

**DEED OF DISCLOSED PLEDGE**

**OVER RECEIVABLES**

**(BANK ACCOUNTS)**

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- ***NautaDutilh***
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THIS DEED is dated [...] and made between:

1. APX COMMODITIES LTD as pledgor (the "Pledgor"); and
2. [...] as pledgee (the "Pledgee").

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions [Facility Agreement]

Unless otherwise defined in this deed, capitalised words and expressions defined in the [Facility Agreement] have the same meanings when used in this deed.

### 1.2. Definitions

Capitalised terms used in this deed have the following meanings:

<b>"Account"</b>	means any bank account held or to be held by the Pledgor with a Bank, the bank accounts listed in Schedule 1 ( <i>Bank and Further Information</i> ) held by the Pledgor with the Bank.
<b>"Additional Bank"</b>	means each Additional Bank as defined in a Supplemental Pledge Deed.
<b>"Bank"</b>	means each Existing Bank and each Additional Bank
<b>"Clause"</b>	means a clause in this deed.
<b>"Collateral"</b>	means all present and future rights of the Pledgor as creditor in relation to the Bank for the payment of an amount (or otherwise) under or in connection with any agreement or other legal relationship with that Bank, including amounts owing to the Pledgor by a Bank as are or will be reflected from time to time in the balance of any Account.
<b>["Enforcement Event"</b>	[means an Event of Default which is continuing and which also constitutes a default ( <i>verzuim</i> ) within the meaning of article 3:248 NCC.]
<b>"Existing Bank"</b>	means the bank listed opposite the name of the Pledgor in Schedule 1 ( <i>Bank and Further Information</i> ) under the heading "Bank".

"Facility Agreement"	means the [...], dated [...], between [...].]
"NCC"	means the Netherlands Civil Code.
"Party"	means a party to this deed.
"Schedule"	means a schedule to this deed.
"Secured Obligations"	means [...]
"Supplemental Pledge Deed"	means a deed of pledge substantially in the form set out in Schedule 2 ( <i>Form of Supplemental Pledge Deed</i> ) or any other form the Pledgee may deem appropriate.

### 1.3. Construction

- (a) A reference to any "**Collateral**" is a reference to that Collateral in whole or in part and includes all rights attached to such Collateral, including dependent rights and ancillary rights.
- (b) A reference to any ["**Finance Document**"] or to any other agreement or document (under whatever name) is a reference to that [Finance Document] or such agreement or document as it may have been or be varied, amended, modified, novated or restated from time to time, including without limitation by way of increase, reduction, alteration of the purpose or other amendment of the facilities made available under it, addition of new facilities, any rescheduling of indebtedness incurred thereunder, accession or retirement of the parties to that agreement or document or any combination of the foregoing.
- (c) A reference to a Party is also a reference to any successor or assignee of such Party.
- (d) A reference to the "**registration**" of this deed and a reference to "**register**" is a reference to the presentation for registration (*aanbieding ter registratie*) of this deed to any office of the Tax Authorities of the Netherlands providing registration services.
- (e) A reference to an authority to "**collect**" any Collateral is a reference to the collection of monetary payment obligations (to the extent the Collateral consists of rights to receive payment of an amount) and to the collection of other obligations (to the extent the Collateral consists of rights other than rights to receive payment of an amount). A reference to an authority to "**collect**" Collateral is also a reference to a right or authority to demand, by legal proceedings or otherwise, payment by the Bank of that Collateral.
- (f) A reference to "**this deed**" is, unless the context requires otherwise, also a

reference to any Supplemental Pledge Deed.

- (g) A reference to a "**right of pledge**" is, unless the context requires otherwise, a reference to a right of pledge purported to be created under this deed over each individual asset falling within the scope of the definition of Collateral.
- (h) A reference to a "**default**" with respect to the payment of the Secured Obligations is a reference to any non-payment of the Secured Obligations when due, without any reminder letter or notice of default being required.
- (i) An Event of Default is "**continuing**" if it has not been waived by the [Finance Party] authorised to do so.
- (j) English language words used in this deed intend to describe Netherlands legal concepts only and the consequences of the use of those words in English law or any other foreign law are to be disregarded.

## **2. AGREEMENT, CREATION AND REGISTRATION OF PLEDGE**

### **2.1. Agreement to pledge Collateral**

As security for the payment when due of the Secured Obligations the Pledgor agrees with the Pledgee to grant to the Pledgee a right of pledge over its Collateral.

