



## General terms and conditions for the sale of crude oil and oil products

Version: 3 May 2016 – Filed with the Chamber of Commerce in Rotterdam under number 24134320

### Preface

1. These binding general terms and conditions for sale (“**General Terms and Conditions for Sale**”) are applicable to each Sales Contract, as defined in this document, and form an integral part of it.
2. Other general terms and conditions, which may be used by Buyer, are explicitly rejected and shall not be applicable. Other (general) terms and conditions shall only be part of the Sales Contract to the extent they are explicitly incorporated therein.

### Definitions

1. “**API**”: means the American Petroleum Institute and the “**MPMS**” means the API Manual of Petroleum Measurement Standards as amended from time to time.
2. “**ASTM**”: means the American Society for Testing and Materials.
3. “**Buyer**”: means the contracting party (natural or legal person) who purchases the Product from COVA under the Sales Contract.
4. “**Calendar Day**”: means a 24 hour period from 0.00 up to and including 23.59. “
5. “**CIF**”: means “Cost, Insurance and Freight” as per the Incoterms; if there is any inconsistency or conflict between the Incoterms and the Agreement, the Agreement shall prevail.
6. “**COVA**”: means the *Stichting Centraal Orgaan Voorraadvorming Aardolieproducten* (the Dutch National Petroleum Stockpiling Agency) or its successor in title, as referred to in article 1 of the *Wet voorraadvorming aardolieproducten 2012* (the Dutch Oil Stockpiling Act) as published in the *Staatsblad 2013, 15*, effective since April 1<sup>st</sup>, 2013, and as may be amended from time to time. COVA has its statutory seat in Rotterdam and is registered there with the Chamber of Commerce under number 24134320.
7. “**DAT**”: means “Delivered At Terminal” as per the Incoterms ; if there is any inconsistency or conflict between the Incoterms and the Agreement, the Agreement shall prevail.
8. “**Dutch Oil Stockpiling Act**”: means the *Wet voorraadvorming aardolieproducten 2012* and its implementing decrees, as amended from time to time.
9. “**EN**”: means European Standards, as published by the European Committee for Standardization (ECN).



10. **“EU-qualified”**: means that the Product is or will be in free circulation within the EU and not subject to any import duties.
11. **“FOB”**: means “Free On Board” and shall have the respective meaning ascribed thereto in the Incoterms; if there is any consistency or conflict between the Incoterms and the Agreement, the Agreement shall prevail.
12. **“Force Majeure”**: means events qualifying as defined in article 12 of these General Terms and Conditions for Sale. Force Majeure cannot relate to the obligation to pay the Purchase Price.
13. **“Incoterms”**: means the International Commercial Terms of the International Chamber of Commerce (ICC) or i.e. the Incoterms 2010 (or the latest version published) as referred to in the Sales Contract.
14. **“Inspector”**: means an independent Inspector, appointed and mutually agreed by COVA and the Buyer, belonging to an entity independent of the Parties with recognised expertise in the field of oil storage and oil products inspection, testing and measurement.
15. **“ISPS Code”**: means the International Code for the Security of ships and of port facilities and the relevant amendments to Chapter XI of SOLAS adopted by the International Maritime Organisation (“IMO”), as may be amended from time to time.
16. **“Loading Date”**: means the date range or date as specified in the Sales Contract.
17. **“Metric ton” or “metric ton” or “MT”**: means a quantity equivalent to a weight of 1,000 kilograms in vacuo.
18. **“Party”**: means the Buyer or COVA , jointly indicated as the Parties.
19. **“Product”**: means the crude oil and/or other oil product as referred to in the Sales Contract, and any other product designated under the *Wet voorraadvorming aardolieproducten 2012* (the Dutch Oil Stockpiling Act), effective since April 1<sup>st</sup>, 2013.
20. **“Provisional Price”**: means the price the Buyer should owe COVA as calculated on any moment before the calculation of the Purchase Price by COVA using the pricing formula and the then applicable quotations at the time the advance must be paid by the Buyer or the Surety must be made by the Buyer.
21. **“Purchase Price”**: means the final price that the Buyer owes COVA as specified in the Sales Contract.
22. **“Sales Contract”**: means the written contract, in which these General Terms and Conditions for Sale are incorporated by reference (Annex 2, format), plus any amendments as agreed between the Parties.
23. **“SOLAS”**: means the International Convention for the Safety of Life at Sea.
24. **“Specifications”**: mean the characteristics of the Product, as set out in the Sales Contract.
25. **“Stock Transfer”**: means transfer of the Product, title and risk within the same Tank.

