

## Fuel Card Services Limited

### TERMS AND CONDITIONS OF SALE

The following Terms and Conditions govern the use of the fuel cards issued and/or administered by Fuel Card Services Limited.

#### 1. DEFINITIONS

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

"**Agent Agreement**" means an agreement between the Card Company and FCS which sets out the terms on which the Card Company have authorised FCS to issue Cards to Customers. FCS is only entitled to provide such Cards subject to these Terms and Conditions and the Agent Agreement;

"**Ancillary Charges**" means any administration fees, charges or other similar fees charged by FCS in relation to the Customer's account;

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

"**Business Day**" means any day other than a Saturday, Sunday or bank or other public holiday in England;

"**Card**" means all Card Company cards issued to the Customer by FCS for the purpose of purchasing Goods and/or Services from a Site;

"**Card Company**" means the fuel card supplier which has authorised FCS to issue Cards to Customers on its behalf;

"**Contract**" means a contract created by the acceptance by FCS of an order made by the Customer for a Card which incorporates these Terms and Conditions.

"**Customer**" means a body corporate, partnership or individual acting in the course of its business and in whose name the Card account is held and maintained and includes employees, sub-contractors or any other person acting on behalf of the Customer;

"**E-Bill**" means an electronic invoice sent by FCS (in substitution of a paper invoice). E-Bills can be requested by the Customer but are sent solely at the discretion of FCS. References in these Terms and Conditions to invoices include E-Bills where appropriate;

"**FCS**" means Fuel Card Services Limited (CRN: 2107821) whose registered office is Alexandra House, Lawnswood Business Park, Redvers Close, Leeds, LS16 6QY;

"**Goods and/or Services**" means fuels, lubricants and other goods and/or services offered by Suppliers;

"**Lost Card**" means any Card that is lost, stolen, mislaid, wilfully damaged, reproduced in an unauthorised manner or subject to any similar circumstances (as appropriate);

"**PIN**" means a personal identification number which may be issued by the Card Company for use with a Card;

"**Site**" means an authorised site for the sale of Goods and/or Services;

"**Supplier**" means the authorised person, company or partnership that accepts the card and which operates the Site and sells the Goods and/or Services;

"**Terms and Conditions**" means these terms and conditions, as amended by FCS from time to time;

"**Wild Cards**" means Cards which are not embossed with either the registration number of any vehicle or the name of any Authorised Cardholder.

1.2 The headings in these Terms and Conditions are for convenience only and shall not affect the interpretation of these Terms and Conditions or the Contract.

#### 2. ACCEPTANCE

2.1 Use of a Card by the Customer (or an Authorised Cardholder) constitutes acceptance of these Terms and Conditions which supersede and shall be taken to override any terms and conditions proposed or stipulated by the Customer and any literature setting out the use of the Card provided by FCS and/or the Card Company.

2.2 All quotations, offers and/or tenders are made and all orders of the Card are accepted by FCS subject to these Terms and Conditions. All prices quoted are subject to alteration or withdrawal by FCS from time to time without notice.

2.3 No Contract is created between FCS and the Customer until the duly authorised documentation relating to the Contract has been processed by FCS and all prior correspondence or oral communications are to be regarded as superseded and not forming part of the Contract.

2.4 All drawings, brochures, descriptive matter, price lists or advertisements howsoever supplied are approximate only and intended for general guidance and information purposes only and shall not form part of the Contract. The parties hereby acknowledge and confirm that they have not entered into the Contract in reliance upon any representation or warranty or other undertaking not fully reflected in the terms of the Contract.

2.5 These Terms and Conditions (as amended) shall apply to all repeat orders for Cards made by the Customer, unless the Company notifies the Customer otherwise.

2.6 FCS reserves the right to amend the Terms and Conditions from time to time and the Customer shall be subject to the Terms and Conditions that are in force at the time that the Card is used. Any changes to the Terms and Conditions will be notified to the Customer via a change to the version number of the Terms and Conditions which is set out on all invoices. The Customer agrees that it shall check FCS's website not less than once every 3 months (or following a change in version number notified on an invoice) in order to check whether the Terms and Conditions have been amended.

#### 3. OWNERSHIP OF THE CARDS

3.1 Under the Agent Agreement, the Cards remain the property of the Card Company at all times and shall be returned to FCS by the Customer promptly at FCS's request.

3.2 The issue to the Customer of Cards shall authorise the Customer to use the Cards to obtain Goods and/or Services from Suppliers, subject always to these Terms and Conditions.

