



## General Terms and Conditions for the Purchase of Products and Crude oil

Version: April 2017

### Preface

These General Terms and Conditions, the Specifications APETRA/2017/1 regarding the Framework agreement for purchase of crude oil and petroleum products and the dispositions of the specific call for tenders of which this Purchase Contract is the result are part of and applicable to every Spot Purchase Contract of mineral oils (hereinafter "Purchase Contract") entered into by ASEVA and the Seller hereinafter collectively called the Agreement.

### Definitions

1. **Purchase Contract** : means the Spot Purchase Contract and the dispositions of the specific call for tenders issued under the Specifications APETRA/2017/1 regarding the Framework agreement for purchase of crude oil and petroleum products of which this Purchase contract is the result in which these General Terms and Conditions are incorporated by reference.
2. **ADN** : latest version of the European Agreement concerning the International Carriage of Dangerous Goods by inland waterways, and annexed regulations or any other European or International agreement that would replace the ADN.
3. **"API"** means the American Petroleum Institute and **"MPMS"** means the API Manual of Petroleum Measurement Standards as amended from time to time.
4. **ASTM** : means American Society for Testing and Materials.
5. **Banking Day** : means a day upon which major banks are open for banking business in the place(s) where payment is required to be made or received hereunder.
6. **Barge** : means a craft carrying Product which is employed in port areas and sheltered waterways .
7. **EN** : European Standards, as published by the European Committee for Standardization.
8. **"EU qualified"** means that the Product is or will be in free circulation within the EU and not subject to any import duties; **"non-EU qualified"** means Product that does not fall within the meaning of EU qualified.
9. **Delivered Duty Paid (DDP)** shall have the meaning ascribed to the term DDP in Incoterms 2010 (or the latest available version) If there is any inconsistency or conflict between Incoterms and the Agreement, the Agreement shall prevail.
10. **Inspector** : Independent Inspector belonging to a company independent of the Parties with recognised expertise in the field of oil storage and oil products and crude oil inspection and testing. The Inspector is appointed by ASEVA and its cost shared 50/50 with the Seller.
11. **Metric ton or metric ton or MT**: means a quantity equivalent to a weight of 1,000 kilograms in air.
12. **Party** : ASEVA or the Seller

13. **Product** : the petroleum products, as referred to in the Purchase Contract .The Product purchased by ASEVA is always EU-qualified.
14. **Representative:** ASEVA designated person or company.
15. **Seller** : the party selling the Product to ASEVA.
16. **Specification:** characteristics of the Product, as defined by Belgian or in their absence, by the European regulations.
17. **Stock transfer** : transfer of Product title and risk within the same tank.
18. **Storage Facility:** any facilities utilised by ASEVA for storing the Products.
19. **Storage Operator:** the legal entity that stores the Products for ASEVA.
20. **Tank transfer** : transfer of Product between two tanks located in the same Storage Facility.
21. **Vessel or Ship** : means any seagoing vessel including tankers, ships and coasters carrying Product.
22. **Working Day** : means a period of twenty-four hours starting at 00H00 and finishing at 24H00 on the same day, where the day in question shall be a day when ASEVA office is open for business.

#### **Article 1 - Delivery**

The Product shall be delivered by Seller in bulk to ASEVA nominated Storage Facility (or delivery point), DDP and within a delivery date range as defined in the Purchase Contract. Delivery hereunder shall be given and taken in full or part cargo lots at the Seller's option.

#### **Article 2 - Quantity**

The quantity delivered is the quantity of the Product delivered at the Storage Facility, that shall be ascertained by the Inspector appointed by ASEVA and determined as follows :

##### Delivered ex ship, barge or train :

- where the Product is delivered from the Seller's Vessel / Barge / train directly into static shore tanks, the quantity of the Product so delivered shall be determined by reference to the Storage Facility discharge shore tank measurements or approved volume meters, in accordance with the standard practice in use at the Storage Facility at the time of discharge ;
- With ASEVA prior written agreement, when the Product can only be delivered from the Seller's Vessel / Barge / train directly into active shore tanks or where certified gauging tables cannot be used at the moment of discharging the cargo , the quantity of the Product delivered hereunder shall be determined by reference to the Vessel's discharged figures as adjusted by its Vessel Experience Factor at discharge ("VEF").

