

Framework Delegation Agreement for Mineral Oils

Framework Delegation
Agreement No.:

Version: June 2016

Between the Erdölbevorratungsverband
Körperschaft des öffentlichen Rechts
Jungfernstieg 38, 20354 Hamburg, Deutschland

– hereinafter "EBV" –

and

– hereinafter "Delegation Provider" –

– each a "Party" and together the "Parties" –

The Parties have agreed to enter into the following Framework Delegation Agreement ("Agreement"):

Preamble

The provisions of this Framework Delegation Agreement shall apply to all Individual Delegation Agreements and Substitutional Delegations [Ersatzdelegationen] entered into between the EBV and the Delegation Provider which were concluded after this Framework Delegation Agreement has been agreed upon or in relation to which the provisions of this Agreement have been agreed upon as binding.

Section 1 Delegation

(1) Delegation for the purposes of this Agreement means that the Delegation Provider shall, in order for the stockpiling obligations of the EBV to be complied with, permanently keep in stock for the EBV in an appropriate storage space the mineral oil that is referred to in the Individual Delegation Agreement and which is owned by the Delegation Provider and under the Delegation Provider's power of disposal.

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(2) The following delegation types are possible:

1. Contract Delegations (section 7(1) ErdölBevG [German Petroleum Stockholding Act]):

Stockpiling of certain mineral oils in precisely defined quantities in a particular tank storage facility and in a certain number of particular tanks. Stock in tanks of 5 % of the tank volume (according to the calibration certificate [*Eichschein*]) are deemed dead stock and must not be delegated. Changes of the specified tanks, of delegated quantities and changes of the tank storage facility constitute changes to the contract and shall only be permitted upon prior written agreement with the EBV. In the case of stock-keeping in another EU member state, it must be guaranteed by confirmation of the local authority in charge, to be provided by the Delegation Provider, that the delegation stock is available for stockpiling purposes in Germany (section 8(2) ErdölBevG). In addition, contract delegations that are stored in another EU member state are subject to permission by the German Federal Ministry for Economic Affairs and Energy.

The Delegation Provider shall report to the EBV – and identically also to the German Federal Office of Economics and Export Control [BAFA] (in the Monthly Oil Statistics Report [Integrierter Mineralölbericht]) using the same wording – details of the type and quantity of the mineral oil and the tank storage facility of the contract delegation by the last day of each month. The delegation quantities must also be available to the EBV at all times on any given day of the month. Availability must be proven to the external auditors of the EBV upon request.

2. Substitutional Delegations (section 7(3) second sentence ErdölBevG [German Petroleum Stockholding Act]):

Stockpiling of certain mineral oils in precisely defined quantities in a particular tank storage facility and in a certain number of particular tanks. Dead stock within the meaning of section 1(2)1 may be delegated as well. A change of storage location for the delegated quantities shall be permissible even without the express consent of the EBV; such a change must be reported to the EBV without delay. In the case of stock-keeping in another EU member state, it must be guaranteed by confirmation of the local authority in charge, to be provided by the Delegation Provider, that the delegation stock is available for stockpiling purposes in Germany (section 8(2) ErdölBevG). In addition, substitutional delegations that are stored in another EU member state are subject to permission by the German Federal Ministry for Economic Affairs and Energy.

The Delegation Provider may use a third party in order to fulfil its delegation obligations. This is subject to the third party committing to the EBV to comply with the Framework Delegation Agreement in its latest version. A further requirement shall be that in such a case the Delegation Provider or the third party is the owner of the delegated mineral oils and delegates these directly to the EBV. Together with the third party, the Delegation Provider shall be jointly and severally liable [gesamtschuldnerisch] for the fulfilment of the delegation obligations.

The Delegation Provider or the third party shall report to the EBV – and to the German Federal Office of Economics and Export Control [BAFA] (in the Monthly Oil Statistics Report [Integrierter Mineralölbericht]) using the same wording – details of the type and quantity of the mineral oil and the tank storage facility of the substitutional delegation by the last day of each month. The substitutional delegation quantities must also be available to the EBV at all times on any given day of the month. Availability must be proven to the auditors of the EBV upon request.

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(3) The Delegation Provider shall in any event be responsible for the compliance of the delegated quantity during the contract term with the agreed specification which, provided that there is such a specification, must comply at least with the DIN/EN [German/European Standard]. In the absence of any stipulation, the DIN/EN must be complied with or, if a DIN/EN does not exist, at least the quality customary in the trade must be provided.

**Section 2
Rights to Delegated Quantities**

(1) The EBV is entitled to set off the delegated quantities in full against its stockpiling obligation. The Delegation Provider shall be prohibited from

- consuming the delegated quantities,
- leaving them to third parties,
- setting them off or letting them be set off against the Delegation Provider's own compulsory stock or the compulsory stock of third parties,
- making them available to third parties.