26. **“Storage Facility”**: means the facilities and installations utilised by the Buyer for storing the Products or an alternative delivery point if so designated and agreed in the Sales Contract.
27. **“Storage Facility Operator”**: means the owner of the Storage Facility or its designated operator.
28. **“Supply Crisis”**: means the events specified in the Dutch Oil Stockpiling Act or as determined by the International Energy Agency, established in Paris.
29. **“Surety”**: means an irrevocable and unconditional bank guarantee which is acceptable to COVA and is provided by a reputable Dutch bank which is also acceptable to COVA, in accordance with annex 1, as may be amended from time to time in good faith by COVA.
30. **“Tank”**: means a storage space on land, including but not limited to caverns, capable of storing the Product.
31. **“Tank Barge”**: means a craft carrying the Product which is employed in port areas and sheltered waterways.
32. **“Tank Transfer”**: means a transfer of the Product between two Tanks located in the same Storage Facility.
33. **“Vessel”** or **“Ship”**: means any seagoing vessel including tankers, ships and coasters carrying the Product.
34. **“Working Day”**: means a period of twenty-four hours starting at 00H00 and finishing at 23H59 on the same Day, where the day in question shall be a day when the office of COVA is open for business.

## **Article 1 – Title and risk**

### *1.1 Transfer of ownership*

1. Regardless of the method of loading, the ownership of the Product is only transferred to the Buyer after a Surety within the meaning of article 4.2 has been provided, or the Purchase Price has been fixed in accordance with the Sales Contract and has been paid in full to COVA.
2. Prior to the transfer of ownership, the Buyer may not transfer the right of ownership or otherwise encumber of the Product, mix the Product with other products or use it as surety.

### *1.2 Transfer of risk*

1. In case the loading takes place by means of a Vessel or Tank Barge, the risk in the Product delivered under the Sales Contract shall pass to the Buyer as the Product passes the permanent hose connection of the Vessel or Tank Barge at the Storage Facility.



2. In case the loading takes place by means of a tank lorry or train, the risk in the Product delivered under the Sales Contract shall pass to the Buyer as the Product passes:
  - a. the inlet manifold of the tank lorry in question, as the case may be, in the case of bottom loading; or
  - b. the outlet flange of the Storage Facility's flexible hose, in the case of gravity fed top loading.
3. In case the loading takes place by means of a pipeline, the risk in the Product delivered under the Sales Contract shall pass to the Buyer as the Product passes the inlet flange of the Buyer's receiving Tank.
4. In case the loading takes place by means of a Tank Transfer, the risk in the Product delivered under the Sales Contract shall pass to the Buyer as the Product passes the inlet flange of the Buyer's receiving Tank.
5. In case the loading takes place by means of a Stock Transfer, the risk in the Product delivered under the Sales Contract shall pass to the Buyer at such time and Calendar Day and in such Tank(s) as shall either be specified in the Sales Contract or as agreed between Parties prior to such transfer being effected and, where applicable, confirmed by the Storage Facility Operator of such Tank(s).
6. If the Buyer does not load the Product on the scheduled date/dates or if the inspection is not done on the scheduled date by fault of the Buyer, the risk will still be transferred to the Buyer on the scheduled date/dates.
7. Irrespective of the modus of loading, Buyer and COVA shall fulfill all applicable legal and other requirements incumbent on them regarding the environment, dangerous substances, inland shipping, pipeline operations, safety, security, ISPS Code.

## **Article 2 – Quality and quantity**

### **2.1            Quality**

1. COVA guarantees that the Product meets the Specifications as agreed in the Sales Contract and complies with the generally accepted standards for the Product. Special characteristics of the Product must be explicitly set out in the Sales Contract based on the quality certificate.
2. The Buyer is solely responsible for the use of the Product and, subject to the Specifications and any other express designation in the Sales Contract, COVA does not provide any guarantees concerning the use of the Product by the Buyer.

### **2.2            Quantity.**

1. COVA delivers the Product quantity that is determined in the Sales Contract.
2. In case of delivery by tank lorry, the quantity of the Product is determined with reference to the measurements of the meter device of the Storage Facility (flow meter / weighing scale).
3. The quantity loaded is determined by means of a flow meter, tank gaugings or weighing scale of the Storage Facility, except in cases of manifest incorrectness in which case the Parties estimate the quantity delivered in good faith and by mutual consultation.

