

# Framework Storage Agreement

Framework Storage  
Agreement No.:

Version: June 2016

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

– hereinafter the "EBV" –

and

– hereinafter the "Storage Company" –

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

## Preamble

The provisions of this Framework Storage Agreement ("Agreement") shall apply to all Individual Storage Agreements entered into between the EBV and the Storage Company which were concluded after this Framework Storage Agreement has been agreed upon or in relation to which Individual Storage Agreements the provisions of this Agreement have been agreed upon as binding. This will only not apply if in the Individual Storage Agreement the Parties have agreed differently in writing within the meaning of section 126 BGB [German Civil Code] or by telefax.

## Section 1 Storage

(1) The Storage Company agrees to provide to the EBV the tank storage as specified in the Individual Storage Agreement and to store on behalf of the EBV petroleum products, including non- mineral oil-based additives to be mixed with such products (all of them together hereinafter referred to as "Petroleum Products") and/or petroleum (crude oil). The quantities of

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Petroleum Products and petroleum stored for the EBV shall hereinafter be collectively referred to as "EBV Stock". With regard to EBV owned stocks the EBV will follow the REACH regulation. If the EBV does not make use of the tank storage, the Storage Company shall keep it available for the supply of EBV Stock at all times and shall not use the storage in any other way.

(2) Storage can occur segregated or commingled (section 469 HGB [German Commercial Code]). The Individual Storage Agreement sets out which of these two options has been agreed upon.

(3) The Storage Company shall ensure that the tank storage is permanently kept in a proper structural and technical condition for the adequate stock-keeping (including supply into and delivery from storage) of the EBV Stock referred to in the Individual Storage Agreement. The Storage Company warrants that all legal provisions and official requirements are adhered to during the contract term. New legal provisions and regulatory requirements which were not yet known at the time the Individual Storage Agreement was entered into and the compliance with which would pose a disproportionate burden for the Storage Company in fulfilling the Individual Storage Agreement entitle the Storage Company to terminate for cause [*außerordentlich kündigen*] in accordance with section 11(2) each such Individual Storage Agreement affected by the new legal provisions or regulatory requirements.

(4) In the case of segregated storage, the following applies:

The Storage Company shall store the EBV Stock separately from stock of other parties and tolerate the sealing of the tanks by either the EBV or its agent. EBV seals shall only be removed with the prior written consent of the EBV.

The tank storage shall be made available to the EBV free of residue and in the state of cleanliness that is required for the particular Petroleum Product or petroleum to be stored. The Storage Company may, at the EBV's expense, put the tank storage into the same condition after the Individual Storage Agreement has ended. If the EBV requests cleaning of the tank storage, the Storage Company shall also have a cleaning obligation at the EBV's expense during the term of an Individual Storage Agreement.

To the extent that the EBV has to partially or fully bear the cleaning costs or costs of disposal of contaminated EBV Stock, the following applies: The Storage Company shall notify the EBV of the anticipated cleaning costs and costs of disposal in writing or text form before beginning with the cleaning. Upon the EBV's request, the Storage Company shall present up to three offers to the anticipated cleaning costs and costs of disposal by fit and proper cleaning- and disposal companies. Before beginning with the cleaning, the EBV needs to confirm that it bears the costs in writing or text form. After the cleaning, the Storage Company shall prove the final costs in writing or text form.

The EBV does not bear the cleaning costs and costs of disposal, if the costs are attributed to the Storage Company, such as if the tanks have to be emptied and cleaned for technical reasons.

To the extent that the EBV has to bear the costs of disposal, the derecognition [*Ausbuchung*] of such disposal quantities shall be made at the EBV's expense. In determining the quantities to be disposed of [*Entsorgungsmengen*], and in the event that cleaning emulsion has been used, care shall be taken to ensure that the evidence of the oil phase [*Ölphase*] and the evidence of used rinse water are furnished separately.