(2) The EBV shall not acquire ownership in or possession of the delegated quantity and the storage facility. The Delegation Provider must not perform any legal action (such as pledging or assigning as security) which may compromise the availability of the delegated stock. All limitations to the actual power of disposal of delegation quantities (e.g. by way of seizures or confiscations) shall be reported to the EBV immediately [unverzöglich]. Such limitations shall entitle the EBV to stop any delegation fee payments according to section 5 for the time period of the limitation on the power of disposal and to terminate the Agreement for cause [außerordentlich kündigen] pursuant to section 6(2).

**Section 3
Duty of Disclosure, Quantity Determination**

(1) The Delegation Provider shall keep proper and clear stock accounting [Mengenbuchhaltung], suitable for audits performed by the EBV. During regular working and office hours, the EBV or its agent shall be authorised at any time to enter the premises and offices of the Delegation Provider and to examine the books and other records of the Delegation Provider, to the extent that is necessary for reviewing the Delegation Provider's obligations under this Agreement. The Delegation Provider shall further provide any required information and surrender on demand to the EBV transcripts of business transactions if these concern EBV matters. The EBV may inspect the delegated stock during regular working and office hours and take samples at its own expense or request such samples to be taken.

The aforementioned rights of the EBV shall also remain in force after the end of the delegation term, however, without exceeding the statutory retention periods for the books and records mentioned in this section 3(1).

(2) The Delegation Provider shall record the delegation quantities separately in the stock records, labelled as stock or part-stock delegated to the EBV. A quantity determination shall be performed upon request at any time, and the results shall be reported to the EBV. For all delegations, the stock records of the tanks must indicate that the contractual quantities were in stock at all times. Furthermore, it must be verifiable which stock quantities under section 1 were not permitted to be subject to a delegation.

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(3) The Delegation Provider must ensure that the EBV can also enforce the aforementioned rights against the tank storage facility referred to in the Individual Delegation Agreement.

(4) The rights of the EBV dealt with in this section shall also be extended to any employees and official representatives of the Commission of the European Union, the German Federal Ministry of Economic Affairs and Energy and the German Federal Office of Economics and Export Control.

**Section 4
Breach of Contract, Contractual Penalty**

If the Delegation Provider grossly negligently [*grob fahrlässig*] or intentionally [*vorsätzlich*] breaches material obligations [*wesentliche Verpflichtungen*] under this Agreement, the EBV is entitled, in relation to the Individual Delegation Agreement the contractual obligations of which have been violated by the Delegation Provider, to demand for any case of breach of contract a contractual penalty up to the agreed amount of delegation fee to be paid for a full term of the Individual Delegation Agreement.

The EBV reserves the right to

- a) finally retain in full or in part the delegation fee for the time period of the breach of contract,
- b) claim compensation for any potential further damages,
- c) terminate for cause [*außerordentlich kündigen*] pursuant to section 6(2) the Individual Delegation Agreement affected by the breach of contract or – in severe cases – all Individual Delegation Agreements entered into with the Delegation Provider.

**Section 5
Delegation Fee**

(1) The amount of delegation fee payable in EUR/t per year is set out in the Individual Delegation Agreement. The fee shall be exclusive of value added tax to the respective statutory amount.

(2) On entering into the Individual Delegation Agreement, the mutual claims amounting to the total fee value [*Vergütungsvolumen*] shall come into existence. In the event of suspension, the delegation fee claim according to section 5(1) expires in this regard. The fee shall be paid monthly amounting to 1/12 of the agreed annual fee in EUR, and shall be paid for the first time upon the provision of the agreed delegation quantities. The monthly instalment shall become due and payable retrospectively on the last day of each month. The monthly instalments shall be settled by the EBV by way of credit note procedure.

In entering into this Framework Delegation Agreement, the Delegation Provider confirms that it is entitled to set out the value added tax separately [*gesonderter Umsatzsteuerausweis*], and that the Delegation Provider will provide the EBV with its valid tax number. The Delegation Provider shall inform the EBV in writing without delay of any changes concerning the Delegation Provider's value added tax-related circumstances.

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The Delegation Provider shall inform the EBV immediately if the Delegation Provider or a third party has, for the tank storage, which is the subject matter of the respective Individual Delegation Agreement, been partially or fully granted or revoked permission for a value added tax warehouse [*Umsatzsteuerlager*] within the meaning of section 4 no. 4a UStG [German Value Added Tax Act] and if this also relates to tanks which are used for quantities that are delegated to the EBV. On the EBV's request, the Delegation Provider shall provide the EBV with copies of all relevant documents in this regard (application, permit, revocation) without delay. The Delegation Provider is aware of the fact that a third party within the meaning of sentence 1 of this subparagraph can, for example, be a Stockist which is not the Delegation Provider, or a company that is part of a fiscal unity for VAT purposes [*umsatzsteuerlicher Organkreis*], which the Delegation Provider or Stockist is a member of, or a legal predecessor of the Delegation Provider or Stockist, or any other third party.