##### Delivered into tank or by stock transfer :

Where the Product is delivered into tank (from pipe line or by Tank transfer) or by stock transfer, the quantity of the Product delivered shall be determined by reference to the receiving tank gauging, in accordance with good international oil industry practice.

Quantity Units to be used are:

- Total Calculated Volume - Total calculated cubic meters (and/or barrels where indicated by local custom) reported at fifteen degrees Celsius (15 Deg C.) as otherwise defined in API's Manual of Petroleum Measurement Standards (MPMS) Chapter 1, with all corrections for temperature based on ASTM D1250-04 or the latest equivalent tables; and
- Weight - Metric tonnes, with all weights expressed "in air" in accordance with ASTM-EI Petroleum Measurement Tables (EI HM1 or equivalent).

The results ascertained by the Inspector shall be binding, except in case of fraud or manifest error.

**Article 3 - Title and Risk**

Title and risk in the Product and all liabilities with respect thereto shall pass from the Seller to ASEVA when the Product passes the inlet flange of ASEVA :

- Receiving pipeline system at the Storage Facility when delivered ex ship or ex barge or ex train ;
- Receiving tank when delivered by pipe line or by Tank Transfer.

Should the Product be delivered by stock transfer, the title and risk shall pass in tank from the Seller to ASEVA when the Inspector shall have certified that the Product meets the Specification as agreed in the Purchase Contract or in the absence of an inspection, when agreed between the Parties prior to the transfer of title and risk being completed and confirmed by the operator of the Storage Facility.

Any loss of, or damage to the Product occurring before, during or after the discharge operations, which is caused by Seller or any of their respective contractors, agents or employees, shall be for the account of Seller.

**Article 4 - Quality**

The Seller guarantees that the quality of the Product complies with the Product Specification as mentioned in the Purchase Contract.

Before each delivery at the Storage Facilities, ASEVA shall instruct the Inspector to analyze the key-points as specified in Appendix 1 of these General Terms and Conditions (which content may be amended from time to time), from a composite sample taken by the Inspector at the delivery point at the Storage Facility defined as follows:

- from a representative composite ship / barge / rail tank sample
- Into tank (if delivered from pipe line or by Tank Transfer) or by Stock transfer (if product transferred between Parties into the same tank) : from a representative on line sampler or from the receiving tank composite sample, according to the Storage Facility practice.

Three additional composite samples will be taken, sealed and kept available by the Inspector for a period of three months or longer if deemed necessary (one for the Seller, one for the Storage Operator and one for ASEVA).

In case non-conformity of the Product with the agreed specifications, ASEVA shall have the right to refuse the delivery of the Product . If the Product is delivered :

- by vessel / barge / train, the Seller shall immediately order its vessel / barge / train to vacate the discharge facilities and leave the terminal. The Seller shall replace the product within 30 days at his cost with another delivery of Product, in accordance with the quality specified in the Purchase Contract.
- by pipe, the Seller shall be obliged, within three months, to take the off-spec Product (delivered or degraded as a consequence of the delivery by the Seller) back at his own cost, and replace it by Product in accordance with the quantity and quality of the Product specified in the Purchase Contract.
- by Tank transfer, the Seller shall be obliged to replace it within 30 days at his own cost by another volume meeting the quantity and quality of the Product as agreed in the Purchase Contract.

Should the Seller be obliged to deliver another cargo under the here above provision, the original price and pricing shall remain unchanged and apply to the replaced quantity of Product.

The Seller shall hold APETRA harmless from any third party claims as regards to the provisions of this article.

All adverse financial consequences, if any for ASEVA, arising from the Seller delivering the Product not in accordance with the terms of the Purchase Contract shall be recovered from the Seller by ASEVA.

#### **Article 5 - Inspection**

ASEVA, its Inspector or its Representative may request to attend at its own expense and risk the loading operations as an observer only. The Seller shall not unreasonably withhold its consent to such request.

