

# **General Terms & Conditions of Fluxys TENP GmbH**

**(hereinafter referred to as “GTCs”)**

valid as of 1st October 2013

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## Section 1 Conclusion of contract

1. The Shipper concludes this entry/exit contract via the primary capacity platform jointly operated by the transmission system operators. The preconditions for contract conclusion are registration as shipper on the primary capacity platform and acceptance by the transmission system operator as a shipper pursuant to Section 2 a. The primary capacity platform's terms and conditions published on the primary capacity platform operator's website apply regarding registration on the primary capacity platform jointly operated by the transmission system operators in accordance with Section 6 of the Gas Grid Access Ordinance (GasNZV). In case of a failure of the primary capacity platform or the connected systems of the transmission system operators, booking requests for day-ahead capacity may be directly forwarded in text form to the transmission system operator. In this case, allocation is carried out according to transmission system operator's ability and without any guarantee on the basis of the chronological order of the binding requests received at the regulated daily capacity tariff.
2. The entry/exit contract for firm entry and exit capacity at market area interconnection points as well as at cross-border interconnection points comes into effect upon the allocation of capacity at the end of the auction.
3. The following capacity types are allocated in the chronological order in which binding requests are received:
  - a) Exit capacity to end-consumers and storage facilities
  - b) Entry capacity from storage, production and LNG facilities
  - c) Entry capacity from facilities within the meaning of Section 6 of GasNZV for biogas injection, and
  - d) Interruptible capacity.

In these cases the contract comes into effect upon receipt by the shipper of an electronic booking confirmation. Day-ahead capacity may only be booked until 18:00 hours.

4. Entry/exit contracts as per Item 3 may be concluded as follows: with a term of
  - one year or longer – at any time
  - less than one year – a minimum of 3 months prior to commencement of the contract term
  - less than one month – a minimum of one month prior to commencement of the contract term.
5. The supplementary terms and conditions of the respective transmission system operator in the version applicable at the time of the entry/exit contract conclusion constitute an integral part of this contract. In the event of conflicting provisions between the entry/exit contract and the respective transmission system operator's supplementary terms and

conditions, the terms of this entry/exit contract shall have precedence over said terms and conditions. Transmission system operator's supplementary terms and conditions may implement exceptions for cross-border interconnection points as per Items 2 lit. a), Item 3 and 6 to the rules outlined in the Federal Network Agency's 'Determination in the matters of capacity management and auction proceedings in the gas sector' (file no. BK7-10-001) dated 24 February 2011 (KARLA). Further deviations from this entry and exit contract are possible to ensure the bundling at the cross-border interconnection points. The transmission system operator and the shipper may agree on rules deviating from this contract to realize projects pursuant to Section 39 GasNZV.

6. The inclusion of shipper's general terms and conditions shall be expressly objected.

## Section 2 Definitions of terms

The definitions of terms set forth in the following shall apply. Terms used in the singular imply the plural accordingly.

1. Bundled capacity: exit capacity and the corresponding entry capacity that a shipper can book together in a single procedure.
2. Bundled booking point: consolidation of a bookable exit point and a bookable entry point between two domestic or one domestic and one foreign market area into a single point at which shippers can book bundled capacity.
3. Bundled nomination: a single nomination for a bundled booking point.
4. Day-ahead capacity: capacity bookable the day before utilization as daily capacity.
5. Rest-of-the-day capacity: capacity bookable on the day of utilization for the rest of that day.
6. Within-day capacity: capacity bookable on the day of utilization for a particular part of that day.
7. Primary capacity platform: booking platform jointly operated by transmission system operators.
8. Person holding the network connection  
As per Section 1 (3) NDAV, applies accordingly to medium and high-pressure networks.
9. Exit network operator  
Network operator with whom the shipper concludes an exit/withdrawal contract per Section 3 (1) Sentence 1 GasNZV, including in the form of a supplier framework agreement.
10. Exit point  
A point within a market area where gas can be withdrawn by a shipper from a network operator's network to supply end-consumers or for injection into storages, or to pass it at market area borders and country borders. Several exit points grouped together within a zone in accordance with Section 11 (2) GasNZV are also considered as exit point.

11. Balancing calorific value

Balancing calorific value is an advance estimate of a final gross calorific value in a given calorific value area. It is subject to monthly review if necessary. A calorific value area is a network area in which a single final gross calorific value is applied.

12. Balancing group number

A unique number assigned by the market area coordinator to a balancing group manager for a balancing group that principally serves the identification of gas quantity nominations/renominations.

13. Entry network operator

Network operator with whom the shipper concludes an entry/injection contract per Section 3 (1) Sentence 1 GasNZV.

14. Entry point

A point within a market area where a shipper can put in gas from country borders, market area borders, domestic sources and production plants, LNG plants, biogas plants and storage facilities into the network operator's network. Several entry points grouped together within a zone in accordance with Section 11 (2) GasNZV also constitute an entry point.

15. Gas business year

The period from 1 October, 6:00 a.m. of a given calendar year until 1 October, 6:00 a.m. of the following calendar year.

16. GeLi Gas (supplier business processes)

Uniform business processes and data formats determined by the Federal Network Agency (doc. no. BK7-06-067) dated 20 August 2007, or any directive replacing or amending a determination issued by the Federal Network Agency.

17. Capacity

Maximum hourly flow rate capacity at an entry or exit point, expressed in kWh/h.

18. KARLA

Determination in the matter of Capacity Management and Auction Proceedings in the Gas Sector issued by the Federal Network Agency (Reference: BK7-10-001) dated 24 February 2011.

19. Flow commitment

The contractual agreements outlined under Section 9 (3) Sentence 2 no. 1, GasNZV.

20. Month M

Month M is the delivery month.

21. Sub-balancing account

Sub-balancing accounts are accounts assigned to a balancing group that allow assigning entry and exit quantities to transport customers and/or clear tracking of partial quantities.

22. Day D

Day D is the delivery day.

23. Interruptible capacity

Capacity offered by the transmission system operator on an interruptible basis. The transmission system operator may interrupt the use of interruptible capacity.

24. Business days

In contrast to the definition of business days found under Section 2 no. 16 GasNZV, hereinafter 'business days' denotes every day except Saturdays, Sundays and legal holidays in relation to deadlines. Any day recognized as a public holiday in any German Federal Land shall be considered a national holiday. The 24th and 31st of December are always considered holidays.

25. For all time specifications the official German time (Central European (Summer-) Time (MEZ/MESZ)) shall apply.

### **Section 2a Admission to the primary capacity platform**

1. The transmission system operator may request from the shipper a excerpt from the commercial register to prove its authorization to represent the company, or in the case of foreign shippers a corresponding proof. The form provided via the primary capacity platform needs to be completed and signed by the shipper's representative as stated in Sentence 1 of this Item. The name of at least one person authorized to represent the shipper as a user of the primary capacity platform must be stated in the form. Sentence 2 of this Item shall accordingly apply to any user who will be added after completed admission.
2. The transmission system operator shall be entitled to not admit the shipper to use the primary capacity platform if justified cases for obtainment of a provision of security or a prepayment according to Section 36 exist and the shipper does not provide a security or an advance payment in due time.
3. The transmission system operator shall immediately admit the shipper to the use of the primary capacity platform, but at least 10 business days after receipt of the complete admission request according to Item 1, provided that the conditions for admission as under Items 1 and 2 have been met.
4. The shipper shall be obligated to notify the transmission system operator of any changes relevant for admission without delay. If the transmission system operator realizes that the conditions for admission as under Items 1 and 2 are not met or only partially met anymore, the transmission system operator shall notify the shipper thereof without delay. The shipper shall be obligated to provide the missing conditions for admission as under Items 1 and 2 within 10 business days.
5. The transmission system operator shall be entitled to withdraw any granted admission in the events as under Section 37 and in the event of missing conditions for admission. The transmission system operator shall guarantee the execution of existing contracts, in particular with respect to the return of capacities as under Section 16. In addition, the transmission system operator shall be entitled to deactivate individual users of the shipper from using the primary capacity platform provided that there is an important reason. The



transmission system operator shall inform the shipper thereof without delay. The shipper may apply for a new admission under the conditions stated above at any time.

### **Section 3 Purpose of the entry contract**

1. Concluding an entry contract obligates the entry transmission system operator to reserve the booked capacity at the respective entry points of the transmission system operator's network for the shipper in accordance with the entry contract.
2. The entry contract entitles the shipper to use the network from the entry point up to the virtual trading point of the respective market area.
3. The shipper is obligated to provide the gas quantities to be transported in accordance with Sections 12, 13, 14 at the booked entry point and deliver them to the entry transmission system operator. The entry transmission system operator is obligated to take delivery from the shipper of the gas quantity provided per Sentence 1.
4. Physical identity of the gas needs not to be ensured. The provision and the offtake of gas quantities may be carried out together with other gas quantities in a commingled gas flow.

### **Section 4 Purpose of the exit contract**

1. Concluding an exit contract obligates the exit transmission system operator to reserve the booked capacity at the respective exit points of the transmission system operator's network for the shipper in accordance with the exit contract.
2. The exit contract entitles the shipper to use the network from the virtual trading point up to the exit point of the respective market area.
3. The exit transmission system operator is obligated to deliver to the shipper the gas quantities to be transported in accordance with Sections 12, 13, 14 at the booked exit point. The shipper is obligated to take delivery from the exit network operator of the gas quantity provided per Sentence 1 at the booked exit point.
4. Physical identity of the gas needs not to be ensured. The off-take and delivery of the gas quantities may be carried out together with other gas quantities in a commingled gas flow.

