



## **Framework Crude Against Products Agreement 2008/4**

**APETRA**, a limited non-profit-making company under public law, with its registered office and offices at 66 boulevard de l'Impératrice, 1000 Brussels, hereinafter called "**APETRA**"

and

**Xxx**, type of company, with its registered office at ..... and offices at ....., hereinafter called the "**Refiner**",

hereinafter collectively called the "Parties".

agree to the following framework Crude Against Product Agreement, herein after called the Framework Agreement.

### **1. Preface**

This framework agreement complies with European and Belgian legislation with respect to minimum stocks of oil and petroleum products. A summary of all the Belgian legislation applicable to this order can be found on the APETRA website: <http://www.apetra.be>.

This framework agreement is not governed by the public procurement Act as it does not imply any transactions subject to payments. The signed framework Crude Against Product Agreement do currently, i.e. in normal market situations, not impose any rights and/or obligations on APETRA nor on the Parties. They only determine the terms and conditions for potential contracts in times of energy crisis.

In times of crisis the Framework Crude Against Products Agreements will be activated by APETRA when launching a call for tenders between the Signatories. At such times APETRA will be able to invoke the negotiation procedure without preliminary notification in implementation of article 17, §2, 1, 3 of the public procurement Act of 24 December 1993. However, this will have been preceded by a fully-fledged competition process.

Notwithstanding the fact that this framework agreement is not subject to the formal application of public procurement legislation, APETRA will closely observe the general award principles. The call for tenders will be widely distributed, also on the Internet page of APETRA ([www.apetra.be](http://www.apetra.be)). The conclusion of the framework agreements and the allocation of Individual Agreements relating to the simultaneous sales of crude oil and purchase of finished products shall be done in a transparent way and with respect to the non-discrimination and equal opportunities principles. Interested companies will have the opportunity to sign the Framework Crude against Product Agreement at all times.

The dispositions of this Framework Agreement apply to all individual Crude Against Product Agreements, herein after called the Individual Agreement, that will be entered into by APETRA and the Refiner within the scope of this Framework Agreement. This Framework Agreement does not incorporate the details stipulated otherwise in Individual Agreements.

By signing this Framework Agreement the Refiner automatically waives his general or specific sales and purchase conditions, even if they are specifically mentioned in an appendix to his tender and confirms his acceptance of the conditions set in this Framework Agreement.

## **2. Goal and activation of this Framework Agreement**

APETRA owns certain quantities of crude oil in order to fulfil its stockholding obligation and to manage the Belgian strategic oil stocks. In case of a crisis declared by the International Energy Agency (IEA), the European Commission or the Belgian federal government, APETRA will need to substitute its crude oil into finished products.

APETRA will then issue a call for tenders among the Refiners that have signed this Framework Agreement (“Signatories”). The Individual Agreement, a specimen of which is attached to this Framework Agreement, will be used by the Refiner as an offer form.

APETRA will award the tender by countersigning those Individual Agreement(s) which offer APETRA the best economical benefit and best response to APETRA’s actual needs taking into account the award criteria which will be stipulated in the call for tenders.

Upon countersigning and notifying the Refiner(s) concerned, APETRA shall sell the crude oil defined in the Individual Agreement to the Refiner, who shall purchase it. At the same time, the Refiner shall sell the quantities of finished products defined in the Individual Agreement to APETRA who shall purchase them. Sales of crude and purchases of products will be done in conformity with the dispositions of this Framework Agreement and the Individual Agreement.

## **3. Individual Crude Against Product Agreements**

The Individual Agreement is signed between APETRA and a refining company.

Refining Companies which are part of the same group of companies can be represented by one entity of the group that declares itself to be jointly and severally responsible for the other companies of the group. Companies are considered to be part of the same group when the mother company establishes an audited financial consolidation in which the different entities which offer to APETRA are included by means of the integral or proportional consolidation method.

The Individual Agreement defines the identity of the Refiner, the crude oil quality and quantity of crude oil sold by APETRA to the Refiner, the quantities and qualities of finished products sold by the Refiner to APETRA, their delivery schedules, their price differentials against quotations as defined in the Individual Agreement and the Delivery locations of both the crude oil and the finished products.