Sampling and testing, with regard to quality and quantity, shall be in accordance with the latest approved methods as published in the Manual of Petroleum Measurements Standards (the "API Manual").

The inspection for quantity and quality determination at the Storage Facility shall be appointed by ASEVA, and its cost shared 50/50 by both Parties, each share being invoiced directly by the Inspector according to each Party agreed tariff. The Inspection procedure will be carried out in accordance with ASEVA GT&C's and ASEVA Product Delivery Inspection Procedure.

#### **Article 6 - Import and excise duties, VAT, EU documentation**

The Product delivered by Seller to ASEVA designated Storage Facility under each Purchase Contract shall be EU qualified and Delivered Duty Paid.

Seller shall be responsible to provide any necessary documentation to the relevant local customs authorities at discharging port, establishing that the Product is EU qualified and therefore in free circulation within the EU.

ASEVA will not be held responsible for any cost in the event of missing document.

### **Article 7 - Payment**

Invoices may be given by electronic mail at [admin@ASEVA.be](mailto:admin@ASEVA.be) followed by an original hard copy sent by post.

Payment shall be made in full in Euros, without any deduction, withholding, set off or counterclaim of any amount, upon production of the Inspector report and the Seller's invoice or any other required document. Should a full set of clean original Bills of Lading be required by ASEVA and found unavailable at the time of payment, a Seller's Letter of Indemnity in a form acceptable to ASEVA shall be used in lieu of such missing documents to secure ASEVA payment.

The final price shall be stated in Euros. Should the price be based on a formula, it shall be calculated according to the terms and conditions of the Purchase Contract within three Working Days after the end of the pricing period and shall be converted in Euro as follows : each daily price as calculated according to the price formula of the Purchase Contract shall be converted in Euro, using the same day ECB fixing.

In case a quoted day is a Bank Holiday in Europe, then the previous ECB fixing shall be used for that day.

ASEVA shall arrange for payment to be made into the Seller's designated bank account, with outgoing payment value date not later than ten Working Days after receipt of the invoice by ASEVA.

Costs for money transfer (swift or other costs) will be split equally between the parties, and each party will bear the cost of its own bank.

Payments falling due on a Sunday or on any Monday which is a Belgian non –Banking Day shall be made on the first Banking Day following. Payments falling due on a Saturday or any other Belgian non-Banking Day shall be made on the last Banking Day prior.

### **Article 8 - Means of transportation**

Seller has the full responsibility for the entire transportation process and its associated risks. In particular, Seller shall check the discharge terminal restrictions directly with terminal operator.

### **Article 9 - Port and Discharging expenses**

The discharging costs, within the fence of the discharge terminal, are for ASEVA's account.

All other expenses pertaining to the discharge of the Seller's vessel / barge / train including but not limited to, all port dues, overtime costs, all charges and expenses relating to the berthing / arrival and unberthing / departure of the vessel / barge / train, anchorage and towing, shall be borne by the Seller.

### **Article 10 -Laytime and demurrage**

For whatever reason, ASEVA will not be liable, nor pay for demurrage.

### **Article 11 - Nomination**

Seller shall send his nomination in due time directly to the ASEVA designated Storage Facility operator and shall make sure that all correspondence is copied to ASEVA.

Applies in case of delivery by barge or by Vessel.

The Vessel or Barge shall at all times be subject to acceptance by the Storage Facility.

The Seller shall be responsible for nominating a Vessel or Barge which does not exceed the restrictions for the particular port and/ or terminal and/or berth (which restrictions are available upon request from the Storage Facility) and which is accepted by the port and/or terminal authorities.

Unless otherwise agreed, the Seller shall make the nomination by fax or mail stating the Purchase Contract reference number to the Storage Facility (copy to ASEVA's Operating Department) three (3) Working Days prior to the first Day of the agreed delivery date range and such nomination must be received during working hours before 03 PM Brussels local time. If received after that time on the Day in question, it shall be deemed to have been received at 09 AM the next following Working Day.