### **Section 5 General entry and exit requirements**

1. The prerequisites for entry and exit usage are having a balancing group contract in place, incorporation of the booked entry or exit point to a balancing group or sub-balancing account and nomination of the entry or exit gas quantity if nomination requirements apply per Section 12 or 13.
2. Biogas quantities may be incorporated to a separate biogas balancing group in accordance with Section 35 GasNZV. Only if doing so the priority transport of biogas can be ensured.

3. Usage of booked capacity is subject to compliance with applicable capacity allocation restrictions and capacity usage restrictions.

### **Section 6 Preconditions for use of booked capacity at market area inter-connection points and cross-border interconnection points**

1. The precondition for the use of bundled capacity are inclusion of the bundled booking point as exit point in the delivering market area, and as an entry point in the receiving market area within the respective balancing groups formed.
2. The shipper appoints a balancing group manager to be responsible for the bundled nomination at a bundled booking point and in whose balancing group the entry capacity of the bundled capacity is incorporated.
3. A precondition for use of capacity is prior conclusion of a balancing group contract or, in the case of bundled capacity the prior conclusion of balancing group contracts and prior fulfillment of technical requirements (most notable the communications testing) for use of the capacity.
4. The shipper must incorporate to the balancing groups the bundled or non-bundled booking point at which he has acquired bundled or non-bundled (unbundled) day-ahead capacity without delay, by 18:30 hours on the day before delivery day at the latest. To do so the shipper informs the transmission system operators of the balancing group numbers during day-ahead booking. Incorporation within the prescribed period requires a successfully conducted advance communication test between the transmission system operators and the appointed balancing group manager in accordance with the transmission system operators' supplementary terms and conditions, and the one-time submission of the confirmation per Section 12 Item 2.
5. A bundled booking point can be incorporated to several balancing groups. Should the shipper prefer to divide the bundled capacity booked by him at this point among several balancing groups/sub-balancing accounts, the shipper notifies the respective transmission system operators of such division per bundled booking point. Items 2 and 3 apply accordingly. Sentences 1 and 2 do not apply to bundled day-ahead capacity.
6. Use of booked capacity must be in compliance with any capacity allocation restrictions and capacity usage restrictions.
7. The possibility of incorporation of rest-of-the-day or within-day capacity offered is ensured.
8. The transmission system operators' supplementary terms and conditions outline further specifics regarding Item 7.
9. When several shippers incorporate their bundled capacity to a given balancing group, or a single shipper or several shippers incorporate bundled capacity to a balancing group to which unbundled capacity has already been incorporated, they are required to agree on the appointment of one balancing group manager who submits a consistent nomination for all capacity incorporated per Item 2.

## **Section 7 Incorporation of entry and exit points to balancing groups**

1. The shipper may incorporate an entry or exit point to several balancing groups/sub-balancing accounts. In such case the shipper shall notify the transmission system operators of the capacity quantities incorporated to the respective balancing group/sub-balancing account at that point. Exit points to end-consumers and entry points at biogas plants can only be booked by one shipper, and only incorporated to one balancing group.
2. Entry or exit points may only be incorporated to balancing groups or sub-balancing accounts with identical gas quality (H-or L-gas).
3. The shipper must incorporate the entry or exit point where he acquired unbundled day-ahead capacity in accordance with Section 6 Item 4.
4. The shipper shall notify the transmission system operators of the number of the balancing group/sub-balancing account to which the entry or exit points are being incorporated. The shipper warrants being authorized by the balancing group manager to incorporate on the latter's behalf entry or exit points to a balancing group or a sub-balancing account. If the shipper itself is not balancing group manager, the transmission system operator reserves the right to require presentation of power of attorney documenting such authorization in case of doubt. The shipper shall indemnify the transmission system operator against third-party liability claims arising from not having the warranted legally valid authorization from the balancing group manager.

## **Section 8 Bundled booking points**

1. The market area interconnection points and cross-border interconnection points connecting transmission networks with each other will be consolidated for each flow direction to form a bundled booking point.
2. Shippers may book bundled capacity at bundled booking points on a firm or an interruptible basis. Booking enables the shipper to handle the transport via a bundled booking by a bundled nomination. This arrangement applies to new contracts. Old contracts (contracts concluded on or before 31 July 2011) remain unaffected unless shippers holding exit and corresponding entry capacity contracts request a conversion of these contracts. Where there is still an old contract on one booking side, the non-bundled (unbundled) capacity on the other booking side may only be sold until the expiry date of this old contract at the latest.
3. In the event a shipper demands the conversion of its exit capacity contracts and corresponding entry capacity contracts into contracts for bundled capacity pursuant to Item 2 Sentence 3 and at least one of the entry and exit contracts to be converted is an unbundled interruptible capacity contract, the capacity contracts in whole shall be converted into entry and exit contracts for bundled interruptible capacity. In this case, the chronological order for the interruption pursuant to Section 29 Item 4 shall be determined by the contract date of the last concluded entry or exit capacity contract for unbundled interruptible capacity to be converted. The fees for the unbundled capacities shall remain unaffected.

4. At bundled and unbundled booking points transmission system operators may also offer bundled and unbundled capacity with capacity allocation restrictions and capacity usage restrictions.
5. Bundling per Item 1 is done among the transmission system operators' individual booking points.
6. In the event of marketing of bundled capacities pursuant to Section 1 Item 2, the auction surcharge shall be split between the adjacent transmission system operators at the bundled booking point and shall be communicated to the shipper via the booking confirmation. The respective transmission system operator shall invoice the shipper for its share of the auction surcharge. The transmission system operator is entitled to amend for the future the split of the auction surcharge in coordination with the other participating transmission system operator.
7. The parties to the contract are entitled and obligated to terminate an entry or exit contract when the corresponding contract at the bundled booking point is terminated. Accordingly, the parties are entitled to adjust a contract if the corresponding contract is adjusted. The rights and obligations from an entry or exit contract at the bundled booking point are suspended for the duration of any suspension of the performance obligations under the corresponding contract at the bundled booking point, or while the corresponding contract is not yet effective.

### **Section 9 Capacity products**

1. Via the primary capacity platform in particular the capacity products listed below may be offered on a firm basis as per Section 1:
  - a) Freely allocable entry capacity: Allows network usage from the booked entry point to the virtual trading point of the market area where the booking was made (Section 3 (3) GasNZV).
  - b) Freely allocable exit capacity: Allows network usage from the virtual trading point to the booked exit point of the market area where the booking was made (Section 3 (3) GasNZV).
  - c) Freely allocable entry capacity for biogas: Allows the same usage as per a., but only permitted for feeding-in of biogas.
  - d) Freely allocable exit capacity for biogas: Allows the same usage as per b., but only permitted for offtaking biogas.
  - e) Restricted-allocable capacity: Allows network usage from the booked entry point to one or more defined exit points. Use of the virtual trading point is excluded.

The transmission system operator offers the products per Items a) – d) also on an interruptible basis according to a transparent and non-discriminatory procedure which is standardised among the transmission system operators. The transmission system op-

erator is entitled to offer interruptible capacities only in case that firm capacities are no longer available.

In their supplementary terms and conditions the transmission system operators may offer additional capacity products, in particular capacity products with capacity allocation restrictions and capacity usage restrictions as well as relating services thereto. Transmission system operators publish capacity allocation restrictions and capacity usage restrictions relevant for individual entry or exit points on the primary capacity platform.

2. Entry and exit contracts can be concluded on a yearly, monthly, quarterly or daily basis according to the offerings on the primary capacity platform. Further details are outlined on the primary capacity platform. Annual capacity products for market area interconnection points and cross-border interconnection points always begin on October 1 of a given year; quarterly products begin on January 1, April 1, July 1 or October 1 of a given year, and monthly products begin on the first of the month.
3. The transmission system operator markets available capacity on a firm basis in the following order:
  - a) Free capacity
  - b) Capacity available again because of renomination restrictions as per Section 17
  - c) Returned capacity as per Section 16
  - d) Withdrawn capacity as per Section 18.
4. The transmission system operator may offer at cross-border and market area interconnection points reverse flow capacities. Usually, reverse flow capacities are to be booked on an interruptible basis. Furthermore, the transmission system operator may offer reverse flow capacities also on a firm basis.
5. The Gas Day shall apply to the beginning and end of the capacity products.

### **Section 10 Conversion of interruptible capacity**

1. Holders of interruptible capacity at market area interconnection points or cross border interconnection points may submit bids to convert interruptible capacity into firm capacity at an auction of firm capacity (Section 13 (2) GasNZV). The shipper may specify in a binding bid whether all interruptible capacity is to be converted into firm capacity, in whole or in part. Both proportion conversion and conversion of multiple interruptible capacity quantities may be realized by the transmission system operator's allowing placement of a separate bid on the primary capacity platform.
2. Holders of interruptible capacity per Section 1 (3) a) - c) can convert interruptible capacity into firm if they made a binding declaration at the time of booking that their interruptible capacity is to be replaced by firm capacity, in whole or in part. Both proportion conversion and conversion of multiple interruptible capacity quantities can be realized by the transmission system operator allowing separate booking on the primary capacity platform.

3. If the shipper's capacity as per Items 1 or 2 is converted, the shipper shall pay the applicable charges determined by auction (Item 1) or published by the transmission system operator (Item 2). Interruptible capacity is reduced accordingly for shipper capacity as per Items 1 or 2 that is converted.

### **Section 11 Subscribing/unsubscribing network usage for supplying end-consumers**

1. The processing of supply to end-consumers at exit points is governed by the Federal Network Agency determination on uniform business processes and data formats and dated August 20, 2007 (Ref.: BK7-06-067), or any directive replacing or amending a directive issued by the Federal Network Agency (GeLi Gas).
2. The booking of available capacities (e.g. successive or extensional bookings) to end-consumers that are directly connected to the transmission system of the transmission system operator does not actuate the proceedings relating to the registration/deregistration according to GeLi Gas as stated in Item 1.