### **2.2. Creation of pledge over Collateral**

As security for the payment when due of the Secured Obligations the Pledgor, as the case may be in advance, hereby grants to the Pledgee a right of pledge over its Collateral owing to it from time to time by an Existing Bank. The Pledgee, as the case may be in advance, hereby accepts this right of pledge.

### **2.3. Creation of pledge over receivables with future banks**

The Pledgor will sign a Supplemental Pledge Deed in connection with one or more additional accounts opened by the Pledgor with the Bank or any other bank, in each case within two Business Days of opening such additional account (to the extent that the Pledgor is obliged to create security rights over such additional accounts pursuant to the Facility Agreement). The Pledgee hereby in advance accepts these rights of pledge to be created under a Supplemental Pledge Deed.

### **2.4. Registration of pledge**

- (a) The Pledgee will immediately upon signing of this deed register this deed.
- (b) The Pledgor will register each Supplemental Pledge Deed on the date of signing of that deed and will provide the Pledgee immediately with a copy of that executed Supplemental Pledge Deed, a copy of the letter whereby that Supplemental Pledge Deed has been offered for registration and, upon receipt of evidence of registration, immediately with a copy of that registered

## Supplemental Pledge Deed.

**3. REPRESENTATIONS AND WARRANTIES****3.1. Representations and warranties**

The Pledgor represents and warrants to the Pledgee that

- (a) it has full title to the Collateral to the extent acquired prior to the moment of this representation and it has full power to dispose of and encumber that Collateral;
- (b) except as permitted under the Finance Documents, the Collateral is not subject to any limited right or other encumbrance and no offer has been made or agreement entered into to transfer or encumber, whether or not in advance, the Collateral and no attachment has been levied on the Collateral;
- (c) the Collateral is freely transferable and may be made subject to the rights of pledge;
- (d) it does not hold any account numbers with any bank other than the Account Numbers;
- (e) the notification details for each Bank set forth in Schedule 1 are complete and correct;
- (f) [the execution and performance of this deed does not violate any agreement or other legal relationship to which it is a party];
- (g) [no litigation, arbitration or administrative proceeding is taking place or pending or, to the best of its knowledge, threatened against it, which could or is reasonably likely to have a material adverse effect on its position under this deed or on the economic value of the Collateral]; and
- (h) [no corporate action nor any other steps have been taken or legal proceedings have been instituted or threatened against it for the entering into a (provisional) suspension of payments or for bankruptcy or for the appointment of a receiver or similar officer of it or of any or all of its assets].

**3.2. Times when representations made**

The representations and warranties in Clause 3.1 (*Representations and warranties*) are deemed to be repeated by the Pledgor on each day the Pledgor enters into a new agreement or legal relationship with the Bank or an entry is made with respect to any Account Number. Each representation and warranty deemed to be made after the date of this deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation and warranty is deemed to be made.

#### **4. UNDERTAKINGS**

##### **4.1. Information**

At the Pledgee's first reasonable request and in such form as the Pledgee may designate, the Pledgor must, subject to the terms of the [Facility Agreement], provide all information, evidence and documents relating to the Collateral which the Pledgee may deem necessary to exercise its rights under this deed.

##### **4.2. Inspection of books and records**

The Pledgee shall at all times, but if no Event of Default is continuing only during regular business hours, be granted access to the premises of the Pledgor to inspect the Pledgor's books and records relating to the Collateral.

##### **4.3. Duty to notify**

The Pledgor shall notify the Pledgee immediately of all circumstances of which it becomes aware which could affect the interests of the Pledgee under this deed, including but not limited to:

- (a) an application being filed for the Pledgor's bankruptcy or (provisional) suspension of payments;
- (b) the Pledgor being declared bankrupt, being granted (provisional) suspension of payments, being unable to pay its debts in respect of taxes or social security premiums or planning to notify the relevant authorities thereof;
- (c) an attachment being levied on any Collateral and/or any claim or notice from any third party with respect to any Collateral; and
- (d) an event analogous to any of the above occurring under the laws of any other jurisdiction.

##### **4.4. Disposal and negative pledge**

Except as explicitly permitted under the Facility Agreement, the Pledgor shall not without the prior written consent of the Pledgee:

- (a) sell, transfer or otherwise dispose of the Collateral in whole or in part and whether or not in advance;
- (b) create or permit to subsist whether or not in advance any limited right or other encumbrance on the Collateral other than as envisaged under this deed or permit to subsist any attachment over the Collateral; or
- (c) other than in the ordinary course of business and on arms length terms vary the term or extend, release, determine, rescind or grant time for payment in respect of

the Collateral if that variation, extension, release, determination, rescission or granting of time for payment in respect of the Collateral would have a material adverse effect on the rights of pledge.