#### Delivery by Vessel

Unless otherwise requested in the Purchase Contract, the nomination shall state:

1. Name of Vessel
2. Flag
3. Year built
4. Summer DWT
5. Length over all
6. Beam
7. Summer draft
8. Estimated draft on arrival
- 9 Classification : Name of society and class
10. Name of Vessel's P&I Club

and any other information or documents reasonably required by the Storage Facility (and / or by ASEVA) regarding delivery of the Product.

#### Delivery by Barge

The nomination shall state:

1. Contract number
2. Name of Barge
3. EURO number of Barge
4. The quantity
5. The Product
6. ETA (one day)

and any other information or documents reasonably required by the Storage Facility (and / or by ASEVA) regarding delivery of the Product.

Each nomination shall at all times be subject to acceptance and approval by the Storage Facility operator.

Seller warrants that – at the time of nominating its means of transportation - it is familiar with all latest port and Storage Facility limitations and restrictions. Seller acknowledges that it shall be responsible for nominating a means of transportation that meets the port and Storage Facility limitation and restrictions.

Seller will make sure that :

- the Vessel nominated shall be owned by a member of the International Tanker Owner Pollution Federation Limited.
- The Vessel shall comply with the requirements of the International Safety Management (ISM) Code and shall have on board valid documents as required by the ISM Code and Solas (Safety of Life at Sea).
- The Vessel or Barge shall remain throughout the voyage and up to the discharge of the product in a Protection and Indemnity Club, member of the International Group of P&I Clubs, at Seller expenses.
- Seller will make sure that the Barge nominated shall have a valid ADN original certificate of approval on board and shall have in place security procedures on board in compliance with ADN Chapter 1.10. (Security provisions of Part 1 – General Provisions).

#### Documentary instructions

ASEVA shall communicate to the Seller its documentary instructions.

ASEVA's documentary instructions for Vessels are detailed in Appendix 2. Additional documents may be required if deemed necessary.

#### **Article 12 - Assignment**

Neither Party shall assign its rights and obligations under the Agreement, in whole or in part, without the prior written consent of the other Party.

If such written consent is given and wherever the assignment is made, the assigning Party shall remain jointly and severally liable with the assignee for the full performance of its obligations under the Agreement.

The assignee shall always be one of the by ASEVA selected suppliers in accordance with the APETRA framework agreement 2017/1.

#### **Article 13 - Insurance**

The responsibility for securing insurance, whether against marine or other risks, shall rest wholly with the Seller until the Product is delivered to ASEVA.

#### **Article 14 - Notices**

All notices to be given hereunder by either Party to the other shall be considered valid if given in writing, sent by facsimile or courier communications and delivered to the other Party at its address or telefax number specified in the Purchase Contract for such purpose unless otherwise specifically provided in this Agreement and shall, unless otherwise provided herein, be deemed to have been given on the Day on which such communication ought to have been delivered in due course of postal, facsimile or courier communications.

Any alteration to the contacts or addresses specified in this Agreement shall be notified immediately by letter or telex to the other Party.

## Article 15 - ISPS

The following clause applies to all deliveries except to the products and crude delivered DDP or DES to Storage Facility reserved for barge deliveries:

1. Seller's shall procure that the vessel shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) ,
2. the vessel shall when required submit a Declaration of Security (DoS) to the appropriate authorities prior to arrival at the discharge port.
3. Notwithstanding any prior acceptance of the vessel by the discharge port/Storage Facility, if at any time prior to; the arrival of the vessel at the discharge port the vessel ceases to comply with the requirements of the ISPS code:
  - a. ASEVA shall have the right not to berth such nominated vessel at the discharge port and any demurrage resulting shall not be for the account of ASEVA.
  - b. Seller shall be obliged to substitute such nominated vessel with a vessel complying with the requirements of the ISPS Code. If title and risk to the cargo on board the vessel subsequently substituted pursuant to iii) b) has already passed to ASEVA, such title and risk shall be deemed to have reverted to the Seller.
4.
  - a. ASEVA shall procure that the discharge port/Storage Facility/installation shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code).
  - b. any costs or expenses in respect of the vessel including demurrage or any additional charge, fee or duty levied on the vessel at the discharge port and actually incurred by the Seller resulting directly from the failure of the discharge port/Storage Facility/installation to comply with the ISPS Code shall be for the account of ASEVA, including but not limited to the time required or costs incurred by the vessel in taking any action or any special or additional security measures required by the ISPS code.
5. Save where the vessel has failed to comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code), ASEVA shall be responsible for any demurrage actually incurred by the Seller arising from delay to the vessel at the discharge port resulting directly from the vessel being required by the port facility or any relevant authority to take any action or any special or additional security measures or undergo additional inspections, by virtue of the vessel's previous ports of call.
6. ASEVA liability to the Seller under this Purchase Contract for any costs, losses or expenses incurred by the vessel, the charterers or the vessel owners resulting from the failure of the discharge port/terminal/installation to comply with the ISPS Code shall be limited to the payment of demurrage and costs actually incurred by the Seller in accordance with the provisions of this clause.