The following quantity units are used:

- total calculated volume - total calculated cubic meters (and/or barrels at 60 degrees Fahrenheit where indicated by local custom) measured at fifteen degrees centigrade (15 Deg C.) as set out in API's MPMS (Manual of Petroleum Measurement Standards), Chapter 1, with all corrections for temperature based on ASTM D1250-80 or the latest equivalent tables; and
- weight - Metric tons, with all weights expressed "in vacuo" in accordance with ASTM-IP Petroleum Measurement Tables (IP200 or equivalent).

### **Article 3 – Inspection**

1. Parties shall ensure that the Inspector checks the quantity of the Product to be delivered and takes (3) samples which are kept by the Inspector for at least three (3) months. If one of the Parties requests so from the Inspector thereof in writing before the expiration of three (3) months, the other Party will in no way prevent the Inspector to keep the samples further for the time specified in the request and keep these samples against payment by the requesting Party of the price charged by the Inspector.
2. Complaints, if any, on account of the provisions in the first paragraph of this article shall be communicated to COVA by the Buyer as soon as possible, but ultimately within thirty (30) Calendar Days from delivery, in case of default whereof the Buyer shall be deemed to have accepted the Product delivered by COVA as in conformity with the agreed Specifications and with the generally accepted standards for the Product.
3. Parties shall ensure that the findings of the Inspector are recorded in a report submitted to COVA and Buyer by the Inspector. Those findings are final and binding for COVA and the Buyer, except in cases of fraud or manifest error.

### **Article 4 – Purchase Price, Surety, advance and payment**

#### *4.1 Purchase Price*

1. Unless a fixed price mechanism is agreed in the Sales Contract, the Purchase Price is determined on the basis of daily international quotations. The method of calculation is specified in the Sales Contract. The Purchase Price does not include taxes, fees and/or levies associated with or connected to the Sales Contract, which may be charged separately.
2. The cost for loading the Products and for the addition of any additives and colouring agents are for account of the Buyer.
3. All government-imposed measures that increase or decrease the Purchase Price, are passed to the Buyer and form part of the Purchase Price.



4. COVA shall send the invoice by electronic mail or by an original hard copy sent by post for the Products concerned to the Buyer within seven (7) Calendar Days after Bill of Lading date and in case of delivery by Tank Barge seven (7) Calendar Days after the receipt of the applicable delivery documents.

#### 4.2 *Surety*

1. The Buyer shall provide COVA the Surety in relation to the Sales Contract.
2. The amount covered by the Surety should at least be at a level of 120 % of the Provisional Price as calculated on that moment in time.
3. COVA shall always have the right to ask an increase of the amount covered by the Surety as from the moment the Provisional Price reaches 95 % of the amount of the Surety.
4. This increase of the amount of the Surety will be such that the amount of the Surety becomes 120 % of the newly calculated Provisional Price.
5. The size of the Surety is intended to cover the Purchase Price, interest on arrears and other payments which the Buyer must undertake, to ensure the liability of the Buyer for taxes, fines, convictions and special tax demands pursuant to article 6.2, as well as the liability of the Buyer pursuant to article 8.2. COVA shall apply the Surety in good faith without judicial intervention and notice of default.
6. COVA is not obliged to deliver as long as the Buyer did not or not properly constitute the Surety and may suspend delivery if the Buyer fails to comply with the request for an increase of the Surety.
7. If several successive Sales Contracts between the same Parties are concluded, annex 1 can be adapted so that one Surety is issued as surety for the various successive Sales Contracts, which nevertheless does not appear to also restrict the size of the Surety but only to prevent that each time a new Surety must be constituted.

#### 4.3 *Advance*

1. If in exceptional cases the Buyer will not be able to provide a Surety, the Buyer may ask COVA to agree to advances on the Purchase Price. In that event the account of COVA should be credited by the Buyer with an advance on the Purchase Price at the latest at noon of the Working Day preceding the delivery or on any other moment stipulated in the Sales Contract. The amount of the advance will be 100 % of the Provisional Price as calculated on the Day before payment of the advance. At all times, COVA has the right to claim an increase of the advance if the circumstances show that the Purchase Price will be higher than the previously used Provisional Price and the Buyer must act on this request within three (3) Working Days.
2. COVA is not obliged to deliver as long as COVA has not received the advance and may suspend the delivery if the Buyer fails to comply with the request to increase the advance.

