

# General Conditions of ESPA for the Sale of Liquid Fuels

(Version: 11/2010)

## 1. Integral Parts of the Contract

- 1.1 A final and binding Contract is established by acceptance of the Bidder's (Buyer'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 or e-mail to the address of the Bidder indicated in the Bid.
- 1.2 The Contract consists of the following integral parts which shall constitute a uniform agreement between the Buyer and ESPA:
  - a) Bid signed by the Bidder (Buyer) and accepted by ESPA;
  - b) these General Conditions of ESPA for the Sale of Liquid Fuels;
  - c) other Invitation Documents (see the Invitation to Tender).

Invitation Documents are hereinafter also referred to as "**Bid Documents**".

- 1.3 Any general conditions (standard terms) of the Buyer, 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 legal force and 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, ESPA shall sell, transfer and deliver to Buyer and Buyer 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 Bid Documents.

## 3. Delivery

- 3.1 ESPA shall complete the delivery of the goods at the place of delivery. The delivery of the goods shall be completed within the time of delivery.

- 3.2 The time of delivery is stipulated in the Bid Documents.
- 3.3 The place of delivery is stipulated in the Bid Documents. The place of delivery is the place of performance of the obligations of ESPA under the Contract.
- 3.4 The risk of accidental loss or accidental deterioration of goods is transferred from ESPA to the Buyer upon completion of the delivery of the goods.
- 3.5 The delivery of the goods is completed:
- a. in case the goods will be left in the tank where they are, when the transfer of ownership of the goods to the Buyer has been recorded in the books of the Storage Operator;
  - b. in case of delivery of the goods into a barge, when the goods have flown through the flange of the Storage Operator's stationery pipeline of the loading terminal;
  - c. in case of delivery of the goods into 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 delivery of the goods into railway tanker or road tanker, when the goods have flown through the flange of the stationary pipeline of the loading terminal.

#### **4. Ownership Transfer**

- 4.1 The title to the goods is transferred to the Buyer when the delivery of goods is completed.
- 4.2 The receiving report for declaring the Ownership Transfer shall be concluded between the parties (the Storage Operator, ESPA and the Buyer or the carrier).
- 4.3 ESPA shall deliver the goods free of encumbrances and any rights of third parties.

#### **5. Sale Price**

- 5.1 The sale price of the delivered goods is calculated on the basis of the quantity determined during the execution of delivery.
- 5.2 Unless otherwise stipulated in the Bid Documents, the basis for calculating the sale price of the delivered goods shall be Platts CIF NWE Cargoes / Basis ARA average of the medium-quotations of the period mentioned in the Bid Documents. The sale price for the delivered quantity of goods shall consist of the aforesaid price plus/minus a fixed premium.

- 5.3 Any costs and expenses that will occur after completion of the delivery of the goods will be paid by the Buyer and shall not be covered by ESPA.
- 5.4 The fixed premium shall be exclusive of mineral oil tax (excise tax), VAT and stockpiling tax/stockpiling fee; those will be indicated separately on the invoice and have to be paid in addition to the sale price if applicable.

## **6. Payment**

### **6.1 The Buyer shall**

- 6.1.1 pay the price for the goods to be delivered in advance before the delivery of the goods according to the invoice or preliminary invoice issued by ESPA
- or
- 6.1.2 provide an irrevocable Letter of Credit at least in the amount corresponding to the presumed sale price. The issuing bank and the wording of the Letter of Credit shall be agreed with ESPA prior.

The amount of prepayment or Letter of Credit shall be determined by ESPA, considering the presumed price of the goods in the period indicated in the Bid Documents in accordance with Commodity SWAP indicative price for this period offered by a financial institution selected by ESPA.

- 6.2 Another payment guarantee term can be stipulated in the Contract.
- 6.3 Unless otherwise stipulated in the Bid Documents, the invoices will be issued on the basis of the quantity determined by an independent inspector at the place of delivery (in tank). The independent inspector shall be mutually agreed according to Article 7.1.
- 6.4 In case ESPA has issued an invoice to the Buyer in the amount of the preliminary sale price of the goods, then after the final sale price of the goods has become known, ESPA shall issue an additional invoice to the Buyer (in case the final sale price of the goods is higher than the preliminary sale price) or credit invoice (in case the final sale price of the goods is lower than the preliminary sale price). The Buyer shall pay the unpaid part of the final sale price of the goods to ESPA within 14 (fourteen) days after receipt of the relevant invoice. ESPA shall return the amount indicated on the credit invoice to the Buyer (in case the Buyer has paid the preliminary sale price to ESPA in such extent) within 14 (fourteen) days after issuance of credit invoice, whereas ESPA is not obliged to pay any interest on this amount.
- 6.5 Upon delay with payment the Buyer shall pay delay interest in the amount of 0.06% (zero point zero six per cent) of the delayed amount per each day of delay.

## **7. Quantity and Quality Determination**

- 7.1 Quantity and quality shall be certified by an independent inspector mutually agreed by ESPA and the Buyer. The scope of the inspection as well as the reference samples shall also be mutually agreed by ESPA and the Buyer. Costs of the verification of quantity,

type and quality shall be shared equally (50/50) between the Buyer and ESPA. Concerning to this the invoice for such costs shall be issued equally to the Buyer and ESPA.

- 7.2 Quantity and quality determination is carried out at the place of delivery. 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.
- 7.3 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.
- 7.4 In case the Buyer inspects the delivered goods additionally after the completion of the delivery of the goods, those costs shall be borne by the Buyer.

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

- 8.1 The goods must correspond to the specifications and conditions of the Contract.
- 8.2 The rights of the Buyer 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 In case of lack of conformity of the goods or a discovered deficiency, the Buyer has the right, at ESPA's choice, to a top-up delivery (removal of deficiencies, delivery of the flawless goods), withdrawal from the Contract, or reduction of the sale price of the goods. If ESPA chooses top-up delivery and fails to perform, the Buyer has the right to reduce the sale price of the goods.

## **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 sale and 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 in Estonia for resolution.

## **11. Miscellaneous**

11.1 The Buyer 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 Bid Documents and Bid.

11.3 The headings of the Bid 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.