### **Section 12 Nomination and renomination at market area interconnection points and cross-border interconnection points**

1. Responsible for nomination and renomination is the balancing group manager appointed by the shipper for this purpose.
2. The balancing group manager nominates the gas quantities to be transported under the arrangements for the use of firm capacity at a particular booking point until 14:00 hours of the day prior to delivery day. This initial nomination is accepted if it is received by the transmission system operator by 14:00 hours. The nominated value is otherwise zero, unless the parties have agreed otherwise. For bundled nomination, the nominating balancing group manager must have been authorized by the other balancing group manager whose balancing group is affected by the nomination in text form vis-à-vis the respective transmission system operators. The authorization needs to be given only one time.
3. The nominating balancing group manager can replace its initial nomination with a renomination at least two hours prior to the hour. Renomination is permitted up to 90% of capacity booked by the shipper at the booking point, subject to a minimum 10% of booked capacity. With initial nominations of a minimum 80% of booked capacity, half of the un-nominated range is allowed for upward renomination. With initial nominations of a maximum 20% of booked capacity, half of the nominated range is allowed for downward renomination. Allowable renomination amounts are rounded to whole kilowatt hours per hour for allocation purposes.
4. Nominations shall be first allocated to firm capacity products, and then to interruptible.
5. Renominations of firm capacity exceeding the permitted range as per Item 3 shall only be accepted up to the amount of total booked capacity. The part of the renomination exceed-

ing the permitted range shall be treated as a nomination of interruptible capacity and shall be interrupted first.

6. Renomination of firm capacity falling below the permitted range as per Item 3 is accepted. If interruption in reverse flow direction is necessary, the renomination amount is raised to the minimum allowable renomination value.
7. The renomination restriction does not apply to shippers that have booked less than 10% of the reported technical annual capacity at the booking point on a firm basis.
8. If several shippers incorporate a booking point to the same balancing group, the balancing group manager can set up a sub-balancing account for each shipper in this balancing group. In such case the responsible balancing group manager nominates gas quantities to the corresponding sub-balancing account for each individual shipper. Renomination limits as per Items 3 and 7 apply in this case to the shipper's total capacity incorporated to sub-balancing accounts at the respective booking point. Unless sub-balancing accounts are set up, the total capacity at the booking point within a balancing group is applied concerning the renomination restriction.
9. Nominations must be submitted individually for each flow direction. Bundled capacity is nominated by submitting a bundled nomination.
10. Day-ahead capacity may be nominated until 20:00 hours. Renomination of day-ahead capacity is excluded. Day-ahead capacity is not considered in determining the permitted renomination range as per Item 3.
11. The amount of booked capacity as per Item 3 and the renomination restriction calculated thereof are determined after 14:00 hours based on the capacity booked as per the entry or exit contract or capacity incorporated to the balancing group less capacity returned by 14:00 hours.
12. The technical annual capacity as per Item 7 shall be published on the primary capacity platform by the transmission system operators once a year in March for the following Gas Year. In case of a market area interconnection point, the transmission system operators concerned shall jointly agree on the technical annual capacity to be published.
13. The bundled nomination as per Item 9 Sentence 2 is to be sent by the balancing group manager into whose balancing group the entry capacity of the bundled capacity is incorporated, to the entry-side transmission system operator of the bundled capacity. The nominating, entry-side balancing group manager and the exit-side balancing group manager receive the matching result as confirmation.
14. Item 10 only applies to firm day-ahead capacity. Only capacity nominated after 20:00 hours counts as renominations as per Item 10 Sentence 2. The exclusion of renomination as per Item 10 Sentence 2 applies to all booked capacities at the same booking point which are incorporated to the same balancing group or sub-balancing account.
15. The transmission system operator has to inform the balancing group manager daily until 18:30 hours about the portfolio of capacities within its balancing group per point for the following Gas Day as follows:

- Notation of the point,
- Point-ID (preferably the Energy Identification Code of the DVGW),
- Flow direction (entry or exit),
- Capacity product, provided that the commonly agreed EDIFACT data format enables this,
- Sum of the incorporated firm capacity without day-ahead capacity,
- Information, whether a renomination restriction applies and in case it does, the information about the lower and higher renomination limits according to Item 3,
- Sum of the incorporated firm day-ahead capacities,
- Sum of the incorporated interruptible capacities,
- Firm and interruptible parts of incorporated temperature-related capacity products, if offered.

The transmission system operator endeavours to deliver complete and correct data.

The transmission system operator can split the data stated above into up to two messages. The shipper declares its consent to the forwarding of these data to the balancing group manager. The details concerning the data formats are to be stated in the transmission system operator's supplementary terms and conditions.

### **Section 13 Nomination and renomination**

1. The shipper is obligated to nominate the entry quantities to be transferred at each entry point assigned to its balancing group towards the entry network operator. The transmission system operator is entitled to state rules thereto in its supplementary terms and conditions. Exit nominations are to be provided in the cases outlined under Items 3 and 4. Physical biogas feed-ins does not have to be nominated. The respective transmission system operator is entitled to state an obligation to give a technical notice in case of feed-in as per Sentence 4 in its supplementary terms and conditions. The transmission system operator may waive nominations at entry points defined by itself.

Nominations are first assigned to firm capacity products and then to interruptible capacity products. Nominations must be submitted individually for each flow direction. Nominations of balancing groups or sub-balancing accounts with day-ahead capacities start from 18:30 hours. Transmission system operators may accept nominations before 18:30 hours according to ability and condition. Renomination rights remain unaffected.

2. The shipper may authorize a third party (e.g. balancing group manager) to nominate. This third party provides nominations to the transmission system operator on behalf of the contracting shipper. The balancing group manager is authorized to submit combined nominations for several shippers as long as these shippers have the same balancing group for the assignment of their entry or exit points. If the balancing group manager does not sub-



mit a combined nomination as described above or if a shipper submits a nomination directly, the capacities are to be incorporated to corresponding sub-balancing accounts.

3. At exit points that are not exit points to end-consumers the shipper must nominate the exit quantities to be received at the respective exit point to the exit network operator. The transmission system operator is entitled to state rules thereto in its supplementary terms and conditions.
4. If several shippers have booked capacity at the same exit point and if this exit point is incorporated to different balancing groups, the respective shippers must submit nominations to the exit network operator. This does not apply if nomination is not required due to allocation rules. Nomination obligations shall also apply if a shipper has incorporated the same exit point in different balancing groups.
5. For the operational handling of the nomination and renomination of the transport and in case of an amendment of the allocation rules that is leading to a nomination obligation, the initial setup of the communication processes between entry/exit network operators or operators of infrastructure facilities and shippers or the shipper's third-party contractor in case of a nomination obligation at entry and exit points and an implementation period of maximum 10 business days is required.
6. If for the requested booking point the setup of the communication processes as per Item 5 has already been done and if it is a complex point, the duration of the implementation period is maximum 10 business days. The transmission system operator endeavours to reach a faster implementation. Complex points are particularly characterized by the following: special services within the matching process are provided by third parties, manual processes for the setup of the matching are necessary on at least one side, foreign network operators are affected or if on at least one side of the network interconnection point the pipeline is a co-ownership of several network operators. The transmission system operators mark the complex points on the primary capacity platform.
7. If for the requested booking point the setup of the communication processes as per Item 5 has already been done and if it is not a complex point as per Item 6, the duration of the implementation period is maximum 1 business day.
8. For entry or exit points which are implemented as per Item 5 to 7, there are no particular implementation periods provided that the combinations of balancing group numbers, sub-balancing account numbers or shipper codes were already set up.
9. The applicable provisions outlined in Common Business Practice CBP 2003-002/02 "Harmonisation of the Nomination and Matching Process" in its current version apply regarding nominations and renominations, posted on the transmission system operator's website. A deviation from the provisions mentioned in Sentence 1 is allowed in case the adjacent transmission system operator at a cross-border interconnection point does not apply the provisions outlined in Common Business Practice CBP 2003-002/02.

10. Barring any contrary provisions in Section 12, Section 13 shall also apply to nominations and renominations at market area interconnection points and cross-border interconnection points.

### **Section 13a Operational processing of nominations**

1. The transmission system operator and the shipper as the nominating party commit themselves to 24 hours of availability on each gas day. Accessibility must be ensured under one single phone number and via a further route of communication (e-mail or fax). Furthermore, the nominating party and the transmission system operator shall at all times be able to receive, to send and to process the data required for the handling of nominations.
2. The data exchange in the context of the nomination shall be consistently in machine-readable and aligned form in whole numbers of units of energy [kWh/h] on an hourly basis. Any deviating procedures must be agreed accordingly with the transmission system operator. For the exchange of all data and messages necessary for the nomination handling, the transmission system operator and the nominating party agree on the standard nomination mode using the Edig@s data format. In its supplementary terms and conditions, the transmission system operator may also offer, in addition to the standard nomination mode using the Edig@s data format, further nomination modes.
3. The nominating party shall inform the transmission system operator without delay about any obstacles relating to the set-up or use of interfaces within the meaning of Sections 13a to 13c, to the mutual collaboration or to the procedures.
4. As far as nominations are required, the data formats defined pursuant to Edig@s shall apply. These requirements shall apply mutatis mutandis to renominations. The nominating party shall ensure that congruent nominations for all points requiring nomination are presented to the parties affected by the nominating process, and that the nomination is transmitted in due time. Only the nomination values confirmed by the transmission system operator shall be authoritative.
5. The transmission system operator may refuse the nomination if any contractual terms should not be met or if the nomination should be incomplete. If the amount of the nomination should exceed the amount of the capacity incorporated to the balancing group or sub-balancing account, the transmission system operator may limit the nomination to this amount. In this case, the nomination limited accordingly shall be deemed to be the one submitted by the shipper. The further auxiliary conditions and/or capacity limitation rights for capacity products of the transmission system operator pursuant to the supplementary terms and conditions shall remain unaffected.