#### 4.4 *Payment*

1. The Buyer pays the Provisional Price after each delivery and within seven Calendar Days after Bill of Lading on the basis of 90% of the average of the price quotations until the day of delivery, with final payment of the Purchase Price based on the average quotations as defined in the Sales Contract. The



Buyer pays the final Purchase Price by bank transfer within seven (7) Calendar Days after the invoice date to the bank account as indicated by COVA on the invoice, unless the Sales Contract expressly provides a different payment term.

- a) If a Surety is set, the Buyer shall pay the Purchase Price by bank transfer within the payment term. When the payment is not made in time, COVA has the right to, immediately and upon request, call the Surety set by the Buyer, for the amount of the Purchase Price and any other amounts due to COVA covered by the Surety.
- b) Any advance paid by the Buyer will be deducted from the Purchase Price. If the advance is less than the Purchase Price, the Buyer shall pay the difference between the advance and the Purchase Price to COVA. At all times, COVA shall have the right to (i) suspend the loading of the remaining Product which is not covered by the paid advance and (ii) limit the deliveries to the remaining of the paid advance. In the event the Buyer has paid an advance which is higher than the Purchase Price, COVA shall repay the difference between the advance and the Purchase Price to the Buyer.

2. If the Buyer does not agree with any information contained on an invoice, it must protest the invoice within seven (7) Calendar Days after the invoice date. If no complaint is made within that period, the Buyer is irrefutably deemed to have accepted it except in case of a manifest error of COVA. Payment of the invoice is indisputably assimilated to the acceptance thereof.
3. Parties pledge to accept and pay the gross remuneration of the Inspector shared equally (50/50) according to their own agreed tariff with the Inspector for such service, and ensure that the Inspector invoices each amount owed directly and transparently to each Party.
4. Payment shall be made upon production of the Inspector report and the COVA's invoice and any other required document. Should a full set of clean original Bills of Lading be required by the Buyer and found unavailable at the time of payment, a COVA's Letter of Indemnity in a form acceptable to the Buyer shall be used in lieu of such missing documents to secure Buyer's payment.
5. Should the price be based on a formula, it shall be calculated according to the terms and conditions of the Sales Contract within three (3) Working Days after the end of the pricing period. If the price is agreed to be in Euros it shall be converted in Euro as follows: each daily price as calculated according to the price formula of the Sales 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.
6. 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.
7. Payment is always net, without discount, deduction, offset or counterclaim of any amount.
8. In case of late payment the Buyer shall after a proper notice of default provide payment of interest on arrears amounting to the interest rate determined in accordance with legal trade interest (*wettelijke handelsrente*) as defined in the Dutch Civil Code concerning combating late payment in commercial transactions, increased by one (1)% per month. In addition, the Buyer shall after a proper notice of default be liable for the compensation of any judicial or extrajudicial costs, incurred by COVA in order to recover the payment of the Purchase Price, including the fees for its lawyers, with a fixed minimum of EUR 1,500.



## **Article 5 – Transportation, demurrage and overtime, nominations and insurance**

### *5.1 Transportation*

1. The Buyer shall have the sole responsibility for procuring the means of transportation of the Product. Buyer's means of transportation shall comply with all applicable governmental, local and port authority regulations or any other regulations of whatever nature in force at the Storage Facility.

### *5.2 Demurrage and overtime – nominations*

1. COVA will not be liable for any demurrage. Any overtime will not be paid by COVA and will, if need be, be invoiced by COVA to the Buyer. If the demurrage is recoverable from the party responsible, COVA will make a reasonable effort to recover the demurrage from the party responsible. Only in case COVA receives demurrage from the party responsible, COVA will pay the received amount to Buyer.
2. The Buyer is responsible for the nomination of a Vessel or a Tank Barge that does not exceed the valid restrictions for the specific port, terminal and berthing place (these restrictions are available upon request at the Storage Facility) and for its acceptance by the port and/or terminal authorities. The Vessel or Tank Barge shall at all times be subject to acceptance by the Storage Facility Operator.
3. The Buyer is responsible for the nomination of the vehicles (tank lorries, rail tanker) intended to load the Products and their acceptance by the Storage Facility Operator. The Buyer undertakes to comply with all access and safety rules of the Storage Facility, imposed by the rules of the Storage Facility.
4. Each nomination must be sent by e-mail to COVA with a copy to the Storage Facility Operator. The minimum notice for Vessels is three (3) Working Days and for Tank Barge or "pump-overs" two (2) Working Days in advance.
5. Other possible costs, including but not limited to overtime, port or wharf or harbour dues, will be borne by the Buyer.

