AGREEMENT FOR THE  
DELEGATED LIQUID FUEL STOCKS

Version: 06/2007

**AGREEMENT FOR THE DELEGATED LIQUID FUEL STOCKS**

This Agreement for the Delegated Liquid Fuel Stocks (the “**Agreement**”) is executed on \_\_\_\_\_\_\_\_\_\_\_\_ in Tallinn

between:

**AS Eesti Varude Keskus**, registry code 11124171, address Pärnu mnt. 102 b, 11312 Tallinn, Estonia (hereinafter referred to as “**ESPA**” or “**Estonian Stockpiling Agency**”), represented by Priit Enok, who is acting pursuant to law and Articles of Association of ESPA,

and

.................................., registry code ....................... address .................................. (hereinafter referred to as “**the Company**”) represented by .................................., who is acting pursuant to law and Articles of Association of the ..................................,

hereinafter separately and jointly referred to respectively as **the Party** or **the Parties**,

**HAVE HEREBY AGREED:**

**Preamble**

The provisions of this Agreement shall be applicable to all single delegation contracts (hereinafter referred to as “**the Single Delegation Contracts”**) to be executed between ESPA and the Company under this Agreement or to any other contracts for which the application of the provisions of this Agreement has been agreed upon by the Parties. The provisions of this Agreement shall not be applicable, if so expressly agreed in a Single Delegation Contract.

The sole fact of entry into this Agreement does not create any rights and obligations between the Parties. The rights and obligations set forth in this Agreement arise in respect of any Single Delegation Contract from the moment such Single Delegation Contract has been executed between the Parties and entered into force.

**Article 1**

**Delegation**

* 1. By the execution of any Single Delegation Contract the Company undertakes to (i) hold in its ownership, with full right of disposal, respective liquid fuels specified in the respective Single Delegation Contract, together with an appropriate storage capacity, and (ii) ensure that such liquid fuels are constantly at any time available to ESPA, i.e. that at any time during the validity of the Single Delegation Contract such liquid fuels can be transferred to the ownership and possession of ESPA or of any other person specified by ESPA so that ESPA can fully meet its stockpiling obligations set forth in applicable laws and regulations. The aforementioned undertaking of the Company is hereinafter referred to as “**the delegation**”.
  2. The following levels of delegation are possible:

Level 1A: Delegation of a specified quantity (delegated amount) of specified liquid fuels (delegated stocks) per each specified storage tank. Stocks of five per cent (5%) of the tank volume (as per the calibration certificate) are treated as not usable inventory and cannot be delegated. The Company is not entitled to change the delegated amount per storage tank nor the storage tank in which the delegated amount is stored (i.e. to store the delegated amount in any storage tank other than the specified storage tank). However, ESPA may allow the changes (i.e. to allow the Company to store the delegated amount in any storage tank other than the storage tank specified in the Single Delegation Contract) by granting respective written consent for the change, provided that the Company has proven that there are good reasons for such change.

Level 1B: Same as Level 1A with the addition that also the “not usable” inventory (as defined under Level 1A) can be delegated.

Level 2A: Delegation of a specified quantity (delegated amount) of specified liquid fuels (delegated stocks) in certain defined storage tanks within a defined tank storage facility, i.e. the Parties define certain storage tanks (within a certain tank storage facility) where the delegated amounts may be held and the concrete storage tank (among the pre-defined tanks) in which the delegated amounts are held may be changed by the Company without the prior written approval of ESPA. However, under no circumstances may the Company change the delegated amounts or the pre-defined storage tanks (or the tank storage facility) in which the delegated amounts may be stored. Stocks of five per cent (5 %) of the tank volume (as per the calibration certificate) are treated as not usable inventory and cannot be delegated.

Level 2B: Same as Level 2A, with the addition that also the “not usable” inventory (as defined under Level 2A) can be delegated.

Level 3: Delegation of a specified quantity (delegated amount) of specified liquid fuels (delegated stocks) within a defined refinery is being stored as “in system” in the form of crude oil, intermediate products, blending components or finished products.

In case of Level 3 the visual inspection of the delegated stocks, sampling as well as the quantity verification per storage tank as stipulated in Article 5.1 and 5.2 of this Agreement are not applicable. For avoidance of doubt, all other terms including the rights of ESPA to inspect and audit all books, records, accounts and other relevant documentation of the Company and the obligation of the Company as stipulated respectively in Article 5.1 and 5.2 of this Agreement are applicable.