### **Section 13b Communication test**

1. The transmission system operator shall perform a communication test with the nominating party. Details relating to the communication requirements of the transmission sys-

- tem operator and the communication test performed by the same are published on the website of the transmission system operator.
2. The transmission system operator shall furthermore have the right to repeat a communication test at any time during the term of the respective entry and exit contract (entry-exit-system).
  3. As long as the nominating party fails the communication test pursuant to the criteria defined by the transmission system operator for reasons within the responsibility of the nominating party, the transmission system operator may set all the nominations of the nominating party for the following gas days after the date of the failure of the communication test to zero (0), using a standardized method of the respective transmission system operator.

### **Section 13c Balancing of nominations (“Matching”)**

1. The nominating party must ensure that it submits nominations for the entry points and exit points of the balancing group which require nomination to the respective grid or plant operator.
2. At all points requiring nomination, the transmission system operator shall carry out a matching with the adjacent grid or plant operator and synchronizes all the nominations received, taking into account the “lesser-of-rule” in accordance with the provisions of the Common Business Practice (CBP) with the respectively affected adjacent system operator.
3. If the respective pair of balancing group numbers or sub-balancing account numbers do not match or are unknown on one of both sides, the nomination or renomination for the gas day shall be set to zero (0). The same shall apply to cross-border interconnection points if the shipper codes do not match.

### **Section 14 Nomination replacement procedure**

1. Transmission system operators offer a nomination replacement procedure if technically possible and economically feasible. This requires the transmission system operator and shippers to conclude a separate contract. The transmission system operator publishes on its website if a nomination replacement procedure is offered. If a nomination replacement procedure is offered, the conditions for this have to be published on the transmission system operator's website.
2. The nomination replacement procedure can be agreed to start or end on the first (1<sup>st</sup>) of the month. An implementation deadline of 10 business days applies for conclusion and termination. When initially applying the procedure the shipper must notify the entry or exit network operator of the entry or exit points whose metering data are to be utilized in the nomination replacement procedure, in addition to concluding the agreement 20 business days before the nomination replacement procedure agreed with the entry network opera-

tor is applied. Sentence 3 applies accordingly to the notification of the termination of the application of the nomination replacement procedure.

3. The nomination replacement procedure can only be used if sufficient firm capacity is booked for the respective points in the entry or exit contract. A nomination replacement procedure cannot be used with capacity booked as interruptible.
4. If the transmission system operator offers an online flow control method or time-lag method, the condition for use is the availability of a flexible flow source to which the transmission system operator with whom the shipper has concluded a nomination replacement procedure agreement has access. The virtual trading point is not a flexible flow source, but can connect a flexible flow source with entry or exit points whose metering data are utilized in the nomination replacement procedure. The transmission system operator with whom the shipper has concluded the nomination replacement procedure agreement also takes over controlling of the entry quantities at the agreed entry point. This is based on metering data of one or more entry or exit points. The shipper must make the metering data available. In case of the time-lag method, the hourly metered value counts as nomination for the entry point; the maximum time-lag is 4 hours.

### **Section 15 Technical feed-in and offtake notice**

1. For end-consumers with registering load profile measurement and generally unpredictable, extremely high and volatile gas consumption, the exit network operator may require prior technical offtake notices and compliance with the technical limits as per Section 8 (5) GasNZV, as far as necessary to maintain system integrity of the network. In this case the exit network operator notifies the shipper generally 1 month in advance in writing about the requirement to submit technical off-take notices.
2. If the exit network operator requires technical off-take notices according to Item 1, EDIG@s-messages have to be used. If the shipper is not able to generate EDIG@s-messages, the parties may temporarily agree upon an alternative format. For this purpose, the parties will agree particularly on type, extent, technical execution of provision and documentation of data.
3. The above mentioned procedure applies accordingly for technical feed-in notices according to Section 13 Item 1.

### **Section 16 Capacity return**

1. The shipper can return booked firm capacity in whole or in part, related to the booking period and quantity, to the transmission system operators via the joint booking platform (primary capacity platform) at any time by 14:00 hours on the day before the supply day. Any primary use or secondary marketing of the returned capacities by the shipper is excluded, except as provided as per Item 8.
2. Bundled firm capacity can be returned in bundled form only.

3. Confirmation of capacity return is given via the joint booking platform with a time stamp for the shipper. This confirmation shall not release the shipper from its obligation to pay.
4. Return is possible for any days in the future and for any parts of the originally booked capacity.
5. The transmission system operators market returned capacities as primary capacity under the applicable rules. They can combine returned capacities and any primary capacity that is still available to offer products of longer duration. Returned capacity will be marketed after other primary capacity available for the period in question.
6. If the transmission system operator markets returned capacity in whole or in part, the shipper will be released accordingly from its obligation to pay. The extent of release from the obligation to pay depends on the revenues obtained capped at the regulated transport tariff for the period of primary marketing and the amount of remarketed capacity. If the capacity returned by the shipper was obtained at an auction, the obligation to pay the auction surcharges to be added to the regulated transport tariff remains unaffected.
7. If several shippers return capacities for a particular day, the capacities will in case of supply surplus be remarketed by the transmission system operator in the chronological order in which they were returned (time stamp).
8. Returned capacity that could not be remarketed will be made available again to the shipper daily for the following day after completion of day-ahead marketing, but not later than 18:30 hours, for use in the balancing group, to which it had been incorporated prior to the return.
9. The transmission system operator issues the shipper a credit for the tariff referred to in Item 6. The credit is issued monthly and is offset against any outstanding transport charges.
10. The shipper's releasing from payment obligations as per Item 6 only applies upon receipt of credit. The credit is issued in the month following the marketing of the capacity.
11. The transmission system operator notifies the shipper by 18:30 hours of the capacity amount made re-available as per Item 8.
12. The rules of Section 16 do not apply for exit points to end-consumers. Section 16 GasNZV remains unaffected.

### **Section 17 Transmission system operator offering firm capacity left unused on short notice as per Section 16 (2) GasNZV**

1. The transmission system operator may offer for the next day firm capacity booked by the shipper that cannot be used in whole or in part, taking into account existing renomination rights.
2. The shipper remains obligated to pay charges, also if the capacity is successfully remarketed.

3. Section 16 (4) GasNZV does not apply.

### **Section 18 Withdrawal of capacity left unused over a longer term as per Section 16 (3) and (4) GasNZV**

1. Pursuant to Section 16 (3) GasNZV, the transmission system operator may withdraw firm capacity left unused or partially unused over a longer period by the shipper at all entry or exit points with the exception of the market area interconnection points and cross-border interconnection points if a contractual congestion occurs. For market area interconnection points and cross-border interconnection points the provisions as per Section 18a shall apply concerning the withdrawal of capacity insufficiently used over a longer term.

A contractual congestion exists if a grid access rejection as per Section 20 (2) EnWG occurs.

2. Withdrawal is done for all contracts in place for the entry or exit point that have a combined term of at least one year, irrespective of individual contract durations.
3. Capacity is withdrawn in the amount of firm capacity booked by the shipper left unused permanently on an hourly basis over a period of at least 3 consecutive months within the preceding calendar year. One of these three months must be January, February, March, October, November or December. If several such periods can be identified lasting 3 calendar months, the minimum is to be determined of identified minimal non-utilizations over all these periods. Withdrawal may maximally be made up to this limit. In determining the withdrawal amount the relevant capacity is the capacity consistently and continuously available to the shipper in the previous calendar year, i.e. in terms of both timing and quantity. Any partial resale, return or reduction in booked capacity by the shipper will be considered accordingly.
4. The shipper may object to the withdrawal as per Section 16 (4) GasNZV.
5. If several shippers have booked capacity at an entry or exit point and incorporate these to the same balancing group, in case of combined nominations the transmission system operator may withdraw capacity from each of these shippers proportionately, weighted by capacity booked at that entry or exit point. This does not apply if the balancing group manager nominates in separate sub-balancing accounts for each shipper.
6. For the billing of withdrawn capacity that is actually marketed and for the handling Section 16 applies accordingly.

### **Section 18a Withdrawal of capacity insufficiently used over a longer term at market area interconnection points and cross-border interconnection points**

1. At market area interconnection points and cross-border interconnection points the transmission system operator withdraws capacity if the Federal Network Agency requests this. The transmission system operator transfers to the Federal Network Agency regularly all data which is necessary to monitor to what extent booked capacity with a contract term of

longer than one year or of consecutive quarters which are covering at least two years, are used. Any primary use or secondary marketing of the withdrawn capacity by the shipper is excluded, except as provided as per Sentence 4. Withdrawn capacity that could not be remarketed will be made available again to the shipper daily for the following day not later than 18:30 hours for use in the balancing group, to which it had been incorporated prior to the withdrawal. Furthermore, the rights and obligations of the shipper from the entry or exit contract continue to apply until the effective date of the marketing of the capacity by the transmission system operator as well as to the extent to which the capacity was not remarketed by the transmission system operator.