### *5.3 Insurance*

1. The Buyer concludes an adequate insurance policy from an insurer with an excellent reputation against liability arising from the Sales Contract as well as its non-contractual liability relating to the Sales Contract.

### *5.4 Documents*

1. COVA undertakes, to the extent it is allowed within the permission granted to it by the Board of Customs and Excise, to issue the documents customary in the trade.

## **Article 6 – Taxes, levy and dues**



1. The Buyer is responsible for all government charges, including but not limited to taxes, levies, dues, which may be charged at any stage after the passing of the risk. If these are charged to COVA, these are indicated separately on the invoice. COVA shall provide all the necessary documentation.
2. The Buyer is liable to COVA for the taxes and charges, fines, interest and additional costs resulting from violations or irregularities during or in connection with the transportation of the Product, incorrect or incomplete signatures and late or not received back in proper form by the Storage Facility Operator.

#### **Article 7 – Disputes**

1. The Buyer checks the Product for conformity with regard to the Specifications. Every complaint in this regard should be reported in writing within thirty (30) Calendar Days after completion of the loading, failing which the Buyer is irrefutably deemed to have accepted the Product as delivered.
2. COVA is only responsible for hidden defects when the Buyer reports this within thirty (30) Calendar Days after completion of the loading, unless it can be shown that COVA was aware of these defects at the time of the delivery.
3. Complaints concerning visible or hidden defects may in any event only be expressed until the Product is mixed with other petroleum products. In the event of timely complaint, the Buyer refrains itself of such mixing, so that evidence can be provided.
4. Complaints concerning the quantity and quality of the Product are resolved exclusively on the basis of the findings by the Inspector in accordance with Article 3.3.
5. A dispute does not allow the Buyer to suspend carrying out its payment obligation.

#### **Article 8 – Liability**

##### *8.1 Liability of COVA*

1. COVA is not liable if the Buyer has not complied with the terms set out in article 3.2 and articles 7.1 up to 7.3 of these General Terms and Conditions for Sale.
2. In case of default by COVA, COVA has the right to choose between (i) the delivery of the missing quantity or the replacement in good faith of the quantity of the defective Product within a reasonable time, unless this has a material negative effect for the Buyer, or (ii) the payment of damages to a maximum value of the portion of the Purchase Price corresponding to the missing or defective portion of the Product.
3. In addition to the foregoing, in respect of any claims relating to COVA's failure to supply the agreed quantity or with respect to any deficiency of quantity or variation in quality, COVA shall in no circumstances be liable for more than the positive difference between the market price and the agreed selling price of the Product for the quantity not taken for delivery under the Sale Contract.

##### *8.2 Liability of the Buyer*



1. Notwithstanding any other grounds or cases of liability, the Buyer is responsible for all damage caused by itself, any third parties assigned by the Buyer and their respective staff to the movable and immovable property of COVA and the Storage Facility Operator.
2. Buyer will indemnify COVA against any liability, costs, taxes, fines, penalties, interests, levies, imposts, charges and duties, resulting from using or non-clearance of customs or excise documents or the failure to give any required notice timely.
3. Where the Buyer fails to take delivery of any of the Product under the terms of the Sales Contract, and such failure is not excused through any other provision of the Sales Contract, COVA shall, in addition to any other legal remedies it may have, be entitled to sell the Product comprised in such delivery for the Buyer's account, in a public or private sale after issuing seven Calendar Days notice to the Buyer and the price so obtained shall be deemed conclusively to be the best price that COVA could obtain.
4. The Buyer shall reimburse COVA for any positive difference between the price(s) stated in the Sales Contract and the price(s) obtained through public or private sale for the quantity of the Product not taken for delivery by the Buyer, together with all expenses incurred by COVA through the Buyer's failure to take delivery of any of the Product.
5. The Buyer agrees to indemnify and hold COVA and its Affiliates harmless in respect of any liability, loss, damage or expense of whatsoever nature that COVA may sustain by reason of a third party bringing a claim against COVA for personal injury and/or death and/or loss caused by the Product (including, but not limited to, the handling of the Product) following the passing of risk of the Product.

