

General Conditions of Contract
of the *Erdölbevorratungsverband*

Version: June 2017

A. General Conditions

1 General, Scope

- 1.1 The present General Conditions of Contract shall apply to all existing and future contracts between the Erdölbevorratungsverband (“**EBV**”) and its contract partner (“**Partner**”) on the purchase and sale including “exchange” (*Tausch/Wälzung*) of mineral oil (*Mineralöl*) (“Individual Contract” respectively). The General Conditions of Contract shall only apply if the Partner is an entrepreneur (Section 14 German Civil Code, *BGB*), a legal person under public law (*juristische Person des öffentlichen Rechts*) or a special fund under public law (*öffentlich-rechtliches Sondervermögen*).
- 1.2 The General Conditions of Contract of the EBV shall exclusively apply. Deviating, contrary or supplementary general terms and conditions of the Partner will only become an integral part of the Individual Contract if and to the extent that the EBV has expressly consented to their applicability in writing. This requirement for consent shall apply in every case, e.g. also if the EBV unconditionally fulfils its own contractual obligations with the knowledge of the Partner’s general terms and conditions.
- 1.3 The following regulations shall apply to the respective Individual Contract:
- a) those which are determined in the actual Individual Contract (individually), and
 - b) these General Conditions of Contract.

If there are discrepancies in the set of rules listed in lit. a) and b) above, the individual regulations of the set of rules listed in lit. a) shall prevail over the contrary regulations of the set of rules listed in lit. b).

2 Determination of Quantities

- 2.1 All determinations of quantities shall be made in exact litres on a volume basis at 15°C. For conversions, the guideline for the determination of the taxable quantities of oil (ISO-Norm 91/1) shall be relevant.
- 2.2 The parties may mutually coordinate (by derogation from Clause 9.1 and 10.1) that an independent inspector carries out the determination of quantities. The results of this independent quantity control are binding for the parties. Each party shall bear half of the costs in this regard.

3 Purchase Price/Invoices

- 3.1 The volume at 15 °C shall be authoritative for invoicing purposes.
- 3.2 The purchase price shall follow from the Individual Contract. Unless otherwise agreed, the purchase price shall be untaxed, EU customs cleared, payable, if applicable, plus (i) the statutory stockpiling contribution, (ii) statutory energy tax, (iii) statutory VAT and (iv) additional governmental contributions and charges which exist when the respective Individual Contract is concluded or are introduced after it has been concluded, each in the statutory amount which applies to the specific delivery at the day of invoicing (hereinafter jointly referred to as “**Contributions and Charges**”).
- 3.3 The agreed purchase prices shall be fixed prices.
- 3.4 Invoices submitted by fax and by email shall be equal to invoices which are received by post.

4 Disposition

The disposition on supply/delivery (amongst others loading date, means of transport, vetting etc.) shall be made by the Partner directly with the storage company indicated by EBV.

5 Documentation; REACH Conformity

- 5.1 The respective supplier shall ensure that the storage company provides to the respective purchaser delivery documentation or confirmations of quantity (*Mengenbuchungsbelege*) respectively, indicating the following information:
- Individual Contract number,
 - Company name and legal form of the storage company,

- Quantity information in litres, kilograms and density, each at 15 °C,
- Product,
- Supplier/recipient of the goods
- Energy tax status,
- Confirmation date,
- Delivery date and
- Place of delivery.

5.2 The respective supplier shall ensure the REACH conformity of the delivery. In case of delivery to the EBV, a safety data sheet shall be supplied to the EBV by the Partner. In case of delivery by the EBV, the respective safety data sheet can be viewed or downloaded by the Partner on the EBV internet homepage on www.ebv-oil.org.

6 Retention/Offsetting

6.1 The EBV shall have a right of retention also for non-connected (*nicht-konnexe*) counterclaims.

6.2 The Partner shall only be entitled to offsetting and retention rights if his counterclaims have been determined in a legally binding manner, are undisputed or accepted by the EBV. Moreover, he shall only be entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship.