* 1. If the Parties have not agreed on any specific specifications, the Company shall preserve the delegated stocks constantly at least in EN quality (in line with respective European Standard).

**Article 2**

**Discharge of Delegated Stocks**

* 1. The Company shall ensure (i) that the delegated stocks can be discharged from the tank to the tanks of the transport continuously at any time and that the discharging or - in case of heavy fuel oil stocks - the necessary heating up is commenced not later than within 24 hours as of 8.00 a.m. of the calendar day following the receipt of Option Exercise Notice (Article 9.1) by the Company or (ii) in case of delegation of Level 3 - to be ready to start the discharging of delegated stocks in the form of finished products indicated in the respective Single Delegation Contract within 20 calendar days after receipt of Option Exercise Notice by the Company.
  2. The Company shall ensure that the discharging is completed as soon as possible and not later than (i) within 15 calendar days (a) as of the receipt of Option Exercise Notice by the Company or (b) in case of heavy fuel oil stocks – as of the moment when the discharge temperature (as indicated in the Single Delegation Contract) is achieved or (ii) in case of delegation of Level 3 - within 20 calendar days as of the receipt of the Option Exercise Notice by the Company.
  3. As an exception to Articles 2.1 and 2.2 of this Agreement, in case of delegations of Level 1B, Level 2B and Level 3, the Parties may agree in a Single Delegation Contract a different (shifted) deadline for discharging.
  4. The Company shall immediately notify ESPA of any temporary or non-temporary obstacles, constraints or limitations on charging and discharging of delegated stocks and any other circumstances that will or may have an adverse effect on the charging and discharging process.

**Article 3**

**Single Delegation Contracts**

The delegated quantity, kind of fuel, place of storage, description of tank storage facility, allocation of the quantities to specified tanks and level of delegation are indicated in the respective Single Delegation Contracts.

**Article 4**

**Rights on Delegated Stock**

* 1. ESPA will not acquire the ownership title to the delegated stock and such stock will remain in the ownership and possession of the Company (except in case the stock will be transferred in accordance with Article 9 of this Agreement).
  2. The Company undertakes not to use or transfer the delegated stock in any way (except in accordance with Article 9 below). The Company shall ensure that no action is taken, no transactions are executed and nothing occurs which may impact the continuous availability of delegated stock to ESPA or which may prejudice the rights of ESPA under Article 9 in any way or which creates or will create, at any point of time, any third party’s right to the delegated stock, including, without limitation, right to acquire or use the delegated stock, pledge of delegated stock to third party etc.
  3. The Company shall immediately inform ESPA of any restraints on the disposal, use or possession (control) of the delegated stock, including restraints imposed by court or any public authority, restraints resulting from compulsory execution, bankruptcy or similar proceedings etc. The Company shall also inform ESPA of any circumstances, which give reason to believe that any such restraints will be or may be imposed in the future. If such restraints are imposed, ESPA has no obligation to pay any Delegation Remuneration (as defined in Article 7.1 and stipulated in the respective Single Delegation Contract) for the time period the respective restraints are applicable and shall have the right to cancel all executed Single Delegation Contracts without any prior notice.

**Article 5**

**Obligation to Render Information, Quantity Determination**

* 1. ESPA shall have the right, at any time during normal working hours, to inspect and audit all books, records, accounts and other relevant documentation of the Company for the purpose of assessing the performance by the Company of its obligations hereunder and the correctness of any information given by the Company to ESPA. In addition, the Company shall inform ESPA of all relevant facts relating to performance of this Agreement and, at the request of ESPA, shall provide ESPA with any information on the performance of this Agreement and any information which ESPA may require for the performance of its own reporting or other obligations deriving from applicable laws and regulations. At the request of ESPA, the Company shall provide ESPA with copies of any business transactions concerning ESPA. ESPA shall have the right to visually inspect the delegated stock during normal working hours as well as to request the Company to take samples or take itself samples of delegated stock at its own expense. Should the inspection and/or audit carried out under this Article 5.1 show that any information given by the Company to ESPA is incorrect or that the Company has breached its obligations hereunder, the Company shall reimburse ESPA all costs of inspection and audit within fourteen (14) calendar days as of the receipt of the respective invoice of ESPA.
  2. The Company shall record the delegated stocks in the stock accounts separately - marked as stocks delegated to ESPA (so that the quantities of stocks delegated to ESPA can be clearly identified and distinguished from any other quantities of stocks owned by the Company or any other person). At the request of ESPA the Company shall, at any time, carry out the verification of quantity of delegated stock and report the results to ESPA. The Company shall ensure that the stock accounts indicate separately all delegations of stock, classified as per the levels of delegations, so that all delegated stocks stored at any time in different storage tanks are verifiable according to levels of delegations. Furthermore, the Company shall ensure that the stock accounts enable to verify the quantity of liquid fuels (per storage tank), which could not be (and have not been) subject to delegation as per Article 1 of this Agreement.
  3. If, according to a Single Delegation Contract, the Company has stored the delegated stocks at a third party, it must (a) ensure that ESPA can execute the aforementioned rights set forth in this Article 5 also towards the third party storage operator and (b) submit ESPA a respective declaration in the form set forth in Annex B to a respective Single Delegation Contract signed by the respective storage operator (Storage Operator’s Declaration). For avoidance of doubt, the fact that the Company has stored the delegated stocks at a third party shall in no way restrict or prejudice the obligations of the Company set forth in this Agreement. The Company shall be liable for the conduct of and circumstances arising from such third party as for the Company’s own conduct and circumstances.