#### 4. ISSUE OF THE CARDS

4.1 The Customer may provide a Card to Authorised Cardholder(s) at its discretion. The provision of a Card to an Authorised Cardholder shall be deemed as giving such Authorised Cardholder authority to use the Card for the purchase of the Goods and/or Services from the Supplier, as a duly authorised representative of the Customer. The Customer will ensure that the Authorised Cardholder complies with all these Terms and Conditions.

4.2 The Customer shall be solely responsible for the safe keeping and security of any Cards issued to it and for their correct use in accordance with these Terms and Conditions, whether by its Authorised Cardholder or by the Customer.

4.3 The Customer shall ensure that no person using a Card (including any Authorised Cardholders) shall tamper with or try to alter or interfere with the fuel monitoring device or fuel delivery equipment at any Site. In the event there appears to be a defect or fault in such monitoring or fuel delivery equipment the Customer or Authorised Cardholder (as appropriate) shall immediately report the same to the relevant Supplier.

4.4 The embossing of a vehicle registration number or name on a Card is a management tool only. It is not intended as a security measure and is not verified by FCS or the Supplier when the Card is used.

4.5 FCS may, on request, issue Wild Cards to the Customer. Wild Cards are issued on the condition that, notwithstanding any other provisions of these Terms and Conditions, the Customer will be liable in respect of all or any transactions made with any Wild Cards (even if the Wild Cards are Lost Cards) and will indemnify and keep indemnified FCS in respect of and in relation to all costs, claims and demands arising out of or in connection with the

use of Wild Cards, whether by the Customer, Authorised Cardholders and/or a third party.

## 5. CARD CHARGES

The Company may charge a fee to the Customer for the issue of the Card on setting up of the Customer's account, for replacement Cards, additional Cards and on renewal of a Card, depending on particular circumstances. Some Cards may be charged for on issue and then annually thereafter. Card charges are payable in advance at the prevailing rates which are reviewed periodically, and may be subject to increase. Details of current rates are available on request. All Card charges are non-refundable.

## 6. USE OF THE CARDS

6.1 The Card may only be used:-

6.1.1 if it is a current Card and during the period of validity embossed on the Card;

6.1.2 by the Customer and/or an Authorised Cardholder to obtain Goods and/or Services from a Supplier which accepts the Card,

6.1.3 to obtain Goods and/or Services of a specified nature depending and in accordance with any restrictions relating to such Goods and/or Services embossed on the Card or identified by the relevant Supplier.

6.2 The right is reserved by FCS to unilaterally withdraw at any time any entitlement to purchase the Goods and/or Services for which the Card can be used and/or to issue to the Customer a new Card indicating the appropriate Goods and/or Services in replacement of the previous Card.

6.3 If FCS reasonably believes that a Card is being misused or used in any unauthorised way, FCS reserves the right to put a stop on any Card until the situation is resolved to the reasonable satisfaction of FCS.

## 7. PIN

7.1 If a PIN is issued with a Card or is required by a Supplier or the Card Company, the terms set out in this clause 7 shall apply.

7.2 The PIN shall only be used by the Customer and Authorised Cardholder to whom it is supplied and shall not be:

7.2.1 disclosed by the Customer and/or the Authorised Cardholder to any other person; or

7.2.2 written in such a manner as may be understood by someone else on any Card or sales voucher or on anything kept with the Card or compromised in any other way.

7.3 The Customer shall destroy the PIN advice immediately following its receipt and review.

7.4 If the PIN is (or the Customer suspects it may have been) compromised in any way, the Customer must immediately notify FCS of that fact in accordance with clause 15.1 and return the relevant Card to FCS with the right hand corner cut off for security purposes.

7.5 A new Card and PIN can only be issued upon receipt of a written request from the Customer and will be despatched to the Customer separately by FCS.

7.6 The Customer may request FCS to provide a replacement PIN for a Card. FCS shall be entitled to charge a fee per PIN for this service. Current fees are available on request.

7.7 If the Customer requests a universal PIN for its fleet, the Customer undertakes to indemnify FCS from and against any and all losses, claims, costs, demands and expenses that FCS may incur as a result of the PIN being disclosed or compromised in any way by the Customer and/or an Authorised Cardholder.

7.8 In certain circumstances a PIN is only for use at outdoor terminals at the Sites. An "outdoor terminal" is an automated unattended Card payment facility located on or near the fuel pumps.