7 Liability of the EBV

7.1 The EBV shall be liable pursuant to the statutory regulations if the Partner asserts damage claims which are due to wilful intent or gross negligence, or if the EBV culpably violates a material contractual duty (*wesentliche Vertragspflicht*). Material contractual duties are such duties which are essential for the proper execution of the contract and the compliance with which the contract Partner regularly relies on and may regularly rely on.

7.2 To the extent that the EBV is not charged with intentional breach of contract, the liability for damages in the aforementioned cases is limited to the foreseeable, typically occurring damage.

7.3 Liability due to culpable damage to life, the body or health shall remain unaffected; this also applies to mandatory liability under product liability law.

7.4 Unless otherwise regulated above, a more extensive liability for damages – regardless of the legal nature of the claim which is asserted – is excluded. This applies in particular to damage claims due to other violation of duty or due to tortious claims for replacement of material damage pursuant to Section 823 German Civil Code (*BGB*).

The limitations regulated above shall also apply if in lieu of a claim for replacement of the damage instead of performance, the Partner claims the replacement of useless expenditures.

- 7.5 Insofar as the liability for damages is excluded or restricted vis-à-vis the EBV, this also applies with regard to the personal liability for damages of the employees, representatives and performing agents of the EBV.

8 Miscellaneous/Place of Jurisdiction

- 8.1 German law shall apply; the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. If the Partner is a merchant (*Kaufmann*), a legal person under public law (*juristische Person des öffentlichen Rechts*) or a special fund under public law (*öffentlich-rechtliches Sondervermögen*), the place of jurisdiction shall be Hamburg.
- 8.2 All agreements between the parties are fully contained in the Individual Contract, these General Conditions of Contract as well as other conditions which are included in the Individual Contract.
- 8.3 For the calculations of deadlines, Sections 187 et seq. German Civil Code (*BGB*) shall apply, provided that public holidays are only those of the Federal Republic of Germany (Hamburg).
- 8.4 Banking days in the sense of these General Conditions of Contract are those on which the banks in Frankfurt am Main are usually open for the entire day.
- 8.5 **The English translation of these General Conditions of Contract is provided only by courtesy. The German version of these General Conditions of Contract (*Allgemeine Kontraktbedingungen des Erdölbevorratungsverbandes*) shall prevail.**

B. Particular Conditions

9 Particular Conditions for the Sale of Mineral Oil by the EBV

9.1 Determination of Quantities

In the event of a sale by the EBV, the determination of quantities will be made by the storage company in the dispatch warehouse (subject to Clause 2.2). These measurement results are binding for the parties.

9.2 Delivery Conditions/Transfer of Risk

The release of goods by the EBV shall be upon the Partner's request, but not before a potential security has been provided and not before the signed Individual Contract has been returned.

Unless otherwise agreed (e.g. transfer in the tank), the delivery will be EXW "ex tank" at the dispatch warehouse indicated by the EBV pursuant to the Incoterms 2010.

"Ex Tank" shall mean the transfer of risk when

- a) the goods have flown through the connection flange of the pipeline which is permanently installed on the landing stage to fill tank vessels;
- b) the goods have flown through the grips of a tank farm to a pipeline system;
- c) the goods have flown through the connection flange of the permanently installed pipeline of the filling station during the filling of the railway carriage or the road tank truck.

The EBV is only obliged to deliver from its own stock.

9.3 Payment Terms

The purchase price as well as all Contributions and Charges are payable ten (10) days after delivery of the mineral oil and after a proper invoice, the confirmation of quantity (*Mengenbuchungsbeleg*) of the storage company as well as the protocol of the independent supervisory company have been received, if this was mandated pursuant to Clause 2.2.

9.4 Duty to Inspect and Make Complaints/Damage Claims

- 9.4.1 Section 377 German Commercial Code (*HGB*) shall apply. The Partner shall inspect the goods immediately upon delivery. Notices of defects are to be issued in writing immediately, but at the latest within 30 calendar days

after delivery (deadline for complaints), indicating the type and extent of the defects as well as the number of the delivery slip or the invoice. If the Partner misses the deadline for complaints due to inspection delays for which he is not responsible, and proves this to the EBV, e.g. by presenting the order, correspondence etc., the deadline for complaints shall be considered met if the EBV receives the complaint immediately after the Partner has received the inspection result.