**Article 6**

**Breaches of the Agreement and Contractual Penalty**

* 1. If (a) the Company breaches its obligations so that any liquid fuels specified in any Single Delegation Contract are not stored and/or are not available to ESPA in the storage tank(s) or refinery specified in the Single Delegation Contract in the quantities specified in the Single Delegation Contract and otherwise in accordance with the Single Delegation Contract and this Agreement or (b) if the Company commits a breach of its obligations set forth in Article 4.2, then

1. irrespective of whether such breach is excusable or not, ESPA has no obligation to pay any Delegation Remuneration (as defined in Article 7.1 and stipulated in the respective Single Delegation Contract which was breached by the Company) for the quantity of stock in respect of which the obligations were breached by the Company or - if such quantity is less than 500 t - at least for 500 t of stock – starting from the beginning of the month in which the respective breach occurred (or started) until the end of the month in which the breach discontinued; and
2. at the request of ESPA, the Company shall pay to ESPA, for each breach committed, a contractual penalty equal to the decuple of the annual Delegation Remuneration (as defined in Article 7.1 and stipulated in the respective Single Delegation Contract which was breached by the Company) for the quantity of stock in respect of which the obligations were breached by the Company or - if such quantity is less than 500 t – at least for 500 t of stock. If any single breach continues longer than one month, ESPA shall have the right to demand from the Company the above-referred contractual penalty again for each following month during which the breach of contract continued (including, for avoidance of doubt, for the month in which the breach commenced). ESPA shall have the right to present the claim of above-referred contractual penalty within six (6) months starting from the day it became aware of the circumstances giving rise to the claim for contractual penalty and the Company shall pay the contractual penalty within one (1) month from the receipt of respective invoice of ESPA; and
3. irrespective of whether such breach is excusable or not, if the Company has not performed its respective obligations (remedied the breach) within fourteen (14) calendar days as of the receipt of the written notice of ESPA, ESPA has a right to cancel the violated Single Delegation Contract without any advance notice.
   1. Nothing in Article 6.1 shall exclude or limit the right of ESPA to exercise any other rights or remedies against the Company arising out of this Agreement or applicable law.
   2. In case the Company has committed a breach referred to in Article 6.1 intentionally or due to gross negligence, ESPA shall have the right to cancel, without any advance notice, also any other Single Delegation Contracts concluded with the Company (even if the Company is not in breach of such Single Delegation Contracts).

**Article 7**

**Delegation Remuneration**

* 1. The remuneration for delegation (consisting of portion for goods and portion for storage) shall be indicated in respective Single Delegation Contract (the “**Delegation Remuneration**”). Any changes in Delegation Remuneration may be made only pursuant to Article 8.7 of this Agreement. The Delegation Remuneration does not include value added tax (VAT) and VAT, if applicable, shall be added to the Delegation Remuneration pursuant to the applicable legislation.
  2. ESPA shall pay the Delegation Remuneration to the Company in monthly instalments. The Delegation Remuneration shall be calculated starting from the moment when the delegated stock has been made available for ESPA in accordance with this Agreement. Each monthly instalment shall equal to 1/12 of the agreed annual Delegation Remuneration and shall be paid in arrears on the basis of invoices presented by the Company at the end of each respective month but not earlier than 14 (fourteen) days from the date of receipt of the respective invoice from the Company. In case of incomplete month, the Delegation Remuneration shall be calculated as monthly instalment that is divided with the number of calendar days in respective month and multiplied with the number of calendar days in respective month during which the delegated stock has been available for ESPA.