#### **4.5. Further assurances**

At the Pledgee's first request, the Pledgor shall at its own expense execute any further encumbrances and assurances in favour of, or for the benefit of, the Pledgee and perform all acts as the Pledgee may reasonably deem necessary to create, perfect or protect the rights of pledge purported to be created or to exercise or have the full benefit of its rights under or in connection with this deed (including the right to enforce these rights).

### **5. NOTIFICATION TO BANKS AND WAIVER**

- (a) The Pledgor will immediately upon the signing of this deed and of each Supplemental Pledge Deed send a notice substantially in the form of Schedule 3 (*Form of Notice to Banks*) to each Bank. The Pledgee is authorised to notify each Bank of the rights of pledge.
- (b) The Pledgor will use all reasonable endeavours to ensure that the Bank will release any right of pledge, waive any right to create a right of pledge and any right to set-off and suspension that Bank may have in respect of any Account by countersigning the notice from the Pledgor to that Bank with a copy to the Pledgee within ten Business Days from the date of this deed.

### **6. AUTHORITY TO COLLECT**

#### **6.1. Collection by Pledgee**

The Pledgee is authorised to collect the Collateral and to enter into compromises, settlements and other agreements with one or more Banks, to grant discharge in respect of the Collateral and to exercise all other rights of the Pledgor in connection with the Collateral (including calling in the Collateral). The Pledgor hereby waives its rights under section 3:246(4) NCC.

#### **6.2. Collection by Pledgor**

The Pledgee hereby authorises the Pledgor to collect the Collateral and to enter into compromises, settlements and other agreements with any Bank, to grant discharge in respect of its Collateral and to exercise all other rights of the Pledgor in connection with the Collateral (including calling in its Collateral), in each case to the extent these rights are exercised in the ordinary course of business. The Pledgee may revoke this authorisation upon the occurrence of an Event of Default which is continuing by notice to the Pledgor. Upon such revocation the Pledgor cannot derive any further rights from section 3:246(4) NCC and the Pledgee may inform the Banks of that revocation and that further payments must be made into a bank account designated by the Pledgee.



**7. IMMEDIATE FORECLOSURE**

- (a) Upon the occurrence of an Enforcement Event, the Pledgee may, without any further notice of default or other notice being required, sell the Collateral in accordance with applicable law and have recourse against any Collateral collected pursuant to Clause 6.1 (*Collection by Pledgee*).
- (b) The Pledgor shall not be entitled to file a request with an interim provisions judge to request that its Collateral be sold in a deviating manner as provided for in section 3:251 NCC.
- (c) The Pledgee shall not be obliged to give notice of an intended sale as provided for in section 3:249 NCC, and the Pledgee shall not be obliged to give the notice following the sale as provided for in section 3:252 NCC.
- (d) The Pledgee is not obliged to first foreclose on any other security right created under or in connection with the Facility Agreement.

**8. APPLICATION OF PROCEEDS**

The Pledgee will apply the proceeds from the sale or the collection of and recourse against any Collateral towards satisfaction of the Secured Obligations in accordance with the relevant provisions of the Finance Documents, subject to mandatory provisions of Netherlands law.

**9. CANCELLATION**

The Pledgee is entitled to cancel (*opzeggen*) any right of pledge under this deed in whole or in part by notice in writing to the Pledgor within the meaning of section 3:81(2) under d NCC.

**10. LIABILITY**

The Pledgee is not liable to the Pledgor for any loss or damage arising from any exercise of, or failure to exercise, its rights under this deed, except for gross negligence or wilful misconduct of the Pledgee.

**11. COSTS**

The Pledgee may charge all costs, losses, claims and expenses of whatever nature (including legal fees) incurred by it in connection with this deed in accordance with the Facility Agreement.