- 9.4.2 The Partner shall bear the full burden of proof for all eligibility requirements for a claim, in particular for the defect itself, for the time the defect occurred and for the timely notice of defects.
- 9.4.3 The Partner shall not have a claim for defects in the event that there is only an insignificant deviation from the agreed quality or in the event that the usability of the mineral oil is only insignificantly impaired.
- 9.4.4 If there is a defect, the EBV reserves the right to choose the type of subsequent performance.
- 9.4.5 The limitation period for claims for material defects within the meaning of section 438 Para 1 no. 3 German Civil Code (*BGB*) is twelve (12) months, calculated as of delivery. The statutory liability of the EBV pursuant to Clause 7 remains unaffected in this regard.
- 9.4.6 The limitation period in the event of a delivery recourse pursuant to Sections 478, 479 German Civil Code (*BGB*) shall remain unaffected.

9.5 Interest

Sections 352, 353 German Commercial Code (*HGB*) shall apply.

9.6 Collateral

- 9.6.1 The EBV does not provide any securities to the Partner.
- 9.6.2 In the event of sales of the EBV, the Partner shall provide to the EBV a security in accordance with the following regulations:
 - a) Security Purpose. The security shall serve to provide collateral for existing, future and conditional contractual obligations (in particular payment and acceptance obligations) of the Partner from all sales transactions of the EBV.
 - b) Security Amount. The Partner shall provide to the EBV a security in the following amount (the “**Security Amount**“):
 - aa) In the amount of existing payment obligations of the Partner from all Individual Contracts (quantity to be made available, i.e.

quantity actually requested, in cbm multiplied with the respective purchase price that was agreed per cbm pursuant to the purchase price formula, inclusive of Contributions and Charges and exclusive of VAT).

- bb) If at the time of the collateralization, the purchase price of the amount to be made available is not yet determined (because, for instance, a monthly average price formula is used as a basis) the Security Amount is calculated as follows:

In the amount of the quantity which is to be released in cbm from all Individual Contracts

multiplied

by the respective current market price for the goods (Platts quotation of the previous day dependent on the place of delivery as well as ECB reference price USD/EUR of the previous day), plus (i) Contributions and Charges (but excluding VAT) and (ii) a location surcharge of EUR 10 per cbm of the quantity which is to be released.

- cc) In the event of a subsequent increase and/or introduction of statutory charges and/or contributions after the conclusion of the respective Individual Contract, the Security Amount shall be increased accordingly. In the event of a subsequent reduction and/or abolition of statutory charges and/or contributions after the conclusion of the Individual Contract, the Security Amount shall be reduced accordingly.
- c) Type of Security. The security shall be provided in the form of a (simple) payment guarantee issued by a credit institution or credit insurer (the “**Guarantor**”) authorized as such by the competent regulatory body in Germany or another EU member state, the Swiss Confederation or the Kingdom of Norway and authorized to do business in Germany according to the text in **Annex 1** (hereinafter referred to as “**Guarantee**”). For clarification purposes: The Partner himself cannot at the same time be the Guarantor.

The security provided to the EBV by one Guarantor is limited to an amount of EUR 150 million per Partner. As the case may be, the Securities to be provided by a Partner have to be granted by several Guarantors.

Moreover, the Guarantor has to have a credit rating concerning the Guarantor himself by an external rating agency (External Credit Assessment Institution, ECAI; hereinafter referred to as “**Rating Agen-**

cy”) whose credit assessments are recognised by the Eurosystem. The Guarantor’s rating has to confirm that the Guarantor has a low default risk or a better classification (hereinafter referred to as “**Classification**”).

If the Guarantor does not have an individual credit rating but is part of a group which has a credit rating by a Rating Agency, then the group’s rating is regarded as the Guarantor’s credit rating.

The credit rating shall not be older than 15 months at the time the Guarantee is handed over to the EBV by the Partner. For the entire term of the Guarantee, Guarantor’s rating must comply with the aforementioned Classification.

If there are several different credit ratings for the Guarantor by one or more Rating Agencies, only the rating showing the lowest, most unfavourable Classification for the Guarantor is relevant regarding obligations concerning collateral under this agreement. However, a more favourable rating is relevant if it is the most recent rating and the less favourable credit rating is at least six (6) months older than the more favourable, most recent rating.