(5) In the case of commingled storage, the EBV Stock will be kept in the same tanks as the stock of other parties, including that of the Storage Company. In the case of commingled storage, the EBV shall not bear any tank cleaning costs and no quantities to be disposed [*Vernichtungsmengen*] shall be acknowledged since these have been covered by way of payment of the storage fee. The Storage Company shall in any event be responsible for the compliance

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of the stored Stock during the contract period with the agreed specification which, provided that a specification exists, must comply at least with the DIN/EN (German/European Standard). In the absence of any stipulation, the DIN/EN shall be complied with or, if a DIN/EN does not exist, at least the quality customary in the trade must be ensured. The EBV shall be responsible to ensure that at the time of supply of its Stock into storage, its Stock complies with the stipulations on quality.

If an amendment in the DIN/EN results in the Storage Company having to provide a modified quality, the Storage Company may demand that any necessary additional costs arising as a result be refunded by the EBV. Also in this case the Storage Company may demand from the EBV the throughput fee [*Umschlagvergütung*] in accordance with the Individual Storage Agreement.

In the case of imminent insolvency [*drohende Zahlungsunfähigkeit*] of the Storage Company, on the application for, commencement of [*Eröffnung*] or rejection of insolvency proceedings over the Storage Company's assets for lack of sufficient assets in the insolvency estate to cover the costs of proceedings or in the event of any other good causes, the EBV shall be entitled to demand from the Storage Company the immediate and free of charge transfer of the EBV Stock into segregated storage pursuant to section 1(4), unless such transfer is barred by compelling technical or operational reasons. If the Storage Company invokes such reasons, it shall immediately set out these reasons in detail and in relation to the tank concerned. With regard to the other tanks, the Storage Company shall carry out the immediate transfer into segregated storage.

(6) The Storage Company may replace, at its own expense, the employed tank storage with other tanks within the same facility which are equivalent in size, suitability and features. The replacement of the used tank storage is subject to the prior written amendment of the Individual Storage Agreement, which shall only be refused by the EBV for good cause [*aus wichtigem Grund*].

(7) The Storage Company shall keep copies of the Framework Storage Agreement and of the respective Individual Storage Agreement in all storage facilities concerned – in each case with all related annexes and amendments.

## **Section 2 Details of Ownership and Possession**

(1) The Storage Company shall hold the EBV Stock on behalf of the EBV within the framework of this Agreement.

(2) In the case of segregated storage and an agreed exchange [*Wälzung*] of EBV Stock pursuant to section 10, the provisions of the Exchange Agreement [*Wälzungsvereinbarung*] attached to the Individual Storage Agreement shall govern the ownership in the stock before and after exchange and the ownership in the exchanged stock [*Ersatzbestand*].

(3) In the case of commingled storage, upon the addition or withdrawal or any other commingling (e.g. by tank-to-tank transfer) of any stock belonging to the EBV, Storage Company or any third party, the fractional share of co-ownership of the EBV shall change according to the ratio of the stored part-quantities in relation to the total quantity. Any change of stock shall be recorded in the required documentation. The storage of any subsequently added, EBV- owned quantities shall also fall under the scope of this Agreement.

(4) The Storage Company shall only be entitled to dispose of the property of the EBV if the EBV has provided prior written consent (release) [*Freistellung*].

### **Section 3 Supply to and Delivery from Storage**

(1) The Storage Company shall ensure that the technical facilities at all times provide for the proper supply to and delivery from storage of the Stock in accordance with the options agreed upon in the Individual Storage Agreement.

(2) The Storage Company warrants, having due regard to the usual storage operations, a continuous delivery using the loading/unloading capacities referred to in the annex to the Individual Storage Agreement. The delivery from storage shall take place without delay and by no later than the nomination deadlines referred to in the annex to the Individual Storage Agreement. Surcharges for required overtime, weekend or holiday work shall be classified as additional expenses pursuant to section 9(1).