**Article 8**

**Term and Termination**

* 1. Each Party may cancel this Agreement by submitting to the other Party a written notice 12 (twelve) months in advance. Upon material reason, either Party may cancel this Agreement without giving advance notice. However, under no circumstances may this Agreement be cancelled or otherwise terminated during the validity of any Single Storage Contract.
  2. The beginning and the expiration of a Single Delegation Contract are indicated in the respective Single Delegation Contract.
  3. On each date of expiration of the Single Delegation Contract, the term of such contract prolongs automatically by 24 (twenty four) months if neither of the Parties submits to other Party, not later than 6 (six) months before the relevant expiration date, a written notice of its intention to terminate the respective Single Delegation Contract as of the relevant expiration date. A Party may, in accordance with previous sentence, submit a written notice of the intention to terminate any Single Delegation Contract in part, in which case the respective Single Delegation Contract will terminate as of the relevant expiration date in part, unless the respective other Party submits, within 4 (four) weeks after the receipt of the partial termination notice, a written notice of the intention to terminate the Single Delegation Contract in whole, in which case the Single Delegation Contract shall terminate as of the relevant expiration date in whole.
  4. Upon material reason, each Party may extraordinarily cancel the Single Delegation Contracts by submitting to the other Party a written notice 6 (six) months in advance.
  5. ESPA may cancel this Agreement and/or some or all of the Single Delegation Contracts without submitting any advance notice, if

(i) the compulsory execution of the property of the Company or any insolvency proceedings in respect of the Company have been commenced; or

(ii) the Company has breached any material obligation of this Agreement.

* 1. The termination of a Single Delegation Contract, as a result of which the respective Single Delegation Contract would end during the difficulties in supply (as defined in Article 1(2) of the Estonian Liquid Fuel Stocks Act) shall only have legal effect upon the relevant written consent of ESPA. If such consent is missing, the respective Single Delegation Contract shall terminate after the end of the aforesaid difficulties in supply. The termination of a Single Delegation Contract (due to expiration, cancellation or otherwise) shall not terminate or otherwise affect the rights and obligations arising from an Option Exercise Notice (as defined in Article 9.1) submitted prior to such termination, unless the Parties agree otherwise in writing.
  2. If a Single Delegation Contract has been concluded for a period longer than 3 years, either Party has the right to initiate negotiations on the adjustment of the respective Delegation Remuneration to the existing market conditions either after 2 (two) years since the execution of the relevant Single Delegation Contract or after 2 (two) years since the last adjustment of fees (i.e. since the date the last adjustments became effective) by submitting a respective written notice to the other Party. The newly adjusted Delegation Remuneration will become effective as of the beginning of the following contractual year. If the Parties do not reach an agreement on the new Delegation Remuneration within 3 (three) months as of the submission of a notice regarding initiation of negotiations, the Party demanding a change may cancel the Single Delegation Contract by submitting to the other Party a written notice 6 (six) months before the end of the running contractual year.

The “contractual year” referred to in this Article shall commence on 1 April and end on 31 March of the calendar year following the beginning of the contractual year. The first contractual year shall commence at the beginning of the term of the Single Delegation Contract and end on 31 March of calendar year following the beginning of the first contractual year.

**Article 9**

**Option**

* 1. If, in case of difficulties in supply, the Government of the Republic of Estonia (or any other public authority having the respective competence pursuant to laws and regulations that may be adopted in the future) has, on the basis of Article 7 of the Liquid Fuel Stocks Act (or any other similar law or regulation that may be adopted in the future), decided (decreed) to take the liquid fuel stock into use, then ESPA has the right, by submitting a respective declaration to the Company (the “**Option Exercise Notice**”):

1. to request the Company (and upon such request the Company shall be obliged) to sell certain quantity of certain delegated stocks specified by ESPA, at a market price, to ESPA or other person(s) specified by ESPA in accordance with Article 2 and other provisions of this Agreement or
2. in case the Company is a person to whom ESPA may make an sale offer in accordance with Article 7(7) or 7(8) of the Liquid Fuel Stocks Act - to allow the Company to use certain quantity of certain delegated stocks specified by ESPA in a certain way.

If the person(s) specified by ESPA in the Option Exercise Notice do(es) not agree with the Company on the purchase of respective stocks from the Company, the Company shall be obliged to sell the respective stocks to ESPA at the market price.