If during the term of the Guarantee the Guarantor loses his aforementioned authorization by the supervisory body or the authorization to do business in Germany or if the Guarantor’s credit rating is downgraded from the aforementioned Classification, the Partner has to provide to the EBV another security which fulfils the aforementioned requirements within one banking day at his own initiative. The same applies upon EBV’s request if specific facts justify the assumption that the economic situation of the Guarantor has deteriorated since the credit rating was issued in such a way that a Rating Agency would no longer confirm the aforementioned Classification in a current credit assessment.

The deadline to provide another security shall be extended to ten (10) banking days in case the credit rating of the Guarantor is downgraded if the new classification of the Rating Agency does not certify for the Guarantor himself a higher default risk than a medium default risk until another security is provided. For clarification purposes: The existing Guarantee shall be maintained until another security is provided.

On request of the EBV, the Partner is obliged to prove at any time that the aforementioned authorization of the Guarantor as credit institution or credit insurer and/or the Guarantor’s authorization to do business in Germany as well as his credit rating by a Rating Agency and the recognition of the Rating Agency as ECAI are in place. If the supervisory bodies of the Guarantor or the Rating Agency make the

facts for which proof has to be provided publicly accessible on the internet, there shall be no further obligation to provide proof in this regard.

d) Release from obligation to provide Security/Group Guarantee. Under the following preconditions, Partners are released from the obligation to provide a security by a Guarantor as mentioned in lit. c):

aa) The Partner has an individual credit rating of a Rating Agency which confirms the aforementioned Classification, and in the case of balancing pursuant to the German Commercial Code (*HGB*), the Partner shows an equity capital in the capital balance within the meaning of Section 247 Para 1 German Commercial Code amounting to at least EUR 100 million or, in the case of balancing pursuant to IFRS, an equity capital within the meaning of IAS 1 (International Accounting Standards) amounting to at least EUR 100 million. In this respect, the most recent annual financial statement disclosed and certified by an auditor is to be used as a basis, which, however, must not be older than two business years (calculated from the balance sheet deadline) at the time when the security is provided.

In addition, the following shall apply:

(i) If the amount to be secured exceeds an amount of EUR 100 million, the Partner has to provide a security from a Guarantor pursuant to lit. c) or lit. d) bb) for the excess amount.

(ii) If the Partner's credit rating is downgraded in comparison to the aforementioned Classification, the Partner shall provide to the EBV a security pursuant to lit. c) or lit. d) bb) at his own initiative. The same applies if the aforementioned equity capital falls below the minimum amount of EUR 100 million in an account balance or in a financial reporting issued during the financial year with a later reference date. The same applies upon EBV's request if specific facts justify the assumption that the economic situation of the Partner has deteriorated since the credit rating was issued to such an extent that a Rating Agency would now no longer certify a low default risk or a better classification in a new credit rating or if the equity capital falls below the minimum amount of EUR 100 million.

bb) The Partner belongs to a group within the meaning of Section 18 German Stock Corporation Act (*AktG*), and another company that belongs to the same group (hereinafter also referred to as "**Guarantor**"), which has an individual credit rating from a Rating Agency confirming the aforementioned Classifica-

tion, and which, in the case of balancing pursuant to the German Commercial Code (*HGB*), displays an equity capital within the meaning of Section 247 Para 1 German Commercial Code of at least EUR 100 million, or, in the case of balancing pursuant to IFRS, an equity capital within the meaning of IAS 1 (International Accounting Standards) of at least EUR 100 million, shall provide to the EBV a guarantee with the wording of **Annex 2** (hereinafter also referred to as “**Guarantee**”). Besides that, the aforementioned regulations in lit. aa) respectively apply.

The regulations in lit. c) shall respectively apply for lit. d) aa) and bb), with the exception of the regulation concerning the credit rating of a group; this regulation exclusively applies to Guarantees which are provided pursuant to lit. c).

- e) Alternative Proof of Creditworthiness. For the purposes of these General Conditions of Contract, a confirmation provided to the Partner by the Deutsche Bundesbank about a low default risk (credit quality step 2 of the Eurosystem’s rating scale) shall be equated with the credit rating of a Rating Agency.