2. For the billing of withdrawn capacity that is actually marketed and for the handling Section 16 applies accordingly.

### **Section 19 Secondary market trading**

1. The shipper may surrender the use or assign booked capacity as per Section 12 (2) GasNZV to a third party only using the secondary platform. Bundled capacity can only be surrendered or assigned as bundled capacity. The provisions below govern the surrender of use and assignment of an entry or exit contract.
2. The shipper may surrender the use of capacity rights (with or without nomination rights) from an entry or exit contract in whole or in part to a third party without the transmission system operator's permission. The shipper shall remain obligated to the transmission system operator to fulfill the obligations resulting from the entry or exit contract, in particularly the payment of charges.
3. The shipper may with the transmission system operator's consent assign the entry or exit contract in whole or in part to a third party. The third party concerned must be approved by the transmission system operator. Consent may only be withheld for reasons that would likewise justify rejection of initial conclusion of an entry or exit contract with the third party in question. Such reason shall be in particular if the third party as per Section 36 meets the conditions for requiring a provision of security and has not provided such. Assignment in relation to the transmission system operator only becomes effective upon approval as per Sentence 1 or notification as per Section 40 Item 2. Transmission system operators' supplementary terms and conditions specify deadlines for assignment of entry and exit contracts between shippers. Transmission system operators shall endeavor to offer as soon as possible the assignment by at the latest Day D-1, 11:00 hours.

### **Section 20 Technical requirements**

1. The shipper must ensure that the gas available for entry meets the requirements as per Section 19 GasNZV. Gas quantities to be delivered have to comply with worksheet G 260, 2<sup>nd</sup> Gas Family, of the German Technical and Scientific Association for Gas and Water (DVGW) as amended from time to time, and to the applicable nominal value of the Wobbe Index. Section 36 (1) GasNZV governs the technical specifications for feeding-in of biogas.

2. The technical specifications for the respective entry or exit points published on the transmission system operator's website constitute a part of the entry or exit contract. Each party to the contract may request that a neutral party inspect whether the gas quality complies with the transmission system operator's requirements as per Sentence 1. If the parties to the contract cannot reach an agreement about the neutral party within one month after the other party to the contract has received the request, the inspection shall be conducted by the Engler-Bunte-Institut at the University of Karlsruhe. The party to the contract requesting the inspection shall bear the cost of the inspection if compliance is confirmed. If compliance is not confirmed, the transmission system operator is obligated to pay the costs.
3. The transmission system operator must notify the shipper of any change in technical specifications becoming necessary due to amendments of laws or regulations as promptly as possible in view of the circumstances. The transmission system operator shall amend the respective contract affected by the change with effect from the effective date of the amendments of laws or regulations as per Sentence 1. When a change in technical specifications is necessary to fulfill the transmission system operator's legal obligations to cooperate, the transmission system operator may make such changes 4 months after notifying the shipper thereof. If the change affects the shipper's use of capacity, the shipper has the right to terminate the respective contract as of the effective date of the change with 3 months' notice. If the transmission system operator provides notice as per Sentence 1 less than 4 months in advance of the effective date of the change, the shipper may terminate the contract in question without notice as of the effective date of the change.
4. Deviating from Item 3 Sentence 3, the transmission system operator is entitled to change the gas quality or pressure specification in coordination with the Federal Network Agency providing 3 years' notice, effective at the start a gas business year, without the shipper's consent. If a new entry or exit contract begins during the notice period after the transmission system operator has announced a change, the notice period already ongoing applies to that contract as well. Any change of gas quality or pressure specification must be limited to the entry or exit points affected by the change. The contract affected by the change is to be amended with effect from the effective date of the change of the gas quality or pressure specification. If the transmission system operator changes the gas quality or pressure specification as outlined here, the shipper is entitled to terminate the contract for the corresponding entry or exit points subject to a notice period of one year prior to the effective date of the change of the gas quality or pressure specification.

## **Section 21 Non-compliance with gas quality or pressure specification**

1. If gas quantities supplied by the shipper at the entry point do not meet the technical requirements for gas quality or pressure specification as per Section 20 Items 1 and 2 (hereinafter referred to as "off-spec gas"), the entry network operator is entitled to refuse acceptance of the off-spec gas, in whole or in part. The shipper must in such case immediately adjust its nomination at that entry point accordingly and reduce the continuation of



supplying of off-spec gas at that entry point accordingly. None of the transmission system operator's rights vis-à-vis the shipper are affected.

2. If gas quantities supplied by the exit network operator at the exit point do not meet the technical requirements for gas quality or pressure specification as per Section 20 Items 1 and 2, the shipper is entitled to refuse acceptance of the off-spec gas, in whole or in part. The exit network operator must in such case immediately reduce the supplying of off-spec gas at that exit point accordingly. None of the shipper's rights vis-à-vis the transmission system operator are affected.
3. In the case of reduction as per the rules stated above, renominations shall be carried out immediately in order to avoid imbalances.
4. Each party to the contract shall immediately inform the other party as soon as becoming aware of off-spec gas being supplied at an entry or exit point, or expecting off-spec gas to be supplied.

## **Section 22 Allocation of quantities**

1. The entry network operator to whom entry nominations were submitted as per Section 12 Items 1 and 2 and Section 13 determines for each balancing group or sub-balancing account the gas quantities fed in at entry points and allocates these to the respective balancing group or sub-balancing account based on nominations or using the allocation procedure specified in the entry contract.
2. In allocating biogas entry quantities, any liquefied petroleum gas quantities added by the entry network operator for conditioning for adjustment to the required calorific value of the entry network operator's network in accordance with Section 36 (3) GasNZV are not considered.
3. The exit network operator allocates gas quantities withdrawn at exit points to storage facilities, at market area interconnection points and at cross-border interconnection points to the respective balancing group or sub-balancing account based on nominations or using the allocation procedure specified in the exit contract.
4. The exit network operator determines for each balancing group or sub-balancing account the gas quantities withdrawn at exit points to metered end-consumers ("RLM") based on metered values and allocates these to the balancing group or sub-balancing account.
5. The exit network operator determines for each balancing group or sub-balancing account the gas quantities withdrawn at exit points to end-consumers with standard load profiles and allocates these to the balancing group or sub-balancing account based on the standard load profile procedure determined by the exit network operator.
6. If entry or exit points are incorporated to several balancing groups, shippers and the respective entry/exit network operators agree upon allocation rules in the entry/exit contract in order to ensure that gas quantities allocated to this point are balanced once only.

## Section 23 Metering points operation and metering

1. Metering data taken by the transmission system operator or a third party as per Section 21 b of the Energy Industry Act (EnWG) are used by the transmission system operator for balancing and calculating oversupply/undersupply quantities and exceeding of capacity limits.
2. Barring any differing provisions agreed between the connection user and a third party as per Section 21 b EnWG, the provisions outlined below shall apply, in which case the transmission system operator is the metering point operator and metering service provider. As metering service provider the transmission system operator provides metering data to the shipper.

The transmission system operator determines the type, number and size of metering and control devices, in accordance with Section 8 of the Metering Access Regulation (MessZV). These determinations must take energy industrial concerns properly into account with respect to the consumption amount and consumption behavior. The transmission system operator provides and operates the metering and control devices required for measurement and meter reading with RLM end-consumers.

3. For remote reading the end-consumer must have a suitable, externally dialable telecommunications connection without time limit and a 230 V connection. The transmission system operator may use a GSM modem instead of a telecommunications connection. Upon request the transmission system operator must notify the end-consumer of the relevant technical specifications (distances between connections, connections to metering installation etc.). Remote reading must be available prior to commencing supply to a RLM meter or conversion of an SLP into a RLM meter. The setup and use of telephone and electricity connections are free of charge for the transmission system operator. Cost accruing through delays caused by the transmission system operator shall not be borne by the shipper or the end-consumer. Costs accruing through delays caused by the end-consumer shall not be borne by the transmission system operator.
4. The transmission system operator must immediately notify the shipper daily by 13:00 hours of the previous day's load profile, recorded hourly and read daily at the RLM exit points in the MSCONS format. The load profile energy amounts are calculated using the balancing calorific value.

After the close of the supply month, all load profiles are plausibility-checked as per worksheet G 685 of the DVGW (German Technical and Scientific Association for Gas and Water) and substitute values are recorded as applicable. Load profiles are converted using the final gross calorific value. The transmission system operator must provide the shipper the load profile at RLM exit points for the supply month by no later than M+10 days.

If the transmission system operator records replacement values using DVGW worksheet G 685, the load profile is also to be provided, converted using the balancing calorific value, within M+10 days.

The applied calorific value and Z number are communicated in MSCONS.

For RLM exit points, which are allocated to a biogas balancing group, instead of the above mentioned procedures Item 5 shall apply.

5. For RLM exit points, which are allocated to a biogas balancing group, the load profile will be corrected to the final gross calorific value according to DVGW worksheet G 685 on Day M+12 business days. If a correction of the compression factor (K-number) is necessary according to DVGW worksheet G 486, this will be considered as well. The transmission system operator notifies the complete monthly timeline in the applicable ALOCAT-format as amended from time to time on Day M+12 business days to the market area coordinator.
6. For end-consumers supplied using the load profile method, metering devices are read by the transmission system operator, its agent or by the end-consumer at the request of the transmission system operator at regular intervals not substantially exceeding 12 months on a date and schedule determined by the transmission system operator. If an agreement as per Section 40 (3) Sentence 2 EnWG is in place, the shipper must observe the meter-reading schedule specifications outlined therein.

The transmission system operator must arrange interim meter readings between regular readings, particularly at a change of supplier, end-consumer move-in/out, termination of this contract or a material change in demand, in accordance with GeLi Gas. If this is not possible, the transmission system operator may determine the consumption by way of extrapolation or estimate it on the basis of the last reading. The actual situation must be taken into account appropriately.