(3) Temporary impairments of the supply and delivery facilities shall be coordinated in advance with the EBV or, if that is not possible, the EBV must be notified of these impairments in writing without delay.

(4) In the case of a permanent impairment of the supply and delivery facilities, the Storage Company shall inform the EBV in advance and enter into negotiations on the adjustment or continuation of the Individual Storage Agreement. If such negotiations do not lead to a result that is acceptable to the EBV, the EBV shall be entitled to terminate the respective Individual Storage Agreement for cause [*außerordentlich kündigen*] in accordance with section 11(2). The additional costs for delivery which are incurred in such cases shall be borne by the Storage Company.

### **Section 4 Customs/Tax Situation**

(1) Unless, as an exception, it has been agreed otherwise expressly and in writing, the Petroleum Products shall be stored on an untaxed basis [*unversteuert*] in an energy tax warehouse [*Energiesteuerlager*] granted to the Storage Company or a third party.

(2) In the case of storage in an energy tax warehouse granted to the EBV, the EBV (owner of the energy tax warehouse [*Energiesteuerlager*]) may appoint a tax facility manager in order to comply with the fiscal obligations under section 62(1) EnergieStG [German Energy Tax Act]. For this purpose, the Storage Company shall nominate a appropriate employee. The Storage Company and the tax facility manager shall be responsible for the proper compliance with customs and energy tax regulations.

(3) If the Storage Company or a third party is the owner of the energy tax warehouse, such owner shall be liable for the charges and fines which have arisen from the owner's failure to comply with the customs and tax provisions [*abgabenrechtliche Bestimmungen*]. The EBV shall be liable for any charges which have intentionally or negligently [*schuldhaft*] been caused by the directions given by, or conduct of, the EBV.

If the EBV is the owner of the energy tax warehouse, then the EBV shall be held responsible for any fees or fines which have arisen from the failure of the EBV to comply with the customs and tax provisions [*abgabenrechtliche Bestimmungen*]. The Storage Company is liable for any charges or payment obligation for which has intentionally or negligently [*schuldhaft*] been caused by its directions or the conduct of the tax facility manager.

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(4) Regarding the value added tax-related situation of the Storage Company and especially as regards the question of the existence or non-existence of a value added tax warehouse [*Umsatzsteuerlager*], reference is made to section 9(2).

**Section 5  
Duty of Disclosure, Quantity Determination**

(1) The Storage Company shall keep proper and clear stock accounting [*Mengenbuchhaltung*], suitable for audits performed by the EBV. EBV stock shall at all times be marked as the property of the EBV. During regular working and office hours, the EBV or its agent shall be authorised at any time to enter the Storage Companys premises and offices and to examine the Storage Companys books and any other documents, provided these are relevant to the dealings with the EBV or its customers and/or suppliers. The Storage Company shall further provide any required information and surrender on demand to the EBV transcripts of business transactions if these concern EBV matters.

In the case of segregated storage, the Storage Company shall determine the stock for each Individual Storage Agreement at the beginning and end of any movement of stock that concerns EBV Stock and upon request by the EBV, using measuring methods approved by Customs, and inform the EBV immediately of the results. To the extent admissible, the EBV may also at any time demand that a determination of quantity be performed by manual measurement.

The aforementioned rights of the EBV shall also remain in force after the term of an Individual Storage Agreement has ended, however, without exceeding the statutory retention periods for the books and records mentioned in this section 5(1).

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

(2) For segregated and commingled storage alike, the quantities shall be determined uniformly according to ISO-Norm 91/1 in kg and litre 15 °C. The data shall be provided to the EBV together with the density at 15 °C for any changes in EBV Stock as well as on every taking of the inventory. Inventories shall be performed once a year by way of annual stocktaking at a time determined by the EBV as well as at any other time as requested by the EBV. Furthermore, the EBV shall be notified of its current Stock by the end of every month. Any receipt must be sent in writing. The issuer has to be stated and the receipts must be signed.