The remaining regulations in lit. c) and d), in particular regarding the minimum equity capital amount and regarding collateral in the event of loss of the aforementioned confirmation of the Deutsche Bundesbank, shall respectively apply. For clarification purposes: The regulations regarding the credit assessment of a group only apply to Guarantors within the meaning of lit. c).

- f) Validity of the Guarantee. Unless otherwise agreed in the respective Individual Contract, the Guarantee has to be valid for at least one (1) month from the first release (of goods). The Partner is obliged to extend the guarantee by at least one (1) additional month two (2) banking days before the deadline for the Guarantee expires, as long as not all claims for which collateral was provided have been satisfied in full. If the Partner does not provide a new guarantee, but increases an already existing guarantee for collateral purposes, the term of the Guarantee shall remain unchanged. For clarification purposes: Sentence 2 shall respectively apply.
- g) Adjustment of the Guarantee. The guarantee shall be adjusted to the amount to be secured which is calculated pursuant to lit. b) (there in particular lit. bb)) within one banking day.

- h) Utilization of the Security. The Guarantee is invoked if
 - aa) the Partner does not meet his due payment obligations (including those which become due prematurely) from the Individual Contract or does not meet them in full;
 - bb) the Partner does not accept the contractually agreed mineral oil despite delivery;
 - cc) the Partner does not meet his obligation to adjust or extend the Guarantee within one banking day, despite the EBV's respective request;
 - dd) the Partner has provided a Guarantee through a Guarantor and despite his obligation to provide another security and respective request by the EBV does not meet his obligation in this regard within one banking day, whereby the deadlines regulated in Clause 9.6.2 c) shall remain unaffected; or
 - ee) insolvency proceedings or a comparable statutory proceeding over the assets of the Partner have been opened or the opening of such proceedings has been applied for or such an application was rejected due to lack of assets to cover the costs of such proceedings.
- i) Amount of the Utilization of the Security. The security shall be invoked in the amount of the due payment obligation or in the amount of the respective damage which the EBV will probably incur or actually has incurred due to a violation of duty on the part of the Partner.
- j) Return/Release of Securities. The Partner is entitled for the securities to be returned or released to the extent that the claims for which collateral was provided have been satisfied. The EBV shall be entitled to choose the Guarantees to be released. Potential costs which might incur following the return or release of securities shall be borne by the Partner.

9.7 Repayment of Claims/Withdrawal from the Individual Contract

9.7.1 The EBV is entitled to declare claims (in particular payment obligations) which have accrued from the respective Individual Contract due and payable immediately, in full or in part (or to revoke a deferment agreement which might have been granted) and/or to withdraw in full or in part from the Individual Contract if:

- a) the Partner does not accept the contractually agreed mineral oil despite delivery;

- b) the Partner does not meet his obligation to adjust or extend a security within one banking day despite EBV's respective request, whereby the deadlines regulated in Clause 9.6.2 c) shall remain unaffected; or
- c) the Partner has provided a Guarantee through a Guarantor and does not meet his obligation to provide another form of security within one banking day despite EBV's request.

9.7.2 Moreover, the EBV is entitled to declare claims (in particular payment claims) due and payable immediately (or to revoke a deferment agreement which might have been granted) if insolvency proceedings or a comparable statutory proceeding have been opened over the assets of the Partner or the opening of such proceedings has been applied for or if such an application was rejected due to lack of assets to cover the costs of such proceedings or if the proper execution of the contract is seriously at risk since the Partner has not just temporarily ceased payments.

10 Particular Conditions for the Purchase of Mineral Oil by the EBV

10.1 Determination of Quantities

In the event of a purchase by the EBV, the determination of quantities will be made by the storage company in the receiving warehouse (subject to Clause 2.2). These measurement results are binding for the parties.

10.2 Delivery Conditions/Transfer of Risk

Unless otherwise agreed (e.g. transfer in the tank), the delivery will be DDP “free tank” at the receiving warehouse indicated by EBV pursuant to the Incoterms 2010.