7. The shipper must pay the transmission system operator separately when ordering an additional reading.
8. If an inspection of metering equipment reveals that error margins have been exceeded, the over-/undercharged amount must be reimbursed or paid.

If the amount of error in an SLP end-consumer's metering device cannot be determined with accuracy or the device is unreadable, the transmission system operator estimates consumption for the period since the last accurate metering based on average consumption for the metering periods preceding and following reading, or on the previous year's consumption. The actual situation must be taken into account adequately.

If the amount of error in a RLM end-consumer's metering device cannot be determined with accuracy or if the device is unreadable, replacement values are derived for missing or implausible values in accordance with the latest updated version of DVGW worksheet G 685.

Claims as per (1) Sentence 1 are restricted to the reading period preceding the determination of the error, unless the impact of the error can be determined over a longer period. In such case claims expire in 3 years at the latest.

9. Barring any differing agreements as per Section 21 b (2) or (3) EnWG, metering data provided by metering service provider to the transmission system operator and processed by the transmission system operator are used for execution and settlement of this contract.

Item 8 para. 2, 3 and 4 apply if the metering data are not properly available to the transmission system operator or if the available metering data are implausible.

10. A written request from the connection user and the shipper is required for registering load profile metering with an annual withdrawal of less than 1,500,000 kWh and a maximum hourly withdrawal rate of less than 500 kWh/h as per Section 24 (1) GasNZV, or below the limits specified by the transmission system operator as per Section 24 (2) GasNZV.

The shipper bears the cost of converting a standard load profile metering into registering load profile metering in the cases described above, unless otherwise agreed.

Following conversion and commencement of registered load profile metering, charges for registering load profile metering are applied as per the pricelist published by the transmission system operator, regardless of actual consumption and annual energy quantities.

11. The quantity of biogas fed-in is reported in "kWh" as the product of standard quantity multiplied by final gross calorific value, i.e. the calorific value for billing determined for the entry point. The transmission system operator is entitled to calculate replacement values if no metering data are available for biogas quantities delivered by the shipper. Replacement values are calculated in accordance with DVGW worksheet G 685.

### **Section 24 Settlement of oversupply/undersupply quantities**

1. The transmission system operator determines oversupply/undersupply quantities after final determination of the billing-related metering values and data. Consumption during the billing period for SLP and RLM exit points is measured for all exit points using DVGW worksheet G 685 is compared with the final value applied for allocation to the balancing group manager's balancing group. For RLM exit points, which are allocated to a biogas balancing group, the oversupply/undersupply billing is not applicable.
2. Oversupply quantities arise as difference quantity in the billing period as long as the exit gas quantity withdrawn at the exit point is lower than the gas quantity allocated by the exit network operator to the balancing group/sub-balancing account. Undersupply quantities arise as difference quantity in the billing period as long as the exit gas quantity withdrawn at the exit point is higher than the gas quantity allocated by the exit network operator to the balancing group/sub-balancing account. The transmission system operator pays the shipper for oversupply quantities and invoices the shipper for undersupply quantities.
3. The transmission system operator settles oversupply/undersupply quantities with the shipper for SLP end-consumers at the respective average balancing energy prices for the billing period. Account settlement for oversupply/undersupply quantities is done using the method described in Annex 1.
4. Oversupply/undersupply quantities for RLM end-consumers per exit point – arising particularly due to differences between balancing calorific values and calorific values for billing – are determined monthly for each exit point and settled by the transmission system operator with the shipper at the average monthly balancing energy prices. These prices are the unweighted arithmetic mean of the positive and negative balancing energy prices of

the gas days of the month concerned. The monthly average balancing energy price is calculated and published by the market area coordinator, and is used for settlement of over-supply/undersupply quantities.

5. The energy tax free settlement of oversupply/undersupply quantities between transmission system operators and shippers is carried out as long as one party has received a declaration from the responsible customs office as per Section 38 (3) of the Energy Tax Act (EnergieStG) from the other party. The other party must be notified immediately in writing of any changes concerning the declaration, including for example its rejection by the responsible customs office.

### **Section 25 Fees**

1. The shipper is obligated to pay to the transmission system operator the tariffs stated in the respective contract in accordance with the pricelist, in particular the respective specific capacity tariff, plus any surcharge for capacity as per Section 1 Item 2 as well as the metering charge, the metering point operation charge and the settlement charge, plus any applicable concession charges or other charges and taxes including biogas pass-on costs of the market area as per Section 20 b of the Gas Transport Tariff Ordinance (GasNEV) including the charged conversion costs according to Section 19 a EnWG. The applicable tariffs and charges as per the transmission system operator's pricelist are published on the transmission system operator's website.
2. In determining revenue caps as per Section 17 (1) of the Incentive Regulation Ordinance (ARegV) and in adjusting revenue caps as per Section 17 (2) ARegV in conjunction with Section 4 (3) to (5) ARegV and Section 5 (3) ARegV in conjunction with Section 17 ARegV, the transmission system operator is entitled to adjust the transport tariffs if this results in an increase of the transport tariffs. The transmission system operator is obligated to adjust the transport tariffs if this results in a reduction of the transport tariffs. According to Section 5 (3) ARegV the difference between the actually obtained revenues and the obtainable revenues has to be completely taken into consideration thereby. In such cases the transmission system operator adjusts the transport tariffs in accordance with Section 17 ARegV in conjunction with the regulations of Part 2 (2) and (3) GasNEV and Section 5 (3) ARegV. The transmission system operator must notify the shipper immediately in text form (pricelists) about the adjusted transport tariffs.
3. Transport tariffs may only be adjusted effective January 1 of the following calendar year.

The transmission system operator may utilize its own regulatory account for processing differences arising from both increases and reductions (Section 5 ARegV).

4. In case of an increase of the tariffs, the shipper may terminate the contract in whole or in part relating to the amount of capacity booking, providing 10 business days' written notice prior to the effective date of the adjustment. If the shipper does not receive the information according to Item 2 Sentence 4 at least 20 business days prior to the effective date of adjustment, the shipper may - deviating to Sentence 1 - terminate the contract in

whole or in part relating to the amount of capacity booking within 10 business days after receiving such information according to Item 2 Sentence 4 with a 5 business days' prior written notice, to the effective date of the adjustment at the earliest. A termination in part according to Sentence 1 and 2 is only allowed, if the capacity within the booked capacity product is reduced consistently for the total remaining term of the contract. A termination right according to Sentence 1 and 2 is excluded, if the increase of the tariffs is in percentages lower or equal to the increase of the Verbraucherpreisindex (Gesamtindex) für Deutschland (Consumer Price Index/Total Index) for Germany (VPI) as published by the Statistisches Bundesamt (Federal Statistic Office). The change rate of the annual average of the VPI compared to the preceding year which is published by the Federal Statistic Office on the date of the announcement of the increase of the tariffs is applicable.

5. In the event that taxes or other public-law levies on the fees pursuant to the respective contract – including taxes or other public-law charges on services on which these fees are based – are introduced, abolished or adjusted, the transmission system operator shall increase or reduce the fees accordingly in the respective contract effective at the date of introduction, abolishment or adjustment of the taxes or other public-law dues, unless the revenue cap applies.
6. When revenue caps are adjusted in view of hardship as per Section 4 (4) Sentence 1 No. 2 ARegV, the transmission system operator is entitled to adjust the tariffs in accordance with the decision of the Federal Network Agency or effective January 1 of the following calendar year.
7. Additionally, the transmission system operator is entitled or obligated to adjust the tariffs as per Item 1 if such adjustments are required pursuant to legal and/or regulatory and/or judicial decisions.
8. The transmission system operator's right and obligation to adjust the tariffs apply to all entry and exit capacities, regardless of the kind of its allocation.
9. The transmission system operator pays the shipper a flat rate fee for avoided network costs for physically directly fed-in biogas, in the amount as specified by law. The settlement of the fees for avoided network costs is made on a monthly basis, applying the technical quantity calculation as per Section 23 Item 10. Any liquefied petroleum gas quantities added by the transmission system operator for conditioning for adjustment to the required calorific value in the transmission network in accordance with Section 36 (3) GasNZV are not considered.
10. Apart from that, the transmission system operator's supplementary terms and conditions published on the internet shall apply.
11. For exit points to end-consumers the shipper has to pay the stated metering point operation charge/metering charge according to Item 1 from the date and for the time period at which the transmission system operator is a metering point operator/metering service provider according to Section 21 b EnWG at the respective exit point to the end-consumer. The transmission system operator will inform the shipper without delay in

case that he becomes a metering point operator/metering service provider or in case that he is not any more a metering point operator/metering service provider of the exit point to the end-consumer, in particular as a result of a change of the metering point operator/metering service provider according to Section 21 b (2) EnWG.

### **Section 26 Invoicing and payment**

1. Invoicing and any installment payments are processed in accordance with the transmission system operator's published supplementary terms and conditions. The network usage billing process as per GeLi Gas remains unaffected thereby.
2. Distinct indications of an obvious invoice error entitle the shipper to postponement or refusal of payment.
3. The transmission system operator is entitled to charge a lump sum payment for damages caused by delay. The shipper may prove lower actual damages caused by delay.
4. The transmission system operator shall refund any overpayment and the shipper shall pay any outstanding amount resulting from calculation errors of invoice amounts or invoicing data. Invoice correction is only permitted within a maximum of 3 years from receipt of the invoice to be corrected.
5. The parties may only offset with counterclaims that are undisputed or were determined legally binding.