### 8.3 *Liability of the Buyer and COVA*

1. Notwithstanding anything else in the Sales Contract and these General Terms and Conditions, no Party shall be liable to the other Party under or in connection with the Sales Contract and these General Terms & Conditions for the other Party's (i) loss of actual or anticipated profit; (ii) losses caused by business interruption; (iii) loss of goodwill or reputation; and (iv) or any indirect, special or consequential cost, expense, loss or damage even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the Parties and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.
2. The Buyer and COVA shall take all reasonable measures to mitigate damages.

### **Article 9 – REACH, health, safety and environment**

1. COVA represents and warrants that it 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 Sales Contract. COVA shall provide Buyer with a copy of the current Material Safety Data Sheet (“**MSDS**”) in connection with the Product.
2. For all deliveries at a facility designated by the Buyer, COVA shall ensure that it or its representatives including the transportation company's staff respect the Health, Safety and Environment (“**HSE**”) policies of the discharge terminal designated by the Buyer.

## **Article 10 – Trade, control and boycott**

1. Neither Party shall be obliged to perform any obligation otherwise required by the Sale Contract forming part thereof, 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**”).
2. 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 (2) 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 article 10, the obligations affected by the relevant rule and the scope and the impact of the effect.
3. Once such notice has been given, Parties shall convene within three (3) Calendar 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.
4. If no alternatives for performance of the Sales Contract (in conformity with the Trade Restrictions) are available, the Affected Party shall – at his discretion – be entitled:
  - a. 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
  - b. 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;
  - c. to terminate the Sales Contract forming part thereof, forthwith upon written notice to the other Party at any time; and/or
  - d. where the obligation affected is acceptance of the Vessel, to require the nominating Party 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 COVA knew or should reasonably have known before entering into the Sales Contract that its performance would be in violation of, inconsistent with, or expose such Party to punitive measures under the Trade Restrictions.

## **Article 11 – Anti-corruption**

1. The Parties each agree and undertake to the other that in connection with the Sales 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. Buyer and COVA each represent, warrant and undertake to the other that they shall not, directly or indirectly, 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 the Buyer or COVA;
  - 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;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, COVA represents and warrants to Buyer 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 and/or oil products which are the subject of the Sales Contract, which would be inconsistent with or contravene any of the above-referenced legislation.
4. Buyer or COVA may terminate the Sales 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 as much as reasonably possible refer to the relevant facts as well as to the representation, warranty or undertaking that the other is in breach of within this article 11.

#### **Article 12 – Force Majeure**

1. Neither Party shall be liable for the non or delayed performance and/or the malperformance of its obligations if and to the extent that, and as long as the performance is, wholly or partly, temporarily or permanently, delayed, obstructed or prevented due to Force Majeure. Force Majeure shall, inter alia, mean a shortcoming, which cannot be attributed to the Parties, including in any case:
  - a. the compliance with a requirement or request by any governmental agency, port, local or other authority or any other body or person, which (who) convincingly appears or indicates to be such agency or authority, or which (who) acts on behalf thereof;
  - b. preventions, restrictions or obstructions with respect to the storage, supply and/or removal.

2. Force Majeure shall be regulated in accordance with the Dutch civil code. Not considered Force Majeure shall be (i) the non or delayed performance and/or the malperformance of obligations by third parties who have undertaken these obligations vis-à-vis a party (ii) the situation in which there is an oil crisis or imminent oil crisis, but the normal supply and removal procedures still apply, (iii) the situation in which a government body has altered permit requirements and (iv) the payment obligation of the Buyer.
3. If a Party is prevented or delayed due to Force Majeure, it shall as soon as possible give written notice to that effect to the other Party, stating the particulars of such Force Majeure, the obligations thereby affected and the necessary proof, and shall thereupon be excused from performing such obligations for so long as the circumstances of Force Majeure may continue.
4. A Party so affected by Force Majeure shall use every reasonable effort to minimise the effects of Force Majeure upon the performance of its obligations, shall inform the other Party immediately when the Force Majeure no longer occurs and shall promptly resume performance as soon as reasonably possible after removal of the circumstances of Force Majeure.
5. If either Party has proved that due to or as a result of Force Majeure compliance with the obligations in the Sales Contract is not possible, the obligation of that Party shall be suspended during the period of Force Majeure, without prejudice to the right of the other Party – without giving further notice of default and without prior intervention by the court – to immediately cancel the Sales Contract wholly or partly or, as the case may be, to consider the Sales Contract terminated, if the period of Force Majeure is at least thirty (30) Calendar Days and compliance with the Sales Contract may in fairness no longer be expected from this other Party.
6. In case of a Supply Crisis Buyer shall make every effort, in joint consultation with COVA, to act to the best of its ability in COVA's best interests.