“Free tank” shall mean transfer of risk and title

- a) upon receipt of bulk deliveries from tank vessels if the goods have flown through the connection flange of the pipeline which is permanently installed on the jetty of the tank farm;
- b) upon receipt from a pipeline system if the goods have flown through the grips of the pipeline to the tank farm;
- c) upon receipt of bulk deliveries from rail tank cars or road tank cars if the goods have flown through the connection flange of the permanently installed pipeline of the receiving warehouse.

10.3 Acquisition of Title Free from Third Party Rights

The Partner shall provide the goods to the EBV free from third party rights; in particular, the goods must not have been delivered to the Partner under retention of title or been transferred as security.

10.4 Payment Terms

All payments by the EBV, including Contribution and Charges, shall be made ten (10) days after receipt of a proper invoice, the confirmation of quantity (*Mengenbuchungsbeleg*) of the storage company as well as the protocol of the independent supervisory company if such company was mandated pursuant to Clause 2.2.

11 Particular Conditions for the Exchange of Mineral Oil

A so-called “exchange transaction” (*Tauschgeschäft/Wälzung*) consists of several sales or purchases respectively by the EBV under one contract number. The Particular Conditions for the sale by the EBV (Clause 9) and for the purchase of the EBV (Clause 10) shall each respectively apply also to the exchange transaction.

Moreover, the following conditions shall additionally apply to the exchange transaction:

11.1 Substitutional Delegation

The Partner shall provide to the EBV free of charge a substitutional delegation of replacement (*Ersatzdelegation*), using the EBV framework delegation agreement (*Rahmendelegationsvertrag*) in the respective version which is effective (available for download on www.ebv-oil.org) as per the balance of supplied and redelivered quantity on the basis of the respective Individual Contract, including a confirmation by the competent foreign authority, as the case may be. The substitutional delegation of replacement is exclusively made and taken into account pursuant to Section 7 Para 1 in connection with Section 4 Para 5 Petroleum Stockpiling Act (*ErdölBevG*).

A change of the storage place in Germany for the delegated quantities is admissible also without the EBV's express approval. A change of the storage place in the EU outside of Germany is only admissible with the prior consent of the competent foreign authority. Any change of the place of storage shall be documented and notified to the EBV immediately.

The Partner may use a third party in order to fulfil its delegation obligation. This requires that the third party obligates itself vis-à-vis the EBV to comply with the EBV framework delegation agreement (*Rahmendelegationsvertrag*) in the respective version which is effective. In addition to the third party, the Partner shall be liable for the fulfilment of the delegation obligation.

The Partner shall ensure that the delegation provider reports to the EBV and (with the same wording) to the German Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA*) (in the Integrated Petroleum Report [*Integrierter Mineralölbericht*]) pursuant to the sample about the product, quantity and tank farm of the substitutional delegation, each by the last day of the month. The delegation quantities have to be also available during the month at any time. The Partner shall ensure that this is proven to the external auditors of the EBV if requested and that the storage company of the delegation quantities provides all information in this regard to the EBV.

The Partner is entitled to offset quantities which he assigns to the EBV as security in the context of the so-called alternative stockpiling (*Ausweichbevorratung*) pursuant to Clause 11.5.5 against the delegation quantity within the meaning of this Clause 11.1. For clarification purposes: Offsetting also in this case is exclusively done pursuant to Section 4 Para 5 Petroleum Stockpiling Act (*ErdölBevG*).

11.2 Release from the Delivery and Redelivery Obligation

In the event of a release regulation pursuant to Section 12 Para 1 Petroleum Stockpiling Act (*ErdölBevG*), the EBV is released from its delivery obligation if the goods have not yet been handed over by the EBV. In this regard, the Partner is released from a potential redelivery obligation. If the goods have already been handed over, the Partner is obliged to provide a respective quantity to the EBV upon the EBV's first request at the place of supply or at the place of redelivery of the goods delivered by the EBV, or to have these goods count towards own allocation claims (*Zuteilungsansprüche*) from EBV inventories.