#### **4. Definitions**

1. Crude oil Delivery: the date of the bill of lading (FOB) or the end of the pumping date (FIP).
2. 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 APETRA and its cost shared 50/50 with the Seller.
3. Specification: characteristics of the Products, as defined by Belgian or in their absence, by the European regulations.
4. Storage Facilities: any facilities utilised for storing and redelivering the crude oil or finished products, including the tankage, ancillary pipelines, jetties, hoses, pumps, valves and other equipment including tank draining equipment, sheds, warehouses whether covered or not.
5. Delivery location : Storage Facility(ies) from where the Finished Products are delivered to APETRA.
6. Means of Transportation: vessel, barge, pipeline, railcar or road tanker, used for the transport of the finished products or crude oil to and from the Storage Facility.
7. The words “deliver”, “delivered”, “delivery” have in this document the meaning of the products entering into the Delivery location as defined in Definition 5.
8. The words “redelivered”, “redelivery” have in this document the meaning of the products being leaving the Delivery location.

#### **5. Refinery location - refining yields**

##### 5.a. Refinery location:

The Refiner will indicate the name of the refineries involved in the Individual Agreement. In case the refinery indicated in the Individual Agreement differs from the Refiner, the refinery indicated will be part of the group of companies represented by the Refiner, whereby the Refiner declares itself to be jointly and severally responsible for the refineries indicated in the Individual Agreement. Companies are considered to be part of the same group under the conditions stipulated in Article 3.

##### 5.b. Crude qualities:

The quality of the crude oil(s) sold will be specified by APETRA in the call for tenders.

##### 5.c. Finished products based on the refining yields:

the maximal quantities of finished products which APETRA will purchase from the Refiner under the current Framework Agreement are based on the yields (in % weight to the tonnes of crude sold by APETRA) that will be indicated by the Refiner in his offer to the call for tenders for the following products :

Premium Gasoline

Automotive Diesel

Heating oil

Burning Kerosene

Jet A1

Fuel oil 1% S

## **6. Sale of crude oil by APETRA to the Refiner**

The sale of crude oil defined in the APETRA call for tenders will be handled as follows:

### **6.a. Delivery – laydays – cancelling date (laycan)**

APETRA will indicate in the call for tenders :

- Delivery : FOB or FIP and the location
- Laycan : a X days range, according to the loading terminal scheduling rules.

Delivery shall be taken in full or partial cargo lots at the Refiner's option.

### **6.b. Quantity**

The quantity of crude oil sold by APETRA will be specified in the call for tenders and expressed in US bbls +/- 10 % at seller option. The quantity of crude oil sold between APETRA and one Refiner will be defined in the Individual Agreement and measured in net barrels at 60°F:

- FOB sale: as per the bill of lading figures
- FIP sale: as per the delivery location procedures

The quantities will be measured according to the procedures at the APETRA loading (FOB) / pumping (FIP) facility(ies). All measurements will be ascertained by the Inspector.

### **6.c. Quality**

The quality of the crude oil sold by APETRA will be advised in the call for tenders.

### **6.d. Transfer of title and risk**

Title and risk for the crude transfers from APETRA to the Refiner when the crude oil passes the last flange on the APETRA Storage Facilities' outlet pipeline or delivery hose connected to the Means of Transportation's first connection point to the pipeline or receipt hose.

### **6.e. Crude oil price**

The price of the crude oil sold by APETRA to the Refiner will be based on the following elements:

#### **1. Pricing period:**

The pricing period will be specified in the call for tenders, and based on Platt's quotations (it will be a number of days around the bill of lading date). Should Platt's cease to be published or modify the content of its publication during the course of this Agreement, then the Parties will agree to modify the relevant articles of this Framework Agreement in good faith.

#### **2. Price:**

The Refiner will offer a crude oil market price differential (in US dollar per net barrel of oil) against the Brent Dated at the time of the tender.

### 3. Conversion to euro:

each daily price as calculated according to 1. and 2. of this article 6.e. here above shall be converted to 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 (4 digits).

## **7. Purchase of finished products by APETRA**

The purchase of the finished products defined in the Individual Agreement will be treated as follows:

### 7.a. Delivery location

The finished products will be delivered by the Refiner in the Delivery location(s) defined in the Individual Agreement.

The Delivery location must:

- qualify as an excise or customs warehouse,
- In the event of a supply crisis be accessible for all brands, taking into account the safety instructions applicable at the Storage facility;
- meet the criteria stipulated in text part I. 2. a. of the APETRA framework agreement concerning the contracting of storage capacity APETRA/2007/8 and be equipped with truck and/or and bulk loading facilities,
- be located in Belgium or in the ARA zone (including Flushing and Dunkirk)

and can be a Storage facility belonging to the Refiner or to which the Refiner has access or a Storage facility nominated by APETRA in its call for tenders.