## 8. PURCHASE OF GOODS AND/OR SERVICES AND PRICING

8.1 Prior to agreeing to purchase or take delivery of Goods and/or Services, the Customer (or the Authorised Cardholder) shall present or show the Card to the relevant Supplier (if requested).

8.2 Whenever making purchases of Goods and/or Services, the Customer (or the Authorised Cardholder) shall comply with all procedural requirements of the Supplier in respect of the relevant Card transaction and shall be liable to pay FCS for all amounts due to FCS pursuant to the relevant Card transaction.

8.3 When Pump and Schedule Price Card transactions take place at a Site, the transaction may be processed subject to a variable handling fee in addition to the pump price or schedule price prevailing at the time of the transaction.

8.4 When Bunker Price Card transactions take place outside the nominated core bunker network, the transaction will be processed with an appropriate handling fee in addition to the pump price at the time of the transaction. In addition, certain bunker sites may be subject to an additional surcharge (a list of such sites is available on request).

8.5 Supplies of Goods and/or Services, other than motor fuel, acquired with the Card by the Customer shall be invoiced at the price shown on the Customer's receipt plus a reasonable handling fee, details of which are available on request (by telephone or in writing to FCS).

8.6 Due to the volatility of the oil market and the impracticality of notifying each Customer, FCS may change the fuel price from time to time without notice to the Customer.

8.7 All prices are subject to all Government or other taxes, duties, levies, charges, surcharges, assessments or impositions where applicable at the appropriate rate and any variation of the same at any time for the account of the Customer

## 9. INVOICES AND VOUCHERS

9.1 An invoice (which may be in the form of an E-Bill) will be sent to the Customer once or twice (as appropriate) monthly in arrears, or weekly in arrears, detailing all purchases of Goods and/or Services made using the Card attributable to the Customer's account and which have been processed as at the date of the raising of the relevant invoice, plus any Ancillary Charges. No invoice will be sent if no purchases of Goods and/or Services have been made in a relevant period and there are no Ancillary Charges. If E-Bills are not acceptable to the Customer, FCS will provide hard copy invoices at a cost of £1.00 per invoice.

9.2 The Customer may request FCS to provide copies of sales vouchers for transactions made on its Cards provided that the transaction took place not more than 3 months prior to the date of the request. FCS shall be entitled to charge a fee of between £10.00 and £25.00 plus VAT for each copy voucher depending on the relevant Card Company. The above fee may be waived if the transaction is found not to be valid against the Customer's account.

9.3 The Customer may request FCS to provide copies of sales invoices. FCS shall be entitled to charge a fee of £10.00 plus VAT. This fee covers up to 5 copy invoices in any 1 request; a request for more than 5 copy invoices would incur a one-off charge of £20.00.

9.4 For the avoidance of doubt, FCS is not obliged to respond to any invoice queries of any nature if related to transactions which took place over 3 months prior to the date of request. It is therefore important that the Customer promptly reviews and considers each invoice from FCS within these timescales.

## 10. PAYMENT

10.1 Payment of each invoice shall be made in one payment by the Customer in full and cleared funds in the timescales and in accordance with the payment terms detailed on the relevant invoice.