11.3 Base Price/Changes of the Base Price

The base price per cbm is identical for the Partner and the EBV and stipulated in the Individual Contract. The base price may be adjusted by mutual agreement before the first acceptance of the goods with regard to each Individual Contract. If the market price for the goods (Platts quotation dependent on the place of delivery and ECB reference price USD/EUR) deviates from the respective agreed basic price by more than ten (10) %, each party may request that the base price be adjusted to the current market price for the goods. The change of the base price shall apply to all deliveries under the respective Individual Contract. For the quantities which were already invoiced, a subsequent invoice shall be issued for the existing balance including the difference between the original and the new base price by the party who is the beneficiary of the balance.

11.4 Purchase Price

The purchase price is formed from the agreed base price plus or minus the surcharges or reductions respectively which are more closely defined in the respective Individual Contract, e.g. for logistics, quality etc., multiplied by the quantity of mineral oil in cbm which was delivered to the respective other party. The payment claim for the purchase price shall arise with each respective (partial) delivery.

The EBV shall not incur any additional handling, transport or other ancillary charges. In particular, the EBV shall not bear any overtime money/demurrage.

11.5 Collateral (Derogations and Additions to Clause 9.6)

For collateral in the context of exchange transactions, the following regulations shall apply by derogation from or in addition to Clause 9.6 respectively:

11.5.1 Security Purpose. In addition to Clause 9.6.2 a), collateral for exchange transactions shall serve as security for the sales transaction (pursuant to Clause 9.6.2 a)) as well as for any existing, future and conditional contractual obligations (in particular delivery obligations) of the Partner from the respective purchase transaction.

11.5.2 Security Amount. By derogation from Clause 9.6.2 b) aa) and bb), the following shall apply for the calculation of the respective Security Amount in the event of exchange transactions, with regard to the respective Individual Contract:

The Security Amount shall be identical to the

balance

of the quantity of mineral oil in cbm which was already released by the EBV to the Partner (actually delivered) and shall be released to the Partner (actually requested) less the amount of mineral oil in cbm which was already delivered to the EBV by the Partner

multiplied

by the respective current market price for the goods which are (yet) to be delivered by the Partner to the EBV under the purchase transaction (Platts quotation of the previous day dependent on the place of delivery and ECB reference price USD/EUR of the previous day), plus (i) Contributions and Charges (but exclusive of VAT) and (ii) a location surcharge of EUR 10.00 per cbm of quantity to be delivered.

For clarification purposes: The amount which is calculated above shall serve as a security for the Partner's contractual obligations from the sales and purchase transaction up to the amount of the sales price which was agreed in the sales transaction; a potential excess amount exclusively secures the contractual obligations of the Partner from the purchase transaction.

11.5.3 Utilization of the Security. In addition to Clause 9.6.2 h) the security shall also be called if the Partner does not meet his delivery obligations from the Individual Contract (purchase transaction) or does not meet them in full.

11.5.4 Guarantee. Guarantees pursuant to Clause 9.6.2 c) (**Annex 1**) and/or Clause 9.6.2 d) (**Annex 2**) have to include the respective extended guaran-

tee text pursuant to the square brackets (footnote 1 of the Guarantee) in order to serve as security for exchange transactions.

The Partner is free to provide a separate Guarantee for exchange transactions.

11.5.5 Type of Security. It shall apply in addition to Clause 9.6.2 c):

Alternative Kind of Security for Exchange Transactions by Alternative Stockpiling (Ausweichbevorratung). The Partner is entitled, but by no means obliged, to secure payment obligations in the amount of the security which accounts for the exchange transactions by way of so-called alternative stockpiling as follows:

- a) The obligation to provide a Guarantee shall be cancelled to the extent that the Partner transfers to the EBV mineral oil (petroleum or the petroleum products gasoline, diesel, light heating oil EL or aircraft turbine fuel JET A-1) as security in the amount of 110 % of the Security Amount which accounts for the exchange transaction ("**Security Commodity**") (alternative stockpiling). The Security Commodity must not be subject to any restrictions of use and disposal and third party rights.
- b) The **agreement in rem** (*dingliche Einigung*) with regard to the transfer as security shall be made by way of handing over a confirmation of quantity (*Mengenbuchungsbeleg*) of the storage company containing the information pursuant to Clause 5, which will authorize the EBV vis-à-vis the storage company to hand over the Security Commodity (offer) and acceptance by the EBV. Acceptance by the EBV is made with the receipt of the confirmation of quantity. Acceptance by the EBV shall be subject to the condition subsequent consisting of a written declaration of the EBV stating that it does not want to accept the offer within three (3) working days as of the date when the confirmation of quantity was received. For clarification purposes: The EBV may only make such a declaration for those offers of the Partner which do not correspond to the regulations of this Clause 11.5.5. The consequences of the condition subsequent shall have a retroactive effect on the time when the confirmation of quantity was received. The **agreement in rem** with regard to a potential re-transfer shall be made pursuant to the aforementioned regulations, whereby the acceptance of the Partner must not be subject to a condition subsequent.
- c) To the extent that the Security Commodity which was transferred as security is not consistently, completely and exclusively (i.e. not mixed with other quantities) stored in a tank for the entire security period (i.e. until the complete execution of the Individual Contracts), the

