (a repeated breach shall mean two or more breaches of any of the Retailer's obligations during any 12 month period that are notified as breaches to the Retailer by Essar);
- 14.3.3 the credit worthiness of the Retailer is deemed by Essar's credit insurers to be such that credit insurance is withdrawn or substantially reduced, or any security provided is revoked or reduced in effect; and/or
- 14.3.4 in the reasonable opinion of Essar the Retailer acts in any way which may seriously damage the good reputation and standing of Essar or the Essar Trade Marks.
- 14.4 On termination of this Agreement:-
- 14.4.1 all sums owed to Essar shall become immediately due and payable and Essar shall be entitled to recover and resell

	Motor Fuel the property in which remains vested in Essar and Essar may enter upon the Retailer's premises for that purpose; and	6, 7, 11-24 of Section B shall survive termination and remain in full force and effect, along with any other provisions which expressly or impliedly continue to take effect.
14.4.2	any and all obligations of Essar hereunder for the sale of Motor Fuel to Retailer shall cease; and	<b>15 Assignment, Novation and Sub-contracting</b>
14.4.3	orders for Motor Fuel which have been accepted but have not been fulfilled by Essar shall be cancelled at Essar's option without any liability on behalf of Essar.	15.1 This Agreement shall not be assigned, novated or transferred in whole or in part by the Retailer directly or indirectly and the Retailer shall not subcontract any of its obligations under this Agreement without the prior written approval of Essar.
14.5	Upon expiry or termination of this Agreement:	15.2 Essar shall be free to assign this Agreement either in whole or in part or to sub-contract any of its obligations under this Agreement to a third party without the consent of the Retailer including but not limited to the right to assign its receivables under this Agreement.
14.5.1	the Retailer shall immediately discontinue the use of the Essar Trade Marks, the Equipment or any other signs, notices or documents associated with and/or provided by Essar or Essar's agents and make available for collection and permit access of collection all such Equipment, property and materials by Essar or Essar's agents; and	15.3 The Retailer agrees in advance to the novation of this Agreement by Essar to any of Essar's Affiliates in connection with reorganisation of the Essar group. Essar shall give the Retailer not less than 30 days' prior notice of such novation, and the novation will take effect on the date stated within the notice. The Retailer agrees promptly to execute and deliver such documents, and to take such other actions, as Essar may reasonably require to give effect to the novation of this Agreement.
14.5.2	the Retailer shall cease holding itself out as a retailer operating under the Essar brand.	
14.6	If written notice of termination has been given by either Essar or Retailer, Essar may require cash in advance for deliveries of Motor Fuel during any interim period between the time of such notice and the termination date provided in the notice.	<b>16 Waiver</b>
14.7	Where the Retailer is a partnership, reference in this clause to the Retailer shall mean any one or more of the partners, and in Scotland shall mean the partnership itself.	No delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall affect that right, power or remedy or operate as a waiver of it. The single or partial exercise of any right, power remedy provided by law or under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
14.8	Upon termination of this Agreement, the rights and obligations of the parties under this Agreement shall terminate and be of no further effect, except that clauses 14 and 15 of the Retail Motor Fuel Supply Agreement and clauses 3,	<b>17 Amendment or Modification</b>
		No amendment or modification of any of the provisions of this Agreement or the

rights or obligations of the parties shall be valid unless it is agreed in writing by and is signed on behalf of each of the parties, and specifically refers to this Agreement.

## **18 Invalidity**

If at any time any provision of this Agreement is or becomes illegal, invalid, void or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction shall not be affected.

## **19 Status of Agreement**

19.1 This Agreement shall govern the supply of all Motor Fuels by Essar to the Retailer to the entire exclusion of any other terms and conditions upon which the Retailer purports to acquire them whether contained in the Retailer's order or otherwise.

19.2 Except to the extent specified herein to the contrary this Agreement contains the entire agreement between the Retailer and Essar in relation to the subject matter hereof and supersedes all other agreements, documents or pre-contractual statements oral or written between the Retailer and Essar in relation to such subject matter.

19.3 Each party agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding other than in the case of fraud or as expressly set out in this Agreement.

## **20 Third Party Rights**

20.1 Where any clause in this Agreement confers a benefit or benefits on an Affiliate of either the Retailer or Essar (each a "Third Party Beneficiary") the parties intend that each Third Party Beneficiary shall be entitled by virtue of the Contracts (Rights of Third Parties)

Act 1999 to enforce the benefits conferred on it by such clauses.

20.2 Except as provided in clause 20.1, the parties do not intend that any term of this Agreement should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

20.3 No variation or termination of this Agreement, even if that variation or termination affects the benefit conferred on a Third Party Beneficiary, shall require the consent of any Third Party Beneficiary.

## **21 Notices**

21.1 Any notice under this Agreement shall be in English and in writing delivered personally or by courier, or by pre-paid first class mail or by special delivery, registered post or recorded delivery or by fax (and confirmed by pre-paid first class mail, placed in the post on or on the day after the date of transmission) to the address specified in Schedule 1 (Commercial Terms) for the giving of notices.

