

General Conditions of ESPA for the Purchase of Liquid Fuels

(Version: 06/2007)

1. Integral Parts of the Contract

1.1 A final and binding Contract is established by:

1) acceptance of the Bidder's (Vendor's) Bid (offer, submitted on the Bid Form) by AS Eesti Varude Keskus (ESPA) with signing the Bid Form and returning the signed Bid to the Bidder by fax to the address of the Bidder indicated in the Bid

or

2) concluding the Agreement for the Delegated Liquid Fuel Stocks.

1.2 The Contract consists of the following integral parts which shall constitute a uniform agreement between the Vendor and ESPA:

1) Variant 1 in case of purchase tender

- a) Bid signed by the Bidder (Vendor) and accepted by ESPA;
- b) these General Conditions of ESPA for the Purchase of Liquid Fuels;
- c) other Invitation Documents (see the Invitation to Tender).

or

2) Variant 2 in case of purchase of the delegated stocks that derive from the Agreement for the Delegated Liquid Fuel Stocks

- a) Agreement for the Delegated Liquid Fuel Stocks;
- b) General Conditions of ESPA for the Purchase of Liquid Fuels.

1.3 Any general conditions of the Vendor, if any, will not become an integral part of the contract and are not applicable, unless explicitly agreed in writing by ESPA.

1.4 The Contract (incl. all its integral parts) provides all the terms of the Contract and all agreements between the parties thereto. Any prior declarations of intent or agreements of the parties, which are not embodied in the Contract, are deemed not to form part of the Contract. The prior conduct of the parties shall also not affect the Contract.

1.5 Verbal agreements of the parties have no force or are invalid. Changes and amendments to the Contract must be made in writing.

2. Sale and Purchase

2.1 Subject to and upon the terms and conditions of the Contract, the Vendor shall sell, transfer and deliver to ESPA and ESPA shall purchase and accept the goods provided in the Contract.

2.2 The quality and quantity of the goods shall correspond to the conditions provided in the Invitation Documents or in the Agreement for the Delegated Liquid Fuel Stocks.

3. Delivery

3.1 The Vendor shall deliver the goods to the place of delivery and complete the delivery of the goods within the time of delivery.

3.2 The time of delivery is stipulated in the Invitation Documents or in the Agreement for the Delegated Liquid Fuel Stocks.

3.3 The place of delivery is stipulated in the Invitation Documents or in the Agreement for the Delegated Liquid Fuel Stocks. The place of delivery is the place of performance of the obligations of the Vendor under the Contract.

3.4 Unless otherwise agreed, the delivery is to be made by placing the goods at the disposal of ESPA “in tank” (INCOTERMS) at the place of delivery. The term “in tank” shall also mean “in tank of the transport” if the purchase derives from the Agreement for the Delegated Liquid Fuel Stocks.

3.5 The risk of accidental loss or accidental deterioration of goods is transferred from the Vendor to ESPA upon completion of the delivery of the goods.

3.6 The delivery of the goods is completed:

- a) in case the goods are already in the appropriate tank, when the transfer of ownership of the goods to ESPA has been recorded in the books of the Storage Operator;
- b) in case of receipt of bulk cargo from a barge, when the goods have flown through the flange of the Storage Operator’s stationary pipeline of the receiving terminal;
- c) in case of receipt of goods from a pipeline system, when the goods have flown through the valve of the branch line connecting the Storage Facility with the pipeline system;
- d) in case of receipt of bulk cargoes from railway tanker or road tanker, when the goods have flown through the flange of the stationary pipeline of the receiving terminal;
- e) in case the purchase derives from the Agreement for the Delegated Liquid Fuel Stocks, when the goods have flown through the flange of the Storage Facility’s stationary pipeline of the loading terminal.

4. Ownership Transfer

4.1 The title to the goods is transferred to ESPA:

- a) upon delivery in tank by handing over of the goods to the custody of the Storage Operator – or in case the Vendor is simultaneously the Storage Operator – by conclusion of a storage contract between ESPA and the Storage Operator (Vendor);

- b) in case of delivery of the goods free to Storage Facility, by handing over of the goods to the custody of the Storage Operator;
- c) in case the goods are already in the appropriate tank, when the transfer of ownership of the goods to ESPA has been recorded in the books of the Storage Operator;
- d) upon delivery in tank of the transport by handing over of the goods to the custody of a carrier.

In all cases the respective receiving report for declaring the Ownership Transfer shall be concluded between the parties (the Storage Operator, ESPA and the Vendor or the carrier). The receiving report shall include the quantity of goods determined by an independent inspector.

4.2 The Vendor shall deliver the goods free of encumbrances and any rights of third parties.

5. Purchase Price

5.1 The basis for calculating the purchase price of the delivered goods shall be Platts CIF NWE Cargoes / Basis ARA average of the medium-quotation of the month mentioned in the Invitation Documents. The purchase price for the delivered volume shall consist of the aforesaid price plus/minus a fixed premium.