(3) The Storage Company shall determine received and delivered quantities, considering stock temperature and density, by means of:

- a) calibrated flow meters [*Durchflussmeter*] or
- b) weighing with calibrated scales or
- c) shore tank measuring [*Landtankvermessung*] as approved by the customs office.

(4) The disposal of contaminated stock must be performed in accordance with tax regulations. The disposal shall be documented and shown to the EBV by way of a disposal protocol recognised by Customs. In the case of a violation of these obligations, the return of the derecognised quantities into EBV Stock shall be arranged and the incurred energy tax shall be borne by the Storage Company. If the disposal is conducted at the EBV's expense, the Storage Company shall charge the EBV the costs incurred for the transportation and disposal and provide the EBV with the respective receipts.

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(5) The EBV shall be entitled to attend the supply to and delivery from storage and the replacement of quantity and inventories or to appoint agents to attend on the EBV's behalf. The EBV may determine the quantities together with the Storage Company and / or the customs office in charge or let the quantities be determined by an agent.

(6) The Storage Company shall not be responsible to the EBV for delivery-related shortages. Irregularities occurring during the supply of Stock for the EBV (e.g. detected quality defects, contaminations) must be reported to the EBV without delay. Irregularities shall in any event be reported to the freight carrier by way of complaint on behalf of the EBV. The measures to be taken shall be agreed upon with the EBV.

(7) The EBV or its representative may give the EBV Stock a close inspection at any time during regular working hours, perform measurements at its own expense and take samples together with the Storage Company or request samples from the Storage Company.

(8) With regard to supplies to and deliveries from storage, tank-to-tank transfers [*Umpumpungen*] and disposals [*Vernichtungen*], documents with the following information shall be sent to the EBV without delay:

- EBV contract number,
- Company name and legal form of the Storage Company,
- Quantity information in litres at 15°C, kilograms and density at 15 °C,
- Product,
- Supplier/recipient of the goods
- Energy tax status,
- Confirmation date/delivery date,
- Place of delivery.

The issuer has to be stated on every document and the documents must be signed.

### **Section 6 Quantity Calculation, Annual Inventory**

(1) The extent of the EBV's right to recover possession shall be based on the stock as determined during the last supply/delivery of stock or during the last inventory conducted in accordance with sections 5(2) and 5(3), however, after deduction of "losses acknowledged" [*anerkannte Fehlmengen*] by the EBV.

(2) If in the case of segregated storage any quantity deviations are detected during the annual inventory as compared with the EBV's right to recover possession, the EBV will invoice these deviations according to types of goods within three months of sending the inventory report. The quantity determination is conducted in accordance with sections 5(2) and 5(3). Shortages / excess quantities shall not be acknowledged by the EBV in the case of commingled storage. The aforementioned shall apply respectively to supplies from storage. Goods/services [*Leistung*] shall be deemed to have been delivered on the date of the inventory.

Losses shall only be acknowledged and not charged to the Storage Company if the Storage Company provides proof of exoneration [*Entlastungsbeweis*] pursuant to section 475 HGB [German Commercial Code] ("losses acknowledged"). Proof of exoneration may under no circumstance be based on the technical condition of the storage facility.



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Invoicing of the aforementioned quantity deviations are made by the EBV and shall be subject to market prices at the stock-keeping location. Unless otherwise agreed, the EBV may invoice based on Platt's barges fob Rotterdam average of the medium quotations of the month in which the inventory was performed.

The purchase and sales price is derived from the aforementioned market or base price, plus any applicable import duties and statutory stockpiling contributions to the respective amount. Energy tax and value added tax, if any, shall be stated separately to the statutory amount and shall be paid in addition to the purchase/sales price in EUR.

For the conversion of USD into EUR, the published market average of the ECB reference exchange rate USD/EUR valid for the month of the inventory shall apply.