21.2 Any notice given pursuant to this Agreement shall be deemed to have been given or received in the case of despatch by prepaid first class mail on the fourth Working Day from and including the date of posting or in the case of dispatch by pre-paid special delivery, registered or recorded post on the second Working Day from and including the date of dispatch and on the Working Day delivered (or the next following Working Day if delivery is on a non-Working day or after 5pm on a Working Day) in the case of actual delivery to the address specified in Schedule 1 (Commercial Terms) for the giving of notices. Any notice sent by fax and confirmed by pre-paid first class mail shall be deemed to have been given the next Working Day following the day of transmission.

21.3 In addition to the methods of delivery referred to above, a notice relating to this Agreement may be sent by e-mail to the e-mail address shown in Schedule 1

(Commercial Terms) and shall be deemed to have been received on the date that receipt is acknowledged by the addressee provided that any notices relating to any breach or termination of this Agreement should be sent by one of the other methods referred to in clause 21.1 above and shall not be deemed received if only sent by e-mail.

21.4 A party may change its notice details on giving notice to the other party of change in accordance with this clause 21. The notice shall only be effective on the date falling three (3) clear Working Days after the notification has been received or such later date as may be specified in the notice.

21.5 The provisions of this clause 21 shall not apply in relation to the service of any document in connection with litigation proceedings, claims, suits or actions.

## **22 Confidentiality**

22.1 Essar and Retailer will not, without the prior written consent of the other, either:

22.1.1 disclose the other's proprietary or commercially sensitive information ("Confidential Information") in furtherance to anyone other than those officers, employees, agents, or subcontractors who need to know it in connection with this Agreement and have agreed to be bound by these obligations of confidentiality. Essar shall be permitted to disclose the Retailer's Confidential Information in connection with a securitisation or other funding transaction in relation to this Agreement and any receivables under it; or

22.1.2 use the other's Confidential Information for any purpose other than in furtherance of this Agreement.

22.2 For the purposes of this Agreement, all data, maps, reports, drawings, specifications, records, technical information, and computer

programs/software concerning Essar's operations, processes or equipment which are provided by Essar and/or acquired or handled by Essar in connection with this Agreement shall be deemed Confidential Information of Essar.

22.3 Neither Party, its employees, Affiliates, agents, and subcontractors shall prepare photographs, articles, press releases, or speeches about the existence of, scope of, or transactions to be performed under this Agreement or any generalities or details about Essar's facilities or business plans without the other party's prior written consent. Applications for approval must be submitted to the other Party in writing and outline the intended uses thereof.

22.4 Neither Retailer nor Essar will use the name or trademark of the other in any material prepared for public announcement, general publication or distribution to any third party without obtaining prior written permission of the other Party. Notwithstanding the foregoing, either Party may distribute a copy of this Agreement to any subsidiary, Affiliate, agent, or subcontractor for the purpose of performance hereunder.

## **23 Governing Law and Jurisdiction**

This Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by English law and the parties shall submit to the non-exclusive jurisdiction of the English Courts.

## **24 Information**

24.1 Essar may use the information provided by the Retailer and/or the person who signs this Agreement (the "Applicant"):

24.1.1 to operate the Retailer's account and any agreement with Essar;

- 24.1.2 to confirm, update and enhance Essar's records;
  - 24.1.3 to establish the Retailer and/or Applicant's identity;
  - 24.1.4 to make a company search;
  - 24.1.5 for general statistical analysis;
  - 24.1.6 to consider the Retailer and/or Applicant's criminal convictions or alleged commission of an offence;
  - 24.1.7 to assess the Retailer's and/or Applicant's credit status (for this purpose, credit scoring techniques will be used and checks may be carried out with a credit reference agency and a fraud detection system, which will maintain a record of any such enquiry); and
  - 24.1.8 in connection with a securitisation or other funding transaction.
- 24.2 Essar may disclose data relating to the Retailer and/or a Retailer's account(s) to (a) a credit reference agency where it may be accessed by other financial institutions to assist assessment of any application for credit made to Essar and for debt tracing and fraud prevention; (b) to any agent or sub-contractor of Essar performing services in connection with the Retailer's account; (c) to any person to whom Essar proposes to transfer any of its rights and/or duties under this Agreement; (d) to any guarantor or person providing security in relation to Retailer's obligations under this Agreement; (e) as required or permitted by law or any regulatory authority; (f) any person in connection with a securitisation or other funding transaction; and (g) as otherwise considered necessary or appropriate by Essar.
- 24.3 Without prejudice to any other provisions for termination contained in this Agreement, all monies due and owing by the Retailer to Essar shall become due

and payable forthwith if Essar discovers that any information provided by the Retailer to Essar is materially inaccurate.

## **25 Joint and Several Liability**

- 25.1 Where the Agreement is concluded with several retailers such retailers shall act as joint and several creditors and debtors with each of them being responsible and liable for the fulfilment and performance of all obligations entered into by the retailers. It is at Essar's sole option to select a retailer to fulfil or perform an obligation or a claim and in case of such selection which of the retailers it selects. If Essar exercises its option, this does not release the other retailers from their obligations and Essar may hold each or all of the other retailers responsible or liable at any time. The term Retailer represents all retailers as joint and several creditors and debtors.