In case the purchase derives from the Agreement for the Delegated Liquid Fuel Stocks the Vendor shall sell the goods to ESPA at a market price defined in the Agreement for the Delegated Liquid Fuel Stocks.

- 5.2 Any costs and expenses occurred before completion of the delivery of the goods, particularly for transportation and delivery will be paid by the Vendor and shall not be covered by ESPA.
- 5.3 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.

6. Payment

- 6.1 Unless otherwise agreed, ESPA shall pay the net price for the delivered goods within 14 (fourteen) calendar days (due date) after receipt of the invoice from the Vendor, provided that the delivery of goods has been properly completed and relevant documents, including a volume and quality certificate as per Article 7.3 of these General Conditions have been received by ESPA.
- 6.2 ESPA has the right of retention of the payment in case the delivery does not comply with the conditions of the Contract, e.g. in case of lack of conformity of the goods (in quantity and/or quality).

7. Quantity and Quality Determination

7.1 Quantity and quality determination is carried out at the place of delivery (in tank). Quantity determination is carried out according to the official provisions by weighing, measurement or calibrated flow control unit acceptable to the customs authority. The gauging in onshore tanks

must be carried out using standardized sounding, temperature and density determination. In case of quantity determination by flow control unit, the usage of only officially calibrated instruments is allowed. In case of volume conversion the ISO standard No 91/1 must exclusively be applied.

- 7.2 The delivered quantity in tonnes is the standard basis for invoicing, unless invoicing according to volume (litre 15° C) has been agreed upon. The volumes and weights determined by the weighing and sounding instruments, acceptable to the customs authority, are binding. Quantity and quality shall be certified by an independent inspector mutually agreed upon by ESPA and the Vendor. Costs of the verification of quantity, type and quality shall be shared equally (50/50) between the Vendor and ESPA. Concerning to this the invoice for such costs shall be issued equally to the Vendor and ESPA.
- 7.3 The Vendor is obliged to provide ESPA with an original written volume and quality certificate before the payment date.
- 7.4 ESPA has the right to appoint an additional independent inspectorate for the quantity and quality determination. The costs of the independent inspectorate appointed by ESPA shall be borne by ESPA, unless the report has shown important deviations in quantity from the data provided by the Vendor or any deviations in quality. In such case the costs of the inspectorate will be borne by the Vendor.

8. Lack of Conformity of the Goods (in quantity and/or quality)

- 8.1 The Vendor guarantees that upon the completion of the delivery the goods correspond to the specifications and conditions of this Contract.
- 8.2 The rights of ESPA in case of late deliveries or lack of conformity of the goods (including in quantity and/or quality) are defined in the Law of Obligations Act of the Republic of Estonia.
- 8.3 The rights of ESPA referred to in Article 8.2 hereabove shall include, but is not limited to, the right to demand replacement of the goods, withhold performance of its (payment) obligation, require compensation for damage or reduce purchase price or withdraw from the Contract. For the avoidance of doubt, it is clearly understood that in case ESPA will be presented any claims from the Storage Operator (or from the carrier in case the purchase derives from the Agreement for the Delegated Liquid Fuel Stocks) due to the delayed delivery or incorrect volume or damaged or defective conditions of goods, the Vendor shall reimburse to ESPA any costs and expenses related to such claims.
- 8.4 The Vendor has no right to withdraw from (*taganeda*) or cancel (*üles öelda*) this Contract, unless otherwise agreed by the Parties.

9. Applicable Law

- 9.1 This Contract shall be governed, construed and enforced in accordance with Estonian laws. No provisions of international conventions or treaties regarding contracts on international movement of goods will apply.

10. Resolution of Disputes

- 10.1 The Parties shall attempt to resolve any disputes arising from this Contract by negotiations.
- 10.2 If such disputes arising from the Contract cannot be resolved by negotiations of the Parties, each Party may take the matter to the Harju County Court for resolution.

11. Miscellaneous

- 11.1 The Vendor is not entitled to assign this Contract without the prior written consent of ESPA.
- 11.2 All notices and other communication to the respective Party hereto shall be deemed to have been duly given or made when delivered by hand or registered mail or facsimile to the Party in question to the addresses indicated in the Invitation Documents and Bid or in the Agreement for the Delegated Liquid Fuel Stocks.
- 11.3 The headings of the Invitation Documents are for convenience of reference only and shall not in any way limit or affect the meaning or interpretation of the provisions of this Contract.
- 11.4 No delay in performing an obligation or in exercising any right under this Contract shall mean exemption of such obligation or waiver of such right, nor will separate or partial performance of any obligation or exercise of any right exclude further performance of such obligation or further exercise of such right.
- 11.5 If any of the provisions of this Contract is or becomes invalid and/or is declared null and void, it does not affect the validity of the entire Contract or other provisions of this Contract. 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.