The “market price” for the purposes of this Article 9.1 shall mean the market price on the basis of the Platts CIF NWE Cargoes / Basis ARA average of the medium-quotation of the week that precede to the discharging of the delegated stocks plus/minus a fixed premium that is indicated in the respective Single Delegation Contract. The fixed premium shall take into account any possible import duties, but shall be exclusive of mineral oil tax (excise tax), VAT and stockpiling tax/stockpiling fees, if applicable. The price for the weekly discharged delegated stocks shall be paid within 14 (fourteen) calendar days (due date) after receipt of the invoice from the Company.

* 1. In case of purchase of the delegated stocks from the Company the General Conditions of ESPA for the Purchase of Liquid Fuels (version: 06/2007) shall apply.
  2. The Single Delegation Contract and the rights and obligations of the Parties thereunder (including the obligation to pay Delegation Remuneration to the Company) shall terminate in respect of delegated amounts and the respective tank capacity which are the object of the Option Exercise Notice (a) in case specified in paragraph a) of Article 9.1 - from the moment the respective delegated stocks have been fully discharged and delivered in accordance with this Agreement and the Option Exercise Notice or (b) in case specified in paragraph b) of Article 9.1 – from the moment of submission of the Option Exercise Notice to the Company. However, the Parties may agree in writing that the respective tank capacity (being the object of the Option Exercise Notice) shall continue to be available to ESPA, in which case ESPA shall pay to the Company applicable remuneration for storage (one part of the Delegation Remuneration) starting from the moment the delegated stocks have been fully discharged and the tank capacity has been actually made available to ESPA and Company has confirmed the above to ESPA in writing.

**Article 10**

**Other Provisions**

* 1. This Agreement together with its Annexes, including the Single Delegation Contracts shall constitute a uniform and integral Agreement replacing any oral and written agreements previously made between the same Parties with respect to the same subject matter as well as the respective tender documents of ESPA and bid documents of the Company.
  2. All notices, consents, approvals and other declarations of intention (the “**Notices**”) related to this Agreement or to any disputes arising from this Agreement and other communication to the respective Party hereto shall be deemed to have been duly given or made when given to the other Party against the signature or sent by registered mail to the following addresses and to the persons specified below. All such Notices may be sent also by telefax or e-mail to the respective Party, unless the Agreement explicitly requires the Notice to be submitted in written form.

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| --- | --- |
| **ESPA:** | AS Eesti Varude Keskus  Address: Pärnu mnt. 102 b, 11312 Tallinn, Estonia  Phone: +372 66 00 900  E-mail: [info@espa.ee](mailto:info@espa.ee)  Contact person: Mr. Priit Enok |
| **The Company:** | Address:  Phone:  Fax:  E-mail:  Contact person: |

* 1. This Agreement shall be governed and construed in accordance with the laws of the Republic of Estonia.
  2. Neither Party shall disclose the fact of execution or the terms and conditions of this Agreement (or Single Delegation Contracts) as well as any confidential information regarding the other Party, unless the Party is required to do so by this Agreement, applicable laws or regulations or the other Party has consented to such disclosure in advance in writing.
  3. If any of the provisions of this Agreement is or becomes invalid and/or is declared null and void, it does not affect the validity of the entire Agreement or other provisions of this Agreement. Should the Parties detect an invalid provision, they shall make their best efforts to amend such provision in order that it comply with law to the extent it remains closest to the original intention of the Parties. If consent is not achieved, the legal regulations will apply.
  4. Any amendments or changes to this Agreement are valid only if made in written form and signed by duly authorised representatives of both Parties.

**Article 11**

**Jurisdiction**

Harju County Court shall have the jurisdiction to settle any disputes arising out of this Agreement.

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| --- | --- |
| DATE AND PLACE:       ,  ………………………………….  (Signature)        (the Company) | DATE AND PLACE:       , Tallinn  ………………………………….  (Signature)  Priit Enok  Chairman of the Board  AS Eesti Varude Keskus |

**Annexes to the Agreement for the Delegated Liquid Fuel Stocks**

Annex 1 – Single Delegation Contracts

**Annexes to the Single Delegation Contracts**

Annex A – Tanklist

Annex B – Storage Operator’s Declaration (only in case a third party is the storage operator)

Annex C – Specification of the Delegated Stocks (only in case the Parties have agreed on the specific specification based on the tender documents)