### 7. b. Purchase by APETRA with delivery in APETRA storage facility

In case the finished products are to be delivered by the Refiner to a Storage facility nominated by APETRA, the Articles 1-6 and 8-13 of the APETRA General Terms and Conditions for Purchase which are part of the APETRA 2007/7 Framework Agreement for the purchase of Product will apply.

If the delivery is not completed within the delivery date range defined in the Individual Agreement, penalties will be due by the Refiner without any notice for each day of delay. The penalties are equal to 0.07% of the value of the complete value of the contract per day of delay. These penalties are not limited and do not depart from the general principle under civil law that the Refiner must compensate all damages caused to APETRA and/or third parties.

### 7.c. Purchase by APETRA with delivery in Refiner's storage facility

#### 7.c.1. Delivery conditions

The finished products will be delivered by the Refiner FOB, FOR, FOT in the Delivery locations defined in the Individual Agreement and in line with the delivery schedule described in 7. c. 4.

#### 7.c. 2. Quantity

The quantities of finished products that APETRA will buy under the Individual Agreement are calculated according to Article 5.c. and 6.b. hereof and defined in the Individual Agreement.

The quantities actually bought by APETRA will be the quantities of finished products delivered from the Delivery Location or by stock transfer in case of a sales of finished product by APETRA to the Refiner or to other companies that have storage capacity in the Delivery Location.

The quantities invoiced are the volumes measured at 15°C, converted in tons in air, in accordance with the Delivery location practice. In case of delivery in bulk, APETRA will be authorised to appoint an Independent Inspector to ascertain the quantities delivered.

#### 7.c.3. Quality

The finished products delivered by the Refiner to APETRA will be in line with the Belgian, or in case of their absence, the European specification in force at the time of delivery and EU qualified. APETRA will be authorised to appoint an Independent Inspector to ascertain the quality delivered.

#### 7.c.4. Delivery schedule(s):

The Refiner will deliver and store the finished products in the Delivery location(s) defined in the Individual Agreement.

First finished products will be made available 10 days after the first Crude oil Delivery date. The Refiner will determine with APETRA an availability schedule that guarantees APETRA an evenly spread availability of the finished products. In any case, all the finished products must be made available at the latest 30 days after the last Crude Oil Delivery Date.

If the delivery is not completed 30 days after the last Crude Oil Delivery, penalties will be due by the Refiner without any notice for each day of delay. The penalties are equal to 0.07% of the value of the complete value of the contract per day of delay. These penalties are not limited and do not depart from the general principle under civil law that the Refiner must compensate all damages caused to APETRA and/or third parties.

#### 7.c.5. Lifting schedule

APETRA will have a 60 day period, starting from the Crude oil Delivery date to lift the gasoline and middle distillates and an additional 30 days to lift the heavy fuel from the Delivery location. No storage costs will be charged.

Should it appear that APETRA is not able to lift the finished products within this period, APETRA will immediately inform the Refiner. The Parties will discuss to find an agreement on a new lifting schedule.

The Refiner will put the redelivery facilities of the Delivery location at APETRA's disposal. The utilisation rules of these facilities will be determined in common agreement between the Parties. The Refiner will invoice the cost of redelivery to APETRA or, in case APETRA sells the finished product and advise the Refiner, to the buyer of the finished products at the then current tariff against relevant documentation.

#### 7.c.6. Taxes and duties upon redelivery of the finished products

APETRA will sell the finished products using the excise number of the Delivery location.

In case of sales of products by APETRA subject to payment of excise duties, other taxes and VAT (establishment of an ACC4 document by the Delivery location), the Delivery location will be responsible for the payment of these duties and APETRA will immediately repay the payments upon presentation of an invoice of the Refiner.

It is APETRA's duty to ensure that, in case of sales on which duties, other taxes and VAT are not payable (establishment of a GAD document by the Delivery location) the buyer has the necessary customs permits.

#### 7.c.7. Transfer of title and risk

The title and risk for the finished products transfers from the Refiner to APETRA when the Products pass the last flange connecting the Delivery Location to the pipeline or receipt hose of the Means of Transportation.

#### 7.d. Finished product prices

The price of the Products sold by the Refiner to APETRA will be based on the following elements:

##### 1. Pricing of the Products:

The same pricing period as defined in article 6.e.1 will apply

##### 2. Price:

The price will be a differential (positive or negative) against Platt's quotations representing the market at the time of the call for tenders for finished products delivered at the Delivery locations as defined in Article 8.c. hereof.