10.2 If the Customer fails to pay an invoice by the due date (as referred to in Clause 10.1), FCS may at its discretion:

- 10.2.1 place the Card on stop; and/or
- 10.2.2 place the Card on stop and terminate the Contract immediately without notice, at which point all amounts due to FCS, (whether invoiced or not) shall become immediately due and payable in full.
- 10.3 The Customer shall at all times:
- 10.3.1 maintain a bank account capable of accepting direct debits;
- 10.3.2 keep FCS provided with a valid direct debiting mandate against such account; and
- 10.3.3 ensure that every direct debit properly instanced by FCS against such account is paid.
- 10.4 If a Customer's payment by direct debit fails or a cheque is not honoured, FCS shall be entitled to charge the Customer a fee of £30.00 plus VAT for each failure to cover administration costs.
- 10.5 If the direct debit payment due date falls on a Saturday, payment will be taken on the preceding Friday. If the direct debit payment due date falls on a Sunday, payment will be taken on the following Monday.
11. **INTEREST AND CHARGES**
- 11.1 FCS reserves the right to charge interest and/or reasonable debt recovery costs in the event that any amounts payable by the Customer to FCS under these Terms and Conditions are not paid by the due date (without prejudice to FCS's other rights and remedies).
- 11.2 Interest shall be chargeable and payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, or at such lower rate as FCS may decide in its absolute discretion from time to time.
- 11.3 Reasonable debt recovery costs for the purposes of clause 11.1 shall include all third party debt recovery costs, charges and other liabilities reasonably incurred by FCS including collection agency costs and any costs incurred in ascertaining the location of the Customer.
- 11.4 All payments by the Customer or any credits or refunds due to the Customer will be applied first in settlement of any interest owed to FCS by the Customer and secondly in reduction of the Customer's other indebtedness to FCS. No claim by any Customer or Authorised Cardholder against any Supplier shall entitle the Customer to set off or counterclaim against the amounts due to FCS.
12. **TERMINATION**
- 12.1 The Contract may be terminated by either party at any time by giving not less than 30 working days prior written notice to the other party.
- 12.2 FCS shall be entitled to treat the Contract as terminated with immediate effect and without notice in the event that:-
- 12.2.1 the Customer is in breach of any of these Terms and Conditions;
- 12.2.2 If the Customer (as applicable) goes into, or is perceived by FCS as likely to enter into receivership, administration, bankruptcy, liquidation or similar proceedings or makes any arrangement with its creditors or any other event occurs which, in the opinion of FCS, may affect the ability of the Customer to comply with any or all of its obligations or meet any of its liabilities under these Terms and Conditions.
- 12.2.3 FCS receives a credit reference (which the Customer hereby agrees FCS may carry out from time to time in relation to the Customer) which is, in FCS's opinion, unsatisfactory;
- 12.2.4 the Customer undergoes a change in control (where "control" means the ability, directly or indirectly, to direct the affairs of another (whether by means of ownership, contract or otherwise)). The Customer agrees to notify FCS not later than 2 week's prior to any change in control of it occurring; or
- 12.2.5 FCS receives notification from its insurers that credit insurance cover has been reduced or withdrawn from the Customer.
- 12.3 The Contract shall automatically terminate upon the termination for any reason whatsoever of the Agent Agreement and such termination will be confirmed by written notice to the Customer by the Card Company or FCS.
13. **CONSEQUENCES OF TERMINATION**
- In the event of termination of the Contract:
- 13.1.1 the Customer shall cut in half all Cards supplied to it and return them to FCS;
- 13.1.2 the whole outstanding balance of the Customer's account shall (at FCS's discretion) become due and payable in full to FCS; and
- 13.1.3 the right of the Customer and/or any Authorised Holders to use the Card shall terminate (but without prejudice to the Customer's liability for the use of the Card after termination or to the rights of FCS already accrued at the date of such termination).
14. **CANCELLATION**
- 14.1 Cancellation of a Card will only prevent renewal of the Card on expiry; it will not prevent the Card from being used.
- 14.2 FCS will cancel a Card on the Customer's written request.
- 14.3 FCS may cancel or suspend any or all Cards at any time without notice and reserves the right to refuse to reissue, renew or replace any Card.
- 14.4 The Customer must immediately return any cancelled Card to FCS with the right hand corner cut off for security purposes.
- 14.5 Notwithstanding any other provisions of the Contract, the Customer will remain liable in respect of any transactions made with the Card after its cancellation but prior to its return to FCS in accordance with 14.2 above.
15. **LOST OR STOLEN CARDS**
- 15.1 If a Card is a Lost Card, not received by the Customer when due or the PIN number has been compromised, the Customer must immediately notify FCS at the address notified by FCS to the Customer from time to time or, if no such address is notified, at Alexandra House, Lawnswood Business Park, Redvers Close, Leeds, LS16 6QY and FCS may, at its sole discretion either:
- 15.1.1 immediately terminate the Contract; or
- 15.1.2 provide the Customer with a replacement Card, and in any event, the Card will be stopped.
- 15.2 The Customer will provide FCS with all information in its possession as to the circumstances relating to a Lost Card or the other events detailed in clause 15.1 (as appropriate).
- 15.3 Save for liability in relation to Wild Cards (which is set out in clause 4.5), the Customer shall be liable for payment for any Goods and/or Services acquired from Suppliers by the use of a Card issued to it at any time during the period from the time of issue by FCS until one working day from the notification of the circumstances mentioned in clause 15.1 being received by FCS, save that no such release from responsibility will be given to the Customer if it can be established to FCS's reasonable belief in all the circumstances that:
- 15.3.1 the Customer or an Authorised Cardholder gave the relevant Lost Card to an unauthorised person; or
- 15.3.2 the circumstances resulting in the Lost Card was due to the negligence of either the Customer or an Authorised Cardholder; or
- 15.3.3 prior to the Card becoming a Lost Card, the Customer or an Authorised Cardholder failed to adhere to a request made by FCS or its