### **Section 27 Taxes**

1. The shipper must pay the applicable fees plus energy tax at the relevant legal rate on gas quantities delivered by the transmission system operator in line with the respective contract to a shipper who is not a supplier within the meaning of Section 38 (3) of the Energy Tax Law (EnergieStG).

Such a delivery exists in particular in case the transmission system operator delivers additional gas quantities to the shipper at the exit point in addition to the gas quantities delivered by the shipper to the transmission system operator for transport.

If gas quantities are delivered to a shipper which is a registered supplier within the meaning of Section 38 (3) EnergieStG, the shipper must prove to the transmission system operator the existence of the requirements as per Section 38 (3) EnergieStG by submitting a current registration certificate as per Section 78 (4) of the Energy Tax Regulation (EnergieStV) issued by the responsible customs administration, establishing that the shipper is entitled as a registered supplier to purchase gas quantities tax-free. An evidence of the existence of the requirements as per Section 38 (3) of EnergieStG must be provided to the respective transmission system operator not later than one week before the date of delivery. If an adequate evidence of the existence of the requirements as per Section 38 (3) EnergieStG is not submitted within the prescribed period, the transmission system operator may invoice the shipper the fees due plus energy tax at the applicable rate on the gas quantity delivery.

The shipper is obligated to notify the transmission system operator immediately in writing if the shipper is not or no longer a supplier within the meaning of Section 38 (3) EnergieStG. A current delivery confirmation of the customs administration is required for address changes, company name changes and changes of the legal form. If the shipper does not fulfill its duty of notification or if he does not fulfill it in due time, he is obligated to pay to the transmission system operator the energy tax resulting thereof.

2. All fees in the respective contract are listed without applicable taxes. The shipper must pay these taxes in addition to these fees.
3. The fees in the respective contract and in this Section, plus any surcharges thereupon, represent the payment amount for purposes of the Value Added Tax Law and do not include Value Added Tax (VAT). The shipper must pay the VAT in the amount as specified by law to the transmission system operator in addition to this payment amount.

### **Section 28 Maintenance**

1. The transmission system operator shall be entitled to carry out maintenance (servicing, inspection and repair) on its pipeline system as well as measures for new construction, modification and expansion of systems. The transmission system operator shall be released from obligations under this contract if and to the extent the transmission system operator is not able to fulfill its contractual obligations due to aforementioned measures. The shipper is obligated to cooperate, particularly by adjusting network usage during maintenance activities planned by the transmission system operator.
2. The transmission system operator shall inform the shipper about measures as per Item 1 in due time before realization in an appropriate way if the network usage as per this contract should actually be limited in whole or in part. This advance notice requirement does not apply if advance notice is not possible in due time for reasons for which the transmission system operator is not responsible or if the remedial action necessary to eliminate any already occurred interruptions would be delayed by such an advance notice. In such cases the transmission system operator is obligated to inform the shipper afterwards about the reason why the shipper's rights under the contract were limited.
3. If measures as per Item 1 which do not constitute measures within the meaning of Section 16 (2) EnWG reduce the agreed capacity and/or the gas flow at the respective affected entry and/or exit point for more than 14 calendar days per contract year, the shipper is exempt from its payment obligations for the duration and scope of reduction beyond 14 calendar days. This period is reduced pro rata for contracts with a term of less than one year. Apart from that, the shipper is released from its obligations.
4. The above mentioned Items shall apply accordingly if third-party transmission system operators conduct measures as per Item 1 as a result of which the transmission system operator is unable to fulfill its obligations under the respective contract, in whole or in part.



5. Item 1 Sentences 2 and 3 and Item 2 apply accordingly in the event that the transmission system operator is entitled by law or by contractual provisions with third parties to interrupt these third parties' network connection respectively the connection usage.

### **Section 29 Interruption of interruptible capacity**

1. The transmission system operator is obligated to provide booked interruptible capacity at an entry or exit point as long as the usage of booked firm capacity is not affected. The transmission system operator is entitled to a complete or partial interruption of booked interruptible capacity also in the case if another transmission system operator of the same market area requests the transmission system operator to carry out the interruption as per Section 16 (1) EnWG, in order to prevent the impairment of booked firm capacity in his network.
2. The transmission system operator, or in the cases as per Section 13 Item 2 and Section 12 (1) the appointed balancing group manager must give the shipper at least 3 hours' advance notice of the interruption, unless this is not possible due to operational reasons. The transmission system operator must notify the shipper of the reasons for the interruption without delay, no later than at the occurrence of the interruption.
3. In case of an interruption as per Item 2 the shipper is obligated to ensure – if necessary via the appointed balancing group manager– that the corresponding renomination of the gas quantities at the entry and/or exit points affected by the interruption is carried out without delay to avoid difference quantities. In case of an interruption at an exit point to an end-consumer, the shipper has to ensure that the withdrawal of gas quantities by the end-consumer will be reduced accordingly. The transmission system operator's supplementary terms and conditions do not apply to renomination deadlines as long as renomination is technically and operationally possible. If usage continues despite an interruption, Section 30 applies accordingly.
4. Interruption of interruptible capacity at an entry or exit point is done in the chronological order of the respective concluded entry/exit contract, starting with the most recently concluded contract. Biogas capacity is interrupted with a lower priority than other interruptible capacity. This does not apply if there is no corresponding subordinate interruption rule for biogas at cross-border interconnection points. Sentences 1 and 2 may be superseded by differing provisions implemented with the adjacent network operator at cross-border interconnection points.
5. In cases as per Section 16 (1) and (2) EnWG the transmission system operator may deviate from the procedure as per Item 4, if the security or reliability of the network would otherwise be jeopardized or disordered.

### **Section 29a Reduction procedure for firm capacity nomination**

In case the sum of all nominations of booked firm capacities is higher than the available firm capacity within an hour at an entry point or exit point after the interruption of all inter-

ruptible capacities according to Section 29, the nominations according to Item a) and b) will be curtailed. The rules of Section 34 and 35 shall remain unaffected.

- a. The firm capacity nominations of all biogas balancing groups/sub-balancing accounts have to be considered preferentially. These nominations will not be curtailed provided that the available firm capacity is sufficient. If the available firm capacity is insufficient, then a curtailment as per Item b) has to be applied.
- b. If the remaining firm capacity resulting from Item a) is less than the sum of all nominations relating to incorporated firm capacity, the firm capacity will be in a first step considered on a pro-rata basis taking into account the ratio of the incorporated firm capacities in the balancing group/sub-balancing accounts. In case of remaining quantities, because for one or more balancing groups more firm capacities have been considered as nominated and at least one other balancing group has been curtailed, then the remaining quantities will be allocated additionally on a pro-rata basis to the curtailed balancing groups considering the ratio of the incorporated capacities. If quantities remain again after the allocation, the allocation process will be repeated considering the incorporated capacities until all remaining quantities are allocated.

In case of a curtailment the shipper will be informed without delay about the cause and the estimated duration of the curtailment.

### **Section 30 Capacity overrun**

1. The shipper is entitled to use booked capacity at the entry and/or exit point in the amount incorporated to the balancing group/sub-balancing account. The shipper is not entitled to any use exceeding that amount.
2. If contrary to Item 1 Sentence 2 the allocated hourly gas quantities at an entry or exit point exceed 100% of the capacity incorporated to the balancing group for this respective entry or exit point, an hourly capacity overrun shall have occurred. An hourly overrun shall not increase booked capacity.
3. In case several shippers have booked capacity at an entry and/or exit point and incorporate these to the same balancing group, the transmission system operator is entitled to bill each shipper for capacity overruns proportionately weighted by capacity incorporated at that entry and/or exit point. This does not apply if the balancing group manager nominates in separate sub-balancing accounts for each shipper.
4. If the shipper exceeds the incorporated capacity, a contractual penalty is due in accordance with the transmission system operator's supplementary terms and conditions.
5. The provisions as per Item 4 do not affect the assertion of further damage claims by the transmission system operator. Contractual penalties already paid are to be credited to such damage claims for specific capacity overruns.

## **Section 31 Suspension or modification of contractual obligations**

1. Pursuant to Section 16 EnWG, the transmission system operator is entitled to introduce allocation restrictions or usage restrictions for the necessary period respectively to modify existing allocation restrictions or usage restrictions or to convert booked firm capacity into interruptible to the extent necessary to ensure security and reliability of the transmission system operator's network.
2. The transmission system operator is also entitled to apply measures as per Item 1 if capacity usage differs from the load flow simulation assumptions made in accordance with good gas industrial practices as per Section 9 (2) GasNZV, and if the different capacity usage forces the transmission system operator to adapt its assumptions taken as a base for the determination of capacity as per Section 9 GasNZV so that capacity can no longer be offered in the amount previously offered. The transmission system operator may also apply measures as per Item 1 if capacity instruments and control instruments such as load flow commitments or control energy cannot or cannot completely or only on economically unreasonable conditions be obtained to secure firm, freely allocable capacity required by the transmission system operator and if other network-related or market-related measures are not possible. The application of measures by the transmission system operator as per this Item has to be reported in advance to the Federal Network Agency, stating the reasons.
3. If the entire booked capacity on firm basis at a point is not equally affected by the measures as per Item 1, the transmission system operator will choose on a non-discriminatory basis for which capacity or concluded contracts these measures are to be implemented. In cases of conversion of booked firm capacity into interruptible capacity, the booked firm capacity is converted into interruptible capacity proportionately in relation to the firm capacity booked by the shippers. For the interruption of this capacity Section 29 applies, provided that the interruption is carried out in the chronological order in which firm capacity is booked. The interruption is carried out subordinate to already existing interruptible capacity bookings. Section 29 Item 4 Sentences 2, 3 and 4 apply accordingly.
4. The transmission system operator shall without delay notify the shipper in advance about the limitation of the shipper's rights as per Items 1 – 3, with sufficient prior notice for foreseeable developments (e.g. due to market area mergers), generally with a minimum prior notice of 3 months, stating the reasons.
5. The shipper may extraordinarily terminate the contracts concerned wholly or in part within 14 calendar days of the notification date, if the modification lasts longer than 14 calendar days per contract year. Termination becomes effective on the effective date of the modification of the affected contracts. If the terminated capacity is firm capacity at a cross-border interconnection point or market area interconnection point, the shipper may require the transmission system operator to re-auction the terminated capacity at the same point again.