As far as possible, payment of the inventory invoices shall be settled by way of set-off [*Verrechnung*]. Set-off peaks [*Verrechnungsspitzen*] shall be settled within four weeks of receipt of the invoice or credit note by the Storage Company.

### **Section 7 Liability and Insurance**

(1) The Storage Company shall in all its operations for the EBV act with the care of a prudent Storage Company. The Storage Company shall comply with all statutory and regulatory provisions. The Storage Company's liability as regards the EBV Stock starts and ends with the passage through the shut-off valve of the loading/unloading facility pipeline connection to the land- and/or waterside means of transportation.

(2) The Storage Company must ensure that the risks of stock-keeping and public liability [*Betriebshaftpflicht*] are covered by an adequate insurance policy that includes the environmental liability [*Umwelthaftpflicht*] risk and the environmental damage [*Umweltschaden*] risk (soil, air, bodies of water [water]), and the Storage Company must provide verification of such insurance cover upon request.

(3) The Storage Company shall only be liable for damage caused by fire if the Storage Company is responsible for this pursuant to section 7(1), namely in principle irrespective of whether the EBV itself has insured the EBV Stock against the risk of fire.

(4) Reference is made to the special liability provisions in sections 1(5), 4(3) and 5(4).

### **Section 8 Breach of Contract**

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

The EBV reserves the right to

- a) finally retain in full or in part the storage fee for the time period of the breach of contract,

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- b) claim compensation for any potential further damages,
- c) terminate for cause [*außerordentlich kündigen*] pursuant to section 11(2) the Individual Storage Agreement affected by the breach of contract or – in severe cases – all Individual Storage Agreements entered into with the Storage Company.

**Section 9  
Storage- and Throughput Fees**

(1) The storage fee (tank storage fee) in EUR/m<sup>3</sup> per year is set out in the Individual Storage Agreement.

The throughput fee [*Umschlagvergütung*] in EUR/t, divided into fees for supply into and delivery from storage [*Einlagerungs- und Auslagerungsvergütung*], as well as verified additional expenses shall be reimbursed if they have been listed in the annex to the Individual Storage Agreement.

In the case of exchanges [*Wälzungen*], payment of throughput fees and additional expenses cannot be claimed if the Storage Company in line with section 10 has undertaken to perform exchanges [*Wälzungen*] (stock rotation) or if a third party performs these on the Storage Companys behalf at the Storage Companys request.

If the EBV requested overtime work or if the EBV has agreed to bear costs for overtime work, such costs shall be reimbursed upon the provision of proof.

All fees in relation to quantity transfers [*Mengenbewegungen*] shall be understood to include measurements [*Vermessung*] as well as loaded and unloaded weighing. To all aforementioned fees and reimbursements the value added tax to the respective statutory amount shall be added, where applicable.

(2) On entering into the Agreement, the mutual claims amounting to the total contractual volume [*Vergütungsvolumen*] shall come into existence. The storage 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 tank storage. 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.

The settlement of throughput fee [*Umschlagvergütung*], tank cleaning costs, costs of removal and disposal of contaminated EBV Stocks as well as additional expenses shall be made by the Storage Company by issuing an invoice according to section 14 UStG [German Value Added Tax Act]. Amounts settled are due and payable within 10 days of receipt of the invoice at the EBV.

The Storage Company shall inform the EBV immediately if the Storage Company or a third party has, for the tank storage, which is the subject matter of the respective Individual Storage 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 EBV Stock. The Storage Company shall provide the EBV with copies of all relevant documents (application, permit, revocation) without delay. The Storage Company is aware of the fact that a third party within the meaning of sentence 1 of this subparagraph can, for example, be a company that is part of a fiscal unity for VAT purposes [*umsatzsteuerlicher Organkreis*], which the Storage Company is a member of, or a legal predecessor of the Storage Company or any other third party.