Section 6 Duration of the Individual Delegation Agreement

(1) The commencement and end dates of each Individual Delegation Agreement are set out in the Individual Delegation Agreements. A notice of termination is not required.

(2) Individual Delegation Agreements can be terminated by each Party for cause [*außerordentliche Kündigung*] with a six months' notice period, provided that there is a material reason [*wichtiger Grund*], such termination to take effect no earlier than at the end of the last day of the calendar month in which the six months' notice period expires. A material cause shall particularly exist if

- a) insolvency proceedings concerning the assets of the Delegation Provider or similar statutory proceedings have been applied for, have commenced or if such application has been rejected for lack of sufficient assets in the insolvency estate to cover the costs of proceedings or
- b) there has been a change of control within the organisation of the Delegation Provider and the EBV for that reason considers at risk the due performance of the contract. A change of control has occurred if natural persons or legal entities after the execution of this Framework Delegation Agreement obtain directly or indirectly 50 % or more of the capital or voting rights in the Delegation Provider or if they may by other means exercise a controlling influence over the Delegation Provider; section 30 WpÜG [German Securities Acquisition and Takeover Act] applies accordingly.

Section 7 Suspension

(1) If under section 12 ErdölBevG [German Petroleum Stockholding Act] the German Federal Ministry for Economic Affairs and Energy has granted permission to the EBV to stockpile temporarily smaller quantities of petroleum or petroleum products than as required under law, the EBV may suspend in full or in part by way of declaration to the Delegation Provider the rights and obligations arising from the Individual Delegation Agreements.

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(2) If delegated stocks are suspended, the EBV may set off the suspended quantities against the allocation rights [*Zuteilungsrecht*] of the Delegation Provider in the event of a release pursuant to section 12 ErdölBevG, or impose an obligation on the Delegation Provider to use the delegated quantities in a particular manner or to sell them to the EBV at market prices. The market price shall be determined by the procedure that serves to determine the market prices of released stocks.

(3) As of the time of suspension referred to in the declaration pursuant to section 7(1), the mutual rights and obligations arising under the suspended Individual Delegation Agreements shall end, with the exception of the rights and obligations under section 7(2).

**Section 8
Supply into and Delivery from Storage**

(1) In the case of permanent impairment of the supply and delivery facilities, the Delegation Provider shall inform the EBV in advance and enter into negotiations on the adjustment or continuation of the Individual Delegation Agreement. If such negotiations do not lead to a result acceptable to the EBV, the EBV shall be entitled to terminate the Individual Delegation Agreement for cause [*außerordentliche Kündigung*] without notice. Any additional costs incurred in these circumstances shall be borne by the Delegation Provider.

(2) Temporary impairment of the supply and delivery facilities shall be coordinated with the EBV in advance or, if that is not possible, the EBV shall be given immediate notice in writing.

**Section 9
Delivery of Suspended Delegation Quantities from Storage**

The option of a continuous delivery from storage must be guaranteed at all times, and its commencement must be ensured within 24 hours, beginning at 8:00 am on the working day [*Werktag*] that follows the day on which the suspension (section 7(1)) was declared. A complete removal must be capable of being completed within 15 days.

**Section 10
Other Provisions**

(1) German law shall apply, excluding the provisions of the international private law and of the UN Convention on Contracts for the International Sale of Goods.

(2) If any provision of this Agreement is or becomes void or invalid, the validity of the remaining provisions shall not be affected. The Parties shall replace the void or invalid provision with a valid provision which most closely reflects the economic purpose in a legally admissible manner. If no agreement can be reached, the statutory provisions shall apply.

(3) Oral side agreements shall not be valid. Amendments and additions to this Agreement must be made in writing within the meaning of section 126 BGB [German Civil Code]. The same shall apply to a waiver of the written form requirement. The general terms and conditions of the Delegation Provider and the *Allgemeine Deutsche Spediteurbedingungen* (ADSp) [German Freight Forwarders' Standard Terms and Conditions] shall not apply. Section 475 b HGB [German Commercial Code] (warehouse keeper's right of lien) is waived.

**Section 11
Jurisdiction**

If the Delegation Provider is a merchant [*Kaufmann*], the exclusive place of jurisdiction shall be Hamburg, Federal Republic of Germany.

, dated

Hamburg, dated

Delegation Provider:



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(Stamp, full names and signatures)

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