Partner shall transfer to the EBV or the EBV shall respectively receive a joint ownership share pursuant to Section 469 Para 2 German Commercial Code (*HGB*).

- d) Moreover, the Partner shall assign to the EBV all claims to which he is entitled due to loss of or damage to the Security Commodity, including all claims against insurers. The EBV accepts this assignment.
- e) The **handover** of the Security Commodity shall be replaced by the assignment of the restitution claim against the storage company pursuant to Section 931 German Civil Code (*BGB*). The Partner shall assign to the EBV his existing and future restitution claims against the storage company upon sending the confirmation of quantity (*Mengenbuchungsbeleg*). The acceptance of this assignment by the EBV shall take place upon receipt of the confirmation of quantity.

If the Partner himself possesses the Security Commodity, the handover is replaced in such a way that the Partner shall keep the Security Commodity for the EBV free of charge and with care, Section 930 German Civil Code (*BGB*). The handover shall be proven by handover of a confirmation of quantity by the Partner, which displays the EBV as the owner of the Security Commodity. If third parties become the direct possessors of the Security Commodity, the Partner shall already assign existing and future restitution claims to the EBV upon sending the confirmation of quantity. The EBV shall accept this assignment upon receipt of the confirmation of quantity.

- f) If the Security Commodity becomes subject to attachment (*Pfändung*) or other measures by third parties, the Partner shall inform the EBV immediately in this regard and shall provide all documents which the EBV requires in order to object to the attachment or other measures. The EBV is entitled to avert measures by third parties at the security provider's (Partner's) cost.
- g) The Partner is obliged vis-à-vis the EBV
 - aa) to bear all expenditures concerning the Security Commodity (warehousing costs, insurance, tax, charges etc.) and to hold the EBV harmless of all liabilities which affect the owners of the Collateral Commodity;
 - bb) not to dispose of the Security Commodity and the claims that were assigned and besides that to refrain from all acts which could result in a damage, a substantial reduction in value or a loss of the Security Commodity or the claims that were assigned;

cc) to mark in his books and documents the transfer of the Security Commodity to the EBV and upon the EBV's request to mark the Security Commodity as the property of the EBV in a way which the EBV deems appropriate.

11.5.6 The Partner has to be warned of the Realization of the Security Commodity (see Clause 9.6.2 h)) by setting an adequate deadline. In the event of realization, the EBV is entitled to request from the Partner that he shall hand-over the Security Commodity as well as the books and documents in this regard in copy to the EBV at his own cost, and to take possession of the Security Commodity and to store it at a different place.

11.5.7 It shall apply in addition to Clause 9.6.2 j):

Release of the Security Commodity. The Partner shall have a claim for the Security Commodity to be released if the value of the Security Commodity not just temporarily amounts to more than 110 % of the Security Amount which is secured by the Security Commodity. The EBV shall choose the Security Commodity which is to be released.

11.6 Invoicing

There shall be a monthly calculation of the storage/outsourcing quantities by the respective party. Both parties shall invoice the respective quantities delivered on a monthly basis at the last day of the month. VAT is payable by the 10th day of the subsequent month following on from the respective delivery. Besides that, both parties shall defer the payment obligations of the respective other party until the date of the final invoice. On the date of the final invoice (last day of the month of the last delivery), all payment obligations – inclusive of outstanding VAT calculations if any – are offset. The balance is payable by the 10th day of the subsequent month following the last delivery.