	representative to destroy or return the Lost Card to FCS; or		case arising out of or connection with the Contract including without limitation as a result of breach of contract, negligence or any other tort, under statute or otherwise), and regardless of whether FCS knew or had reason to know of the possibility of the loss, injury or damage in question.
15.3.4	the Customer was in breach in any provision of the Contract.		
15.4	If any Card which has been reported as a Lost Card is subsequently retrieved it shall be destroyed immediately by the Customer.	16.11	Subject to clause 16.1, FCS shall not be liable for any indirect, consequential or special loss or damage in each case arising out of or connection with the Contract including without limitation as a result of breach of contract, negligence or any other tort, under statute or otherwise), and regardless of whether FCS knew or had reason to know of the possibility of the loss, injury or damage in question.
15.5	<b>CARD PROTECT</b> – FCS provides a service called "card protect". All Cards are included at a cost of 40p per Card per month unless the Customer chooses to opt out. This service covers the Customer for losses up to a maximum of 5000 litres on its account from the point at which the Customer notifies FCS (in accordance with clause 20) that a Card is a Lost Card. Further information about the card protect service is available from FCS on request.	16.12	Subject to clause 16.1, FCS shall not be liable for any loss resulting from the condition, quality or sufficiency of any fuel or other Goods and/or Services in each case arising out of or connection with the Contract including without limitation as a result of breach of contract , negligence or any other tort, under statute or otherwise), and regardless of whether FCS knew or had reason to know of the possibility of the loss, injury or damage in question.
16.	<b>LIABILITY</b>		
16.1	Nothing in these Terms and Conditions shall exclude or limit FCS's liability for death or personal injury caused by its negligence or for fraudulent misrepresentation or for any other liability which cannot be excluded by law.	16.13	The Customer undertakes to indemnify FCS from and against any and all losses, claims, costs, demands or expenses which FCS may incur as a result of a Card being used by a third party other than the Customer and/or its Authorised Cardholders or by reason of any negligence, fraudulent, dishonest or criminal conduct relating to the use of the Card by the Customer, the Authorised Cardholders and/or the Customer's employees, agents, representatives and/or sub-contractors.
16.2	Subject to clause 16.1, FCS accepts no liability and gives no warranty, express or implied, whether arising by common law or statute in relation to:	16.14	The terms of this clause 16 shall continue in force notwithstanding the termination of the Contract.
	16.2.1 any transaction entered into by a Customer (or any Authorised Cardholder); or	17.	<b>DATA PROTECTION ACT 1998</b>
	16.2.2 any Goods/Services supplied to the Customer.	17.1	To the extent that FCS has access to any personal data as a result of the Contract (where personal data is defined in the Data Protection Act 1998) the Customer agrees that FCS shall act as a data processor (as defined in the Data Protection Act 1998) for such personal data. The Customer authorises FCS to appoint sub-contractors as further data processors on the Customer's behalf provided that such further data processors are engaged on terms providing equivalent protections in relation to such personal data to those set out in these Terms and Conditions.
16.3	Subject to clause 16.1, FCS's aggregate liability to the Customer and/or an Authorised Cardholder in respect of each claim or series of connected claims arising out of or in connection with the use of a Card (including without limitation as a result of breach of contract, negligence or any other tort, under statute or otherwise) will be limited to £5,000.	17.2	FCS will process such personal data only in accordance with these Terms and Conditions and the Customer's instructions and will ensure that it has taken steps to ensure the reliability of those of its employees who are used to process such personal data.
16.4	FCS accepts no responsibility for and shall not be liable to the Customer for a failure (for whatever reason) on the part of an automatic dispensing pump to dispense Goods at any Site.	17.3	FCS warrants that it has appropriate technical and organisational processes and procedures in place to safeguard against any unauthorised or unlawful processing and against accidental loss or destruction of, or damage to the personal data.
16.5	FCS and any of its employees, representatives, sub-contractors or agents of FCS shall not be liable to the Customer in respect of any inaccurate information about purchases of Goods and/or Services made by use of the Cards where such inaccuracy is caused by incorrect information provided by an Authorised Cardholder or a Supplier.	17.4	FCS may request personal data relating to Customers from third parties for example, credit reference agencies. Where credit is granted, FCS may also disclose details about the Customer's account with FCS and the Customer's conduct of the account to such credit reference agencies or to other agencies or debt collection agencies. This information may be searched by credit granters and used and provided in assessing applications for future credit facilities and for debt collection, fraud prevention and other purposes.
16.6	Neither FCS (nor the Card Company) shall be liable in any way if the Supplier refuses to supply Goods and/or Services for any reason whatsoever.	18.	<b>GENERAL</b>
16.7	Subject to clause 16.1, FCS shall not be liable for any loss (whether direct or indirect) of revenue or profits in each case arising out of or connection with the Contract including without limitation as a result of breach of contract, negligence or any other tort, under statute or otherwise), and regardless of whether FCS knew or had reason to know of the possibility of the loss, injury or damage in question.:	18.1	The Customer shall immediately notify FCS in writing of any changes in the Customer's name, address, bank details or any change of legal entity of the Customer.
16.8	Subject to clause 16.1, FCS shall not be liable for any loss (whether direct or indirect) of anticipated savings in each case arising out of or connection with the Contract including without limitation as a result of breach of contract, negligence or any other tort, under statute or otherwise), and regardless of whether FCS knew or had reason to know of the possibility of the loss, injury or damage in question.	18.2	When the Customer consists of two or more persons, the expression " <b>Customer</b> " throughout shall mean and include such two persons and each or any of them. All obligations on the part of such Customer shall be joint and several obligations.
16.9	Subject to clause 16.1, FCS shall not be liable for any loss (whether direct or indirect) of goodwill or injury to reputation in each case arising out of or connection with the Contract including without limitation as a result of breach of contract, negligence or any other tort, under statute or otherwise), and regardless of whether FCS knew or had reason to know of the possibility of the loss, injury or damage in question.	18.3	Without prejudice to any other rights or remedies of FCS under the Contract, all monies due and owing by the Customer to FCS shall become due and payable forthwith if
16.10	Subject to clause 16.1, FCS shall not be liable for any loss (whether direct or indirect) of business opportunity in each		