**12. POWER OF ATTORNEY**

The Pledgor grants to the Pledgee an irrevocable power of attorney with the power of sub-delegation to perform all acts, including acts of disposition (*beschikkingshandelingen*) on behalf of the Pledgor which in the sole opinion of the Pledgee are necessary in order to (i) create or perfect the rights of pledge and/or (ii) to have the full benefit of those rights (including performing any of the Pledgor's obligations under this deed and exercising any of the Pledgor's rights to and in connection with the Collateral). The Pledgee may act as counterparty of the Pledgor even in the event of a conflict of interest. The Pledgor hereby waives its rights under section 3:68 NCC. The Pledgee shall only use this power of attorney if the Pledgor fails to comply with any of its obligations under or in connection with this deed or an Event of Default has occurred which is continuing.

### **13. MISCELLANEOUS**

#### **13.1. No nullification, rescission or suspension**

To the extent permitted by law, the Pledgor hereby waives any right it may have at any time:

- (a) under sections 6:228 or 6:265 NCC or any other ground (under any applicable law) to nullify or rescind, or demand in legal proceedings the nullification or rescission of this deed; and
- (b) under sections 6:52, 6:262 or 6:263 NCC or any other ground (under any applicable law) to suspend any obligation under or in connection with this deed.

#### **13.2. Transfer of rights and obligations**

- (a) The Pledgor may not transfer any of its rights or obligations or its contractual relationship under or in connection with this deed without the prior written consent of the Pledgee.
- (b) The Pledgee may transfer its rights and obligations under or in connection with this deed by an assignment, assumption of debt or transfer of contractual relationship. The Pledgor in advance irrevocably consents to and provides its co-operation with any such assumption of debt and/or transfer of contractual relationship, as the case may be.
- (c) Upon a transfer by the Pledgee of any rights in respect of the Secured Obligations (in part or in whole) the transferee will become entitled to the rights of pledge or to a corresponding undivided part thereof, as the case may be.
- (d) The Pledgee is entitled to provide any transferee or proposed transferee with any information concerning the Pledgor and/or the Collateral.

#### **13.3. Notice**

Any notice or other communication under or in connection with this deed must be made

in accordance with the [Facility Agreement].

**13.4. Records and calculations of the Pledgee**

The books and records maintained by the Pledgee and any calculation or determination by the Pledgee of the existence and the amount of the Secured Obligations, are *prima facie* evidence (*volledig bewijs*) of the existence and the amounts of the Secured Obligations and other matters to which they relate.

**13.5. Partial Invalidity**

If, at any time, any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**13.6. Amendment**

This deed may only be amended by a written agreement.

**13.7. No Implied Waiver and no Forfeiture**

- (a) Any waiver under this deed must be given by written notice to that effect.
- (b) Where the Pledgee does not exercise any right under or in connection with this deed (which includes the granting by the Pledgee to the Pledgor of an extension of time in which to perform its obligations under any of these provisions), this is not deemed to constitute a waiver of that right and does not lead to forfeiture of that right of the Pledgee under this deed.
- (c) The rights of the Pledgee under this deed are not deemed to constitute a waiver of any other right the Pledgee may have under Netherlands law or any other applicable law. In case of a conflict of the rights of the Pledgee under this deed and the rights of the Pledgee under Netherlands law or any other applicable law, the provisions of this deed will apply.

**14. GOVERNING LAW AND JURISDICTION**

- (a) This deed is governed by the laws of the Netherlands (including for the avoidance of doubt Clause 14 under (c) of this deed and the obligation of the Pledgor to create the rights of pledge set out in Clause 2.1 (*Agreement to pledge Collateral*) notwithstanding that such obligation may be governed by any other law pursuant to any other Finance Document).
- (b) If a Party incorporated under the laws of the Netherlands is represented by an attorney in connection with the signing and/or execution of this deed or any other deed, agreement or document referred to in this deed or made pursuant to this

deed, it is hereby expressly acknowledged and accepted by the other Party that the existence and extent of the attorney's authority and the effects of the attorney's exercise or purported exercise of his authority shall be governed by the laws of the Netherlands.

- (c) The courts of Rotterdam, the Netherlands have exclusive jurisdiction to settle any dispute arising from or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed) (a "**Dispute**"). This paragraph (c) is for the benefit of the Pledgee only. As a result, the Pledgee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Pledgee may take concurrent proceedings in any number of jurisdictions.

This deed has been entered into on the date stated at the beginning of this deed and may be signed in any number of counterparts and by way of exchange of pdf or facsimile copies of signed signature pages, all of which taken together shall constitute one and the same deed.

[signature page follows]

**SIGNATURES**

**THE PLEDGOR**

**APX Commodities Ltd**

\_\_\_\_\_  
By :  
Title :

\_\_\_\_\_  
By :  
Title :

**THE PLEDGEE**

[...]