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On entering into this Framework Storage Agreement, the Storage Company confirms that, with the exception of the value added tax warehouse under section 9(2), second paragraph which the EBV was expressly informed about, the Storage Company is entitled to set out value added tax separately [*gesonderter Umsatzsteuerausweis*], and that the Storage Company will provide the EBV with the Storage Companys valid tax identification number. The Storage Company shall inform the EBV in writing without delay of any changes in the Storage Companys value added tax-related circumstances which concern the EBV Stock.

(3) If the EBV has caused the accrual of the energy tax liability, the EBV shall refund to the Storage Company, which pursuant to section 4(1) is the proprietor of the tax warehouse, the energy tax in EUR which within one calendar month has become unconditionally payable [*unbedingt geworden*] and the value added tax to the respective statutory amount by the due date for the undivided energy tax payment or at the time as determined by Customs.

If the accrual of any customs duties has been caused by the EBV, the EBV shall reimburse such duties to the custom debtors on the respective due date.

**Section 10  
Exchange of Petroleum Products (Stock  
Rotation)**

(1) If, in the case of segregated storage, the Storage Company has committed to exchanging [*wälzen*] for quality protection purposes (stock rotation) the stored Petroleum Products upon request by the EBV within the scope of the Storage Companys regular business either itself or by means of a Partner for Exchanges [*Wälzpartner*], a separate Exchange Agreement shall be entered into for this purpose, which Exchange Agreement shall become part of the respective Individual Storage Agreement.

(2) In the case of commingled storage, the Storage Company shall exchange the stored Petroleum Products for quality protection purposes (stock rotation) within the scope of the Storage Companys regular business either itself or by means of a Partner for Exchanges. For the implementation of the preservation commitment of the Storage Company, a separate Exchange Agreement shall be entered into which shall become part of the respective Individual Storage Agreement.

(3) If the Partner for Exchanges has not been commissioned by the Storage Company but only by the EBV, the Storage Companys remaining obligations shall remain unaffected. Costs, such as for throughput, which have been accrued by the storage facility [*lagerseitig*] shall in this case be borne by the EBV in accordance with the provisions of the Individual Storage Agreement, unless the Partner for Exchanges has committed to the EBV to bear such costs.

**Section 11  
Term of the Individual Storage Agreement**

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

(2) Individual Storage Agreements can be terminated by each Party for cause [*außerordentliche Kündigung*] with a six months' notice period, provided that there is a good cause [*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 good cause shall particularly exist if

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- a) insolvency proceedings concerning the assets of the Storage Company 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) insolvency proceedings concerning the assets of the Partner for Exchanges [*Wälzpartner*] or similar statutory proceedings have been applied for, have commenced or if such an application has been rejected for lack of sufficient assets in the insolvency estate to cover the costs of the proceedings and if the Storage Company does not within a reasonable time provide a new Partner for Exchanges or
- c) there has been a change of control within the organisation of the Storage Company, 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 Storage Agreement obtain directly or indirectly 50% or more of the capital or voting rights in the Storage Company or if they can by other means exercise a controlling influence over the Storage Company; section 30 WpÜG [German Securities Acquisition and Takeover Act] applies accordingly.

### **Section 12 Other Provisions**

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

(2) If any individual provision of this Agreement is or becomes invalid or void, the validity of the remaining provisions shall not be affected. The Parties shall replace the invalid or void 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 Framework Storage Agreement must be made in writing within the sense of section 126 BGB [German Civil Code] or by telefax. The same shall apply to a waiver of the written form requirement. The general terms and conditions of the Storage Company and the *Allgemeine Deutsche Spediteurbedingungen* (ADSp) [German Freight Forwarders' Standard Terms and Conditions] shall not apply. § 475 b HGB [German Commercial Code] (warehouse keeper's right of lien) is waived.

### **Section 13 Jurisdiction**

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

### **Section 14 Special provisions**

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, dated

Storage Company:

Hamburg, dated .....



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(Stamp, full names and signatures)

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