7. Demurrage due by ASEVA under the provisions of this article 14 shall be paid, notwithstanding the provision of the article 9 of the present general terms and conditions.

**Article 16 - REACH, Health, safety and environment**

The Seller warrants that he respects the requirements and obligations of Regulation No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals ( "REACH' ), so as to allow legal import and placing on the market of the Product and/or the substances contained in the Product which are sold and/or delivered under the Agreement.

The Seller shall provide the Buyer with a copy of the current Material Safety Data Sheet (MSDS) in connection with the Product.

For all deliveries at a Storage facility designated by ASEVA, Seller shall ensure that he or his representatives including the transportation company's staff respect the HSE policies of the discharge terminal designated by ASEVA.

**Article 17 - Trade control and boycott**

Neither Party shall be obliged to perform any obligation otherwise required by this Agreement, including but not limited to an obligation to (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity, or (b) engage in other act(s)) if this would be in violation of, inconsistent with, or expose such Party to punitive measures under any applicable laws, regulations, decrees, ordinances, orders, demands, requests, rules or requirements relating to international boycotts or embargoes, trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws applicable to such party (the "**Trade Restrictions**").

Where any performance by a Party would be in violation of, inconsistent with, or expose such Party to punitive measures under the Trade Restrictions, such Party (the "**Affected Party**") shall, as soon as reasonably practicable and at the latest two weeks after publication of the relevant rule, give written notice to the other Party of its inability to perform, with reference to the relevant rule, this clause 15, the obligations affected by the relevant rule and the scope and the impact of the effect.

Once such notice has been given, Parties shall convene within 7 working days in order to discuss the matter which gave rise to the notice and they shall discuss in good faith whether the notice has been sent with cause or without cause and which alternatives have the same economic effect as performance of the contract while in conformity with the Trade Restrictions.

If no alternatives for performance of the contract are available, the Affected Party shall be entitled:

- (i) to immediately suspend the affected obligation (whether payment or performance) until such time as the Affected Party may lawfully discharge such obligation; provided that the Affected Party shall, where this is not contrary to the relevant Trade Restrictions in question, use its reasonable efforts to limit the effects of the rule on its obligations; and/or
- (ii) where the inability to discharge the obligation continues (or is reasonably expected to continue) until the end of the contractual time for discharge thereof, to a full release from the affected obligation, provided that where the relevant obligation relates to payment for goods which have already been delivered, the

- affected payment obligation shall remain suspended, and no interest shall accrue on such outstanding payment amount, until such time as the Affected Party may lawfully resume payment; and/or
- (iii) where the obligation affected is acceptance of the vessel, to require the Seller to nominate an alternative vessel.

In each case without any liability whatsoever (including but not limited to any damages for breach of contracts, penalties, costs, fees and expenses) unless the Seller knew or should reasonably have known before entering into the contract that its performance would be in violation of, inconsistent with, or expose such Party to punitive measures under the Trade Restrictions.