\_\_\_\_\_  
By :  
Title :

\_\_\_\_\_  
By :  
Title :

**SCHEDULE 1  
BANK AND FURTHER INFORMATION**

	<u>Bank</u>	<u>Account Number</u>	<u>Contact details for notification</u>
<b>APX Commodities Ltd</b>	<b>ABN AMRO Bank N.V.</b>	[...]	Address : [ ] Fax number : [ ] Attn. : [ ]

**SCHEDULE 2**  
**FORM OF SUPPLEMENTAL PLEDGE DEED**

[...]  
Address : [...]  
Fax number : [...]  
Attn. : [...]

[insert date]

Dear Sirs,

Reference is made to the deed of disclosed pledge over receivables between the Pledgee (as defined in that deed) and the undersigned, dated [[...]] (the "**Deed**").

1. The provisions of the Deed apply *mutatis mutandis* to this deed and are included in this deed by means of cross-reference. Capitalised terms in this deed have the meanings ascribed to them in the Deed.
2. This is a Supplemental Pledge Deed and a Finance Document.
3. We hereby inform you that an additional [account number has been opened by us with a bank other than a Bank (the "**Additional Bank**")\*/\*, the details of which are as follows:

Additional Bank and new account number:\*

[...]

4. As security for the payment when due of the Secured Obligations we hereby grant to the Pledgee, as the case may be in advance, a right of pledge over our Receivables owing by the [Additional Bank]\*/\*.
5. We hereby repeat the representations and warranties set out in Clause 3 (*Representations and Warranties*) of the Deed with respect to the Receivables purported to be pledged under Clause 4 of this Supplemental Pledge Deed.
6. Immediately upon signing of this Supplemental Pledge Deed we will register this deed, notify the [Additional Bank]\* of this deed by means of a notice substantially in the form of Schedule 3 to the Deed and provide you with a copy of the registered deed and [that]/[each]\* notice without delay.

Yours faithfully,

APX Commodities ltd

\_\_\_\_\_  
By :  
Title :

\_\_\_\_\_  
By :  
Title :

*\*Delete if not applicable*



**SCHEDULE 3**  
**FORM OF NOTICE TO BANKS**

[insert name of Bank] ("**Bank**")

Address : [ ]

Fax number : [ ]

Attn. : [ ]\*

[insert place], [insert date]

Dear Sir/Madam,

We write with reference to a Deed of Disclosed Pledge over Receivables dated [[...]] [and a Supplemental Pledge Deed dated [insert date]]\*\* between [...] and the undersigned ([jointly]\*\* the "**Deed**"), under which we have created, among other things, rights of pledge over all our present and future rights as creditor in relation to you for the payment of any amount (including rights to (re)payment of principal, payment of interest, payment of other amounts and rights of recourse or subrogation in relation to the rights of you) under or in connection with any agreement or other legal relationship with you (the "**Receivables**").

We hereby notify you of the creation of this right of pledge over the Receivables.

[On the basis of the Deed we are under an obligation to use all reasonable efforts to ensure that you waive any right of pledge, any right to create a right of pledge and any right of set-off or retention that you may have in relation to the Receivables by signing and returning this notice. In this connection we would request you to waive any right of pledge, any right to create a right of pledge and any right of set-off that you may have based on your general conditions or otherwise, in relation to the Receivables.\*\*\*]

Please also note that we are authorised under the Deed to collect all Receivables until the Pledgee informs you that this authorisation has been terminated and that further payments are to be made into a bank account designated for that purpose by the Pledgee.

We greatly appreciate your cooperation.

Yours faithfully,

[insert name of relevant Pledgor(s)]

By : By :  
Title : Title :

Contact details *[insert contact details of relevant Pledgor(s) below and use separate blocks for each pledgor]*:

Pledgor : [ ]  
Address : [ ]  
Fax number : [ ]  
Tel number : [ ]  
Email : [ ]  
Attn. : [ ]

Signed for acknowledgement and agreement and waiver as referred to above by [ ] :

\_\_\_\_\_  
By : By :  
Title : Title :

- \* Choose appropriate block for each separate notice
- \*\* Insert if this letter is used for the purpose of notification of additional banks pursuant to a Supplemental Deed of Pledge
- \*\*\* Insert this paragraph if the addressee is a Bank
- \*\*\*\* Delete this wording if the addressee is a Bank