FCS discovers that any of the information provided by the Customer to FCS is inaccurate or the Customer is in breach of any of the Contract.

18.4 The Contract is personal to the Customer and the Customer shall not be entitled to assign or transfer all or any of its rights, interests or obligations hereunder.

18.5 FCS shall be entitled to assign or transfer all or any of its rights, interests or obligations hereunder.

#### 19. **FORCE MAJEURE**

19.1 If the performance of the Contract by FCS shall be delayed by any circumstance or conditions beyond the reasonable control of FCS (including without limitation, fire, flood, war, acts of terrorism, acts of God, government actions, strikes, lock outs and fuel shortages), FCS shall have the right at its option:

19.1.1 to suspend further performance of the Contract until such time as the cause of the delay shall no longer be present; or

19.1.2 to be discharged from further performance of and liability under the Contract.

#### 20. **NOTICE**

20.1 Any notice required to be given under the Contract shall be in writing and delivered personally or sent by facsimile, first class post or e-mail to the registered office or email address of the other party or such other address or email address (as appropriate) as notified by the parties in writing.

20.2 Any notice shall be deemed to have been duly received:

20.2.1 if delivered personally, at the time of delivery;

20.2.2 in the case of pre-paid first class post or recorded delivery or registered post, 48 hours from the date of posting if from and to an address in the United Kingdom or Northern Ireland;

20.2.3 in the case of facsimile, 12 hours after the time of transmission provided an error-free transmission has been received by the sender and that within 24 hours of transmission a copy of the facsimile is sent by post to the intended recipient in accordance with the provisions of this clause 20; and

20.2.4 in the case of e-mail, at the time the e-mail enters the IT system of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the e-mail is sent by post to the intended recipient in accordance with the provisions of this clause 20,

provided that if deemed receipt occurs before 9am on a Business Day the notice will be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, on Christmas Eve after 12 noon, or on a day which is not a Business Day, the notice will be deemed to have been received at 9am on the next Business Day.

#### 21. **THIRD PARTY RIGHTS**

A person who is not a party to the contract shall have no rights pursuant to the Contract (Rights of Third Parties) Act 1999 to enforce any term of these Terms and Conditions.

#### 22. **SEVERANCE**

If any provision of these Terms and Conditions shall be deemed void for any reason whatsoever, but would be valid if part of the wording were deleted, any such provision shall apply with such modifications as may be necessary to make it valid and effective.

23.

#### **LEGAL CONSTRUCTION**

These Terms and Conditions shall be construed in accordance with English Law and the parties irrevocably agree, for the sole benefit of FCS that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with these Terms and Conditions or their subject matter or formation (including non-contractual claims). Nothing in this clause shall limit the right of FCS to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**April 2010**