The following quotations will be used as a basis (all Northwest Europe barges Rotterdam):

- a. Gasoline: Premium Gasoline 10 ppm Mean FOB barge
- b. Diesel: Diesel 10 ppm Mean FOB barge
- c. Heating oil: Gasoil 0.1 Mean FOB barge
- d. Kerosene: Jet Mean FOB barge
- e. Jet A1: Jet Mean FOB barge
- f. Fuel oil : Fuel Oil 1.0 % FOB barge

The Refiner will indicate the differentials offered in the Individual Agreement for each Delivery Location.

Should Platt's cease to be published or modify the content of its publication, or should the Products quotation of reference change during the course of this Agreement, then the Parties will agree to modify the relevant articles of this Framework Agreement in good faith.

##### 3. Escalation:

The final price will be escalated according to the actual density measured (in air at 15°C) in conformity with article 4 of the APETRA General Terms and Conditions for Purchase on the basis of the standard following density:

- a. Gasoline: 0.755
- b. Diesel / heating oil: 0.845
- c. Jet / kero: 0.800

##### 4. Conversion to euro:

The value in \$/tonne will be converted to €/tonne: each daily price as calculated according to Article 7.d. here above shall be converted to euro, using the same day ECB fixing. In case a quoted day is a Belgian Bank Holiday, the previous ECB fixing shall be used for that day (4 digits).

##### 5. Invoicing :

when possible, invoices will be established on the basis of weekly volumes lifted (Monday to Sunday), in accordance with article 9 here below.

#### 7.e. Import and excise duties, VAT, EU documentation upon delivery of the finished products

The Products delivered by the Refiner to APETRA at the Delivery location as per 7. a. shall be EU qualified. APETRA shall not be liable for any payment of any import or excise duties, or VAT related to the delivery of the finished products.

## **8. Bilateral agreement**

In case the Individual Agreement gives rise to a transaction in which other Member states then Belgium are implicated, both APETRA and the Refiner will take the necessary steps to have the transaction complying with the relevant bilateral agreement(s).

## **9. Payment**

Invoices may be given by facsimile or electronic mail followed by an original hard copy sent by post.

Payment shall be made in full in euro, without any deduction, withholding, set-off or counterclaim of any amount, upon production of the Inspector's report and the Seller's invoice or any other required document. The price shall be calculated according to the terms and conditions of the Individual Agreement within three working days of the end of the pricing period.

The invoice related to the crude oil shall be paid by the Refiner to APETRA at the latest by the fifteenth calendar day after the Crude oil Delivery date;

The invoices related to the finished products shall be paid by APETRA at the latest by the thirtieth calendar day after the Products delivery to APETRA

The Parties shall arrange for payment to be made into the Seller's designated bank account, by telegraphic transfer in immediately available funds to a bank account set out by Seller. Costs for money transfer (SWIFT costs) will be split equally between the Parties, and each party bearing 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.

## **10. Duration**

This Framework Agreement is concluded for an indefinite period. Each party may terminate this Agreement by giving the other party a 6 months' notice of termination.

## **11. 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 that 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 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 specific 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.

An energy crisis, looming energy crisis or similar event shall not be considered as a force majeure.

**12. Insurance**

The responsibility for securing insurance shall rest wholly with the Refiner from the moment the Crude oil is delivered by APETRA to the Refiner until the moment the Product is delivered by the Refiner to APETRA.

**13. Jurisdiction**

The Agreement will be governed, construed and enforced in accordance with Belgian Law.

If any of the articles of the Agreement is or becomes invalid and/ or is declared null and void, it will not affect the validity of the current Agreement. 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.

**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 postal or email address or telefax number as specified here below 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 should have been delivered in due course of postal, facsimile or courier communications

Names and contact references will be indicated in the Individual Agreement.

Signed in two originals in Brussels on (date):

The Refiner

APETRA

Names

Names

Signatures

Signatures



**Individual Crude against Products Agreement**

**To :** APETRA SA, 66 boulevard de l'Impératrice, 1000 Brussels – Belgium

**From :** **Refiner** (name – address – from Mr ..)

**Reference :** APETRA tender N° dated  
**Refiner contract reference number :**

**Date of offer :**

**In yellow :** information provided by APETRA at the time of tender.

**In blue :** information provided by Refiner in his offer.

Further to APETRA Framework Agreement N° 2008/4 and the call for tenders dated dd/mm/yyyy under which this agreement was negotiated and accepted, please find here under the Specific Terms and Conditions governing the above mentioned transaction:

1. **Refiner :** (name and address: **refiner to specify**)
2. **Crude oil :**
  - a) name of the crude : **APETRA to specify**
  - b) Quantity : **refiner to specify** US bbls +/- 10 % seller option
  - c) Quality : **APETRA to specify**
  - d) Refinery yields : in % (weight) to the tons of crude

Crude	Crude A:
Premium gasoline	<b>Refiner to specify</b>
Automotive Diesel	<b>Refiner to specify</b>
Heating Oil	<b>Refiner to specify</b>
Burning Kerosene	<b>Refiner to specify</b>
Jet A1	<b>Refiner to specify</b>
Fuel Oil 1% S	<b>Refiner to specify</b>

- e) Delivery : **FOB or FIP, at Refiner's option** at **APETRA to specify**
- f) Laydays / cancelling date : **APETRA to specify**

- g) Laytime and demurrage : as per the GT&C's in force at the loading terminal (as per k. here below). Demurrage will be paid by APETRA only if recoverable from the loading terminal operator.
- h) Price differential against the the "Mean FOB Brent Dated" as published by Platt's Crude Oil Marketwire : (refiner to specify) US Dollar per net barrel.
- i) Pricing : The arithmetic average of the 11 daily quotations of the "Mean FOB Brent Dated" as published by Platt's Oil Market Wire, in US \$/bbl, as follows:  
5 quotes prior, 1 quote of the day of the Crude oil Delivery date, and 5 quotes after.  
In case the Crude oil Delivery date is a non-quoted day, then the pricing will be calculated on the 5 quotations immediately preceding and the 5 quotations immediately following the Crude oil Delivery date.
- j) Credit terms : open credit
- k) General : The Framework Agreement N° 2008/xx, the Individual Agreement and the GT&C's for Crude oil FOB/FIP sales as published by and applicable at the loading terminal form the entire agreement as far as the by APETRA sale of crude oil. Such GT&C's will be specified in the call for tenders.

**3. Finished Products :**

- a) Quantities : in tons, as per 2.b) and 2.d) here above

Crude	APETRA to specify	
Premium gasoline	Refiner to specify	
Automotive Diesel	Refiner to specify	
Heating Oil	Refiner to specify	
Burning Kerosene	Refiner to specify	
Jet A1	Refiner to specify	
Fuel Oil 1% S	Refiner to specify	

- b) Delivery and price : the Products will be delivered to APETRA according to the following table

<u>Location</u>	<u>Incoterm : FOB, FOR,FOT</u>	<u>Products</u>	<u>Quantities per location</u>	<u>Differential (in USD / ton)</u>		
Refiner to specify	Refiner to specify	Refiner to specify	Refiner to specify	Refiner to specify		


- c) Pricing : the same pricing as in 2.h) applied on the relevant quotations as specified in article 7.d.2 of the Framework Agreement.
- d) Credit terms : open credit
- g) General : The Framework Agreement N° 2008/xx, the Individual Agreement and the APETRA GT&C's for the Purchase of Products (annex to the APETRA/2007/7 Framework Agreement on the Purchase of Product), latest version, if applicable, form the entire agreement as far as the by APETRA purchase of products.

#### 4. Operations

##### 4.a. Crude Oil Operations – nominations – ETA – documents

<u>Refiner:</u>	<u>APETRA :</u>
Name (specify)	Mr Alain De Mot
Position (specify)	General Manager
mail (specify)	<a href="mailto:alain.de-mot@apetra.be">alain.de-mot@apetra.be</a>

##### 4.b. Finished Products Operations – nominations – ETA - documents

<u>Refiner:</u>	<u>APETRA :</u>
Name (specify)	Mr Alain De Mot
Position (specify)	General Manager
mail (specify)	<a href="mailto:alain.de-mot@apetra.be">alain.de-mot@apetra.be</a>

##### 4.c. Finances – accounts – invoices – payments

<u>Refiner:</u>	<u>APETRA :</u>
Name (specify)	Mr Luc Debeys
Position (specify)	Finance Manager
Fax / mail (specify)	<a href="mailto:luc.debeys@apetra.be">luc.debeys@apetra.be</a>

4.d. Contractual terms

Refiner:

Name (specify)  
Position (specify)  
mail (specify)

APETRA :

Mr Alain De Mot  
General Manager  
[alain.de-mot@apetra.be](mailto:alain.de-mot@apetra.be)

**5. Documentation**

To be sent to APETRA, to the attention of Mr Alain De Mot.

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Signed in two originals in Brussels on (date):

The Refiner

APETRA

Names

Names

Signatures

Signatures