### **Article 13 – Oil Supply Crisis**

1. In case of an oil crisis within the meaning of the the Dutch Oil Stockpiling Act or as determined by the International Energy Agency, established in Paris, or its successor, Buyer shall make every effort, in joint consultation with COVA, to act to the best of its ability in COVA's best interests.

### **Article 14 – Termination**

1. In case of non or incomplete payment of any sum that the Buyer is due under the Sales Contract, including any interest or costs, and no proper Surety is in place, COVA has the right to terminate the Sales Contract without prior judicial intervention or notice of default after:
  - ii. expiration of the (agreed) payment term and a consecutive remedy period of 8 Calendar Days; and
  - iii. a subsequent written termination notice by COVA.
2. If the Buyer is the subject of a procedure of termination, bankruptcy (*faillissement*), liquidation (*ontbinding*), judicial reorganization, suspension of payment (*surseance van betaling*) or protest or if it becomes insolvent or if it transfers all or a substantial portion of its assets, or the Buyer fails to arrange the Surety (an irrevocable and unconditionally bank guarantee), COVA (subject to any contrary, compelling provision of Dutch law) has the right, with immediate effect and without compliance with

any notice or payment of any fee, to unilaterally terminate the Sales Contract by registered letter, without any right of the Buyer for compensation/damages.

3. COVA has the right, following a termination, to unilaterally, at its discretion and without notice, to consider any other agreements concluded with the Buyer as dissolved or the implementation thereof suspended. COVA is not obliged to pay any compensation to Buyer and/or any third party in the event of dissolution.
4. If the Buyer does not load the Product on the scheduled date or dates, due to any cause(s) that is attributable to the Buyer and without being excused by any other provision of the Sales Contract, COVA has the right to terminate the Sales Contract without prior judicial intervention or notice of default and without any right of the Buyer for compensation/damages. COVA also has the right to keep the Product at the cost and expense of the Buyer.

#### **Article 15 – Assignment**

1. The Buyer may transfer, with the prior express written consent of COVA, its rights under the Sales Contract only to an affiliated company within the meaning of article 24b of book 2 of the Dutch civil code. COVA shall not withhold such consent unreasonably. The Buyer may not transfer its rights under the Sales Contract to a third party.

In each case of transfer, the Buyer remains jointly and severally liable together with the transferee for all obligations under the Sales Contract, including these General Terms and Conditions for Sale.

2. If required by the Dutch Minister of Economic Affairs, COVA has the right to transfer its rights under the Sales Contract to any private or public legal body that is charged with the tasks that COVA currently performs pursuant to the the Dutch Oil Stockpiling Act.

#### **Article 16 – Exchange of data, correspondence and notices**

1. All correspondence between COVA and the Buyer takes place according to the applicable data included in the Sales Contract or, if that information is missing, otherwise known.
2. All notices to be given under the Sales Contract by either Party to the other shall be considered valid if given in writing, sent by e-mail, facsimile or courier communications and delivered to the other Party at its (e-mail) address specified in the Sales Contract for such purpose unless otherwise specifically provided in the Sales Contract and shall, unless otherwise provided herein, be deemed to have been given on the Calendar Day on which such communication ought to have been delivered in due course of postal, e-mail or courier communications.
3. Any alteration of the contact details must be reported by the relevant Party through registered letter or per e-mail to the other Party.
4. Each Party shall bear the risk of non-receipt of correspondence and documents if they have not complied with the formalities of this article.

#### **Article 17 – Severability**

1. If one or more of the articles of these General Terms and Conditions for Sale and/or the Sales Contract are or become invalid and/or are declared invalid or legally impossible and/or unenforceable, this does not have any effect on the validity of the other articles of the General for Sale and Conditions and Sales Contracts.
2. In that case, COVA and the Buyer ensure that the article is replaced by an article that corresponds most closely to the intent and spirit of the article that is invalid, declared invalid or legally impossible or is unenforceable.

#### **Article 18 – Alteration**

1. These General Terms and Conditions for Sale can be altered at any time in good faith by COVA and published on the website of COVA ([www.cova.nl](http://www.cova.nl)). For each Sales Contract, the terms and conditions that apply at the moment of signing the Sales Contract, will be communicated to the contracting partner.
2. The one-time or repeated non-application of one or more provisions of these General Terms and Conditions for Sale does not constitute a waiver of rights and does not prevent COVA from yet appealing to this (these) article(s).
3. The Sales Contract may only be altered expressly, in writing and with approval of both Parties.