### **Article 18 - Anti corruption**

1. The Parties each agree and undertake to the other that in connection with this Spot Purchase Contract, they will each respectively comply with all applicable laws, rules, regulations, decrees and/or official government orders relating to anti-bribery and anti-money laundering and that they shall each respectively take no action which would subject the other to fines or penalties under such laws, regulations, decrees or orders.
2. ASEVA and the Seller each represent, warrant and undertake to the other that they shall not, directly or indirectly,
  - (i) pay, offer, give or promise to pay, accept or authorize the payment of, any monies or the transfer of any financial or other advantage or other things of value to:
    - a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
    - an officer or employee of a public international organization;
    - any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization;
    - any political party or official thereof, or any candidate for political office;
    - any director, officer, employee or agent/representative of an actual or prospective counterparty, supplier or customer of Buyer or Seller;
    - any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities, or
    - engage in other acts or transactions,
  - (ii) if such act is in violation of or inconsistent with the anti-bribery or anti-money laundering legislation applicable to any of the Parties.
3. In particular, Seller represents and warrants to ASEVA that it has not made any payments or given anything of value to officials, officers or employees of the government of the country in which the crude oil originated or any agency, department or instrumentality of such government in connection with the crude oil which is the subject of the Purchase Contract, which would be inconsistent with or contravene any of the above-referenced legislation.

ASEVA or the Seller may terminate the Purchase Contract forthwith upon written notice to the other at any time, if the other is in breach of any of the above representations, warranties or undertakings. In the notice of termination, the terminating Party shall refer to the relevant facts as well as to the representation, warranty or undertaking that the other is in breach of within this clause 16.

#### **Article 19 - Applicable law**

The Purchase Contract including these General Terms and Conditions will be governed, construed and enforced in accordance with Belgian Law to the exclusion of Belgian private international law and any applicable international convention including the Vienna convention of 11<sup>th</sup> of April 1980 on the International Sale of Goods.

If any of the articles of the Purchase Contract including these General Terms and Conditions is or becomes invalid and/ or is declared null and void, it will not affect the validity of the current Purchase Contract. The Parties are obliged to agree upon an article that is the nearest to the intention and the spirit of the invalid article/ articles that has/ have been declared null and void. If such agreement is not reached, the respective legal regulations will be applied.

The place of jurisdiction is Brussels, Belgium.

Before instituting any legal proceeding, the Parties will try to resolve the dispute by mediation. To this end, the Parties will organise at least two meetings to discuss the conflict before starting legal proceedings. The invitation for these meetings must be sent by registered letter.

#### **Article 20 - Force Majeure**

Neither Party shall be liable for any delay in or failure of performance of the terms of this Agreement if and to the extent such delay or failure is attributable to force majeure.

For the purposes of this Agreement "force majeure" shall be regulated by Articles 1147 and 1148 of the Belgian Civil Code.

If either Party is prevented or delayed from or in performing any of its obligations under this Agreement by force majeure it shall promptly give written notice to that effect to the other Party, stating the particulars of such force majeure and of the obligations thereby affected, and shall thereupon be excused the performance or punctual performance as the case may be of such obligations for so long as the circumstances of force majeure may continue. A Party so affected by force majeure shall use every reasonable effort to minimise the effects of force majeure upon the performance of this Agreement and shall promptly resume performance as soon as reasonably possible after removal of the circumstances of force majeure.

#### **Article 21 - Termination**

Notwithstanding anything elsewhere in the Agreement to the contrary, ASEVA may at its sole discretion, terminate the Purchase Contract immediately upon written notice to the Seller in the event that the Seller becomes bankrupt or insolvent, enters into arrangement with its creditors or has any petition or proceedings under Insolvency Laws commenced against it.

### **Article 22 - Assignment**

Seller shall not assign its rights or obligations under the Purchase Contract in whole or part without the prior written consent of ASEVA, which shall not be unreasonably withheld.

### **Article 23 - Miscellaneous**

23.1 Severability: if any clause of the Purchase contract is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, the remainder of the Purchase Contract (and of such article) shall not be affected except to the extent necessary to delete such illegal, invalid or unenforceable clause (or part thereof).

23.2 Survivability : if for any reason, the Purchase Contract shall be terminated, then such termination shall be without prejudice to any rights, obligations, or liabilities of either Party which have accrued at the date of termination but have not been performed or discharged, and any part of the Purchase Contract having any relevance thereto or any bearing thereon shall, notwithstanding the termination of the Purchase Contract, continue in force and effect.