#### **Article 19 – Miscellaneous**

1. Deviations to these General Terms and Conditions for Sale can only be agreed to explicitly and in writing.
2. In order to be enforceable non-written communications shall have to be confirmed in writing.
3. Deviation by COVA from these General Terms and Conditions for Sale or from a stipulation in the Sales Contract, and/or the circumstance that COVA at any time does not invoke a right to which COVA is entitled, shall not imply that COVA shall be deprived of its rights in any way.
4. The Buyer expressly waives the application of its own general terms and conditions, even when these are integrated into any document of the Buyer that has not been specifically protested by COVA or when this is referred to in such document.
5. In the event of any conflict between any provision (or part thereof) of these General Terms and Conditions for Sale and any provision (or part thereof) of the Sales Contract, the latter always prevails.

#### **Article 20 – Applicable law and jurisdiction**

1. COVA maintains strategic oil stocks for the Netherlands on the instructions of the Minister of Economic Affairs. COVA is responsible for the purchase, sale and storage of crude oil and oil products and must comply with the conditions laid down in the *Wet voorraadvorming aardolieproducten 2012* (the Dutch Oil Stockpiling Act) as published in the *Staatsblad 2013, 15*, effective since April 1st, 2013, and as may be amended from time to time.

2. The General Terms and Conditions for Sale and each Sales Contract are governed by Dutch law, with the exclusion of any applicable international convention such as the Vienna Convention of 11th of April 1980 on the International Sale of Goods.
3. All disputes which may arise in connection with the Sales Contract and these terms and conditions or in connection with further agreements, which might be the result thereof, shall be determined at COVA's choice either by the competent court in Rotterdam or in accordance with the Arbitration Regulations of The Netherlands Arbitration Institute in Rotterdam. In case of arbitration, the arbitral tribunal shall consist of one (1) arbitrator and the place of arbitration shall be in Rotterdam. The procedure shall take place in Dutch or English language and the arbitral tribunal shall give judgment in accordance with the rules of Dutch law. A dispute as referred to in this article shall be considered to exist if one of the Parties notifies the other thereof.
4. Without prejudice to the provisions under 20.3 the possibility exists, in cases of urgency, for the Parties to institute summary proceedings. In that case the president (*Voorzieningenrechter*) of the district court in Rotterdam shall be competent.



ANNEX 1 to the COVA's GT&C's for the sale of crude oil and oil products: specimen of Surety in case of a Sale in US Dollars

## **GUARANTEE**

The undersigned, [=], established at [=]

TAKING INTO CONSIDERATION:

- that [=], hereinafter referred to as "**Company**", has bought from Stichting Centraal Orgaan Voorraadvorming Aardolieproducten (*Dutch National Petroleum Stockpiling Agency*) of Rotterdam, hereinafter referred to as "**COVA**", a quantity of [=] of [=], stored in a tank facility which is located in the Netherlands.
- that COVA requires a bank guarantee that this agreement will be fulfilled by "**Company**"

hereby declares as follows:

1. The undersigned undertakes unconditionally and irrevocably to guarantee COVA that "**Company**" will fulfil all its commitments under the above agreement for a value of U.S. Dollar [=] (in writing: U.S. Dollar [=] million).
2. The undersigned undertakes to accept liability, upon the first request and upon receipt of written notice from COVA that "**Company**" has not fulfilled its obligations to COVA, to pay to COVA whatever sum is, according to such written notice, considered due to COVA, viz. up to the aforementioned sum of:  
  
U.S. Dollar [=] (in writing: U.S. Dollar [=] million).
3. Alterations or additions to the agreement upon which this guarantee is based, such as extensions to the term, specifications etc., agreed between COVA and "**Company**" shall have no effect upon the validity of this guarantee.  
The undersigned dispenses with his/her right to be informed of such alterations and/or additions.
4. This guarantee shall remain in force until [=], after which date no further claims under this guarantee can be entertained and this guarantee must be returned to the undersigned.
5. If and as soon as, in the opinion of COVA, the transaction between COVA and "**Company**" has been completed in accordance with the agreement before [=], COVA shall return this bank guarantee to the undersigned.

This guarantee is subject to Dutch law.

Yours faithfully,



ANNEX 2 to the COVA's GT&C's for the sale of crude oil and oil products: Sales Contract (format)