6. The contracts concerned are adjusted accordingly if the shipper does not exercise termination. If an adjustment results in firm capacity being converted into interruptible capacity wholly or in part, the applicable charges for interruptible capacity according to Section 25 apply for the converted portion. In such case, any auction surcharges are eliminated pro rata from the date of adjustment by the transmission system operator. If allocation limitations or usage restrictions for capacity are imposed or changed, the respective tariffs as per the transmission system operator's supplementary terms and conditions shall apply. Any auction surcharges continue to apply in such case.

### **Section 32 Transmission system operator's contact person and availability**

The names of the transmission system operator's contact persons are published on its website.

### **Section 33 Data transmission and data processing**

The transmission system operator is entitled to pass on fuel consumption data, billing data and contractual data to other transmission system operators or market area coordinators as far as and as long as this is necessary for proper execution of the respective contract. The shipper consents to automated data processing by the transmission system operator or by a provider contracted by the transmission system operator in accordance with data protection laws.

### **Section 34 Force majeure**

1. A party to the contract shall be released from its obligations to the extent it is prevented from fulfilling them due to force majeure as per Item 2. The other party shall in turn be released from its obligations as far as and as long as the first party is prevented from fulfilling its obligations due to force majeure.
2. Force majeure is defined as any unpredictable external event that is unavoidable, even having exercised reasonably expectable due care and deploying technically and economically feasible resources. Such events include in particular natural disasters, terrorist attacks, power failures, telecommunications failures, strikes and legal lockouts or regulatory requirements or measures of the government or of courts or official orders (regardless of their legality).
3. The affected party to the contract shall notify the other party immediately, stating the reasons for the force majeure occurrence and its expected duration. The affected party shall endeavor to restore its ability to fulfill its obligations as soon as possible, deploying all technically and economically feasible resources to do so.
4. If a party to the contract utilizes third-party services to fulfill its contractual obligations, an event constituting force majeure for the third party or other circumstances within the meaning of Item 2 shall also constitute a force majeure event affecting that party to the contract.

## Section 35 Liability

1. The transmission system operator shall be liable for damages to the shipper resulting from interruption or irregularity of network usage in accordance with Section 5 GasNZV in conjunction with Section 18 NDAV. This shall be applied to low-pressure, medium-pressure and high-pressure grids. The wording of Section 18 NDAV is enclosed as Annex 2.
2. Moreover, the parties to the contract shall be liable to each other for damages resulting from injury of life, body or health, unless the party itself or its legal representatives or vicarious agents have neither acted with willful misconduct nor negligence.
3. In the event of a breach of material contractual obligations (“wesentliche Vertragspflichten”), the parties to the contract shall be liable to each other for damages to property (“Sachschäden”) and financial loss (“Vermögensschäden”), unless such loss or damage was not caused by willful misconduct or negligence of the party itself, its legal representatives or vicarious agents. The liability of the parties in case of damages to property and financial loss caused by slight negligence shall be limited to the typical foreseeable loss or damage for such contracts.
  - a) Material contractual obligations are obligations the fulfillment of which is prerequisite to proper execution of the contract, the fulfillment of which the parties to the contract rely on and may at all times expect.
  - b) Typical, foreseeable damages are damages which the parties to the contract foresaw as possible consequences of breach of contract at the conclusion of the contract or would have foreseen under the circumstances known or that would have been known to him at that time if exercising due care (“verkehrsübliche Sorgfalt”).
  - c) Typical damages for contracts of this kind are EUR 2.5 million for damage to property and EUR 1 million for financial loss.
4. The parties shall be liable to each other for damage to property and financial loss arising from breach of non-material contractual obligations, unless such loss or damage was neither caused by willful misconduct nor gross negligence of the party itself, its legal representatives or vicarious agents.
  - a) In cases of damages to property or financial loss caused by gross negligence, the liability of the parties and their legal representatives and vicarious agents shall be limited to the typical, foreseeable loss or damages.
  - b) In cases of gross negligence causing damages to property, the parties' liability for ordinary servants (“einfache Erfüllungsgehilfen”) shall be limited to EUR 1.5 million for damage to property and EUR 0.5 million for financial loss.
5. Section 16 and 16 a EnWG shall remain unaffected. Measures as per Section 16 (2) EnWG include in particular actions to ensure domestic customers a natural gas supply in accordance with Section 53 a EnWG.

6. The parties' liability under mandatory provisions of the Public Liability Act (“Haftpflichtgesetz”) and other laws remains unaffected.
7. Items 1 to 6 shall also apply regarding legal representatives, employees and vicarious agents of the parties, if and to the extent these conditions are applicable for the respective party.

### **Section 36 Provision of security**

1. The transmission system operator may in certain justified cases demand a reasonable provision of security or a prepayment for all payment claims arising from the commercial relationship with the shipper. The request of a provision of security or of a prepayment shall be explained to the shipper in text form.
2. A justified case is in particular presumed to be when:
  - a) the shipper is in default with a due payment after having received an explicit request for payment,
  - b) enforcement measures have been initiated against the shipper for monetary claims (Section 803 - 882a Code of Civil Procedure (ZPO)),
  - c) the shipper has filed a request for initiation of insolvency proceedings for the shipper's assets, or
  - d) a third party has filed a request for initiation of insolvency proceedings for the shipper's assets.

In addition, the transmission system operator shall be entitled to demand an appropriate provision of security or a prepayment in the event that there are reasonable concerns about the shipper's continuing ability to fulfill its obligations under this contract, based on information concerning the shipper obtained from a recognized credit reporting provider, or on any other facts, and the shipper does not provide suitable evidence of its creditworthiness to allay such concerns within five business days. The shipper may make available suitable evidence of creditworthiness such as, for example, a current annual report, an excerpt from the commercial register and, if necessary, more in-depth information relating to its creditworthiness. In the event that the shipper is not in the position to provide corresponding evidence within the period stated, it shall pay the provision of security within a further five business days.

If the shipper has a rating of a recognized rating agency, causes for justified concerns are, in particular, if the rating of the shipper is not at least

- a Standard & Poor's long-term rating of BBB- or better,
- a Fitch rating of BBB- or better,
- a Moody's long-term rating of Baa3 or better, or,
- a Creditreform rating (credit index score 2.0) of at least risk class II or better (according to Creditreform Rating-Map as of December 2011).

Same applies, if the shipper does not have a corresponding comparable rating of any other recognized rating agency. In the event that several pieces of above mentioned information are provided, justified concerns exist also if only one of the stated creditworthiness indices provokes justified concerns.

The transmission system operator shall fully disclose to the shipper the data and the essential content of the information obtained that supports the justified concern.

3. Provision of security types include irrevocable, unconditional bank guarantees or irrevocable, unconditional corporate guarantees (binding letter of comfort and affiliate guarantee) or irrevocable, unconditional, directly enforceable guarantees and deposits of cash or debt securities. The shipper can choose the type of provision of security. The transmission system operator may also accept cash deposits or assignments of claim.
4. The shipper may avoid providing a provision of security by making prepayments.
5. The shipper must provide the security to the transmission system operator within five business days after the corresponding request. In the event of Item 2 d) the security shall be provided within ten business days, if the shipper does not prove, within this period, the absence of a reason to initiate insolvency proceedings within the meaning of Sections 17 (2), 19 (2) German Bankruptcy Act (InsO). If the provision of security is utilized, the transmission system operator may demand the portion utilized be re-deposited or re-provided. The shipper must likewise provide the security as per Sentence 3 within the period specified in Sentence 1.
6. The requirements for the types of provision of security are as follows:
  - a) Bank securities must be provided in the form of an unconditional, irrevocable and directly enforceable bank indemnity letter or guarantee. The bank issuing the provision of security must have a Standard & Poor's long-term rating of A- or better, a Moody's long-term rating of A3 or better, or be part of the German savings and cooperative bank sector.
  - b) For corporate guarantees and indemnity letters, the issuing company providing the security must have a Standard & Poor's long-term rating of BBB- or better, a Fitch rating of BBB- or better, a Moody's long-term rating of Baa3 or better or a Creditreform credit index score (credit index score 2.0) of risk class II or better (according to Creditreform Rating-Map as of December 2011). The corporate guarantee or indemnity amount may not exceed 10% of liable capital of the legal person providing the provision of security. The shipper must document this to the transmission system operator upon providing the provision of security.
  - c) Any cash deposit provided must be deposited to an account specified by the transmission system operator. Interest is credited on these cash deposits at the base rate published by the Deutsche Bundesbank on the first bank business day of the invoicing month. The shipper may also pledge an account credit balance to the transmission system operator.

- d) The indemnity or guarantee amount is payable on initial demand and the letter generally must feature a waiver of the right to insist on prior failed attempt at direct enforcement, waiver of contestability and waiver of offset against claims unless undisputed or upheld by legal judgment. A directly enforceable indemnity or guarantee letter must be valid for at least 12 calendar months, expiring no later than two months immediately after the end of the contract term.
7. The amount of the provision of security shall amount to the higher of any of the following values:
- a) twice the average monthly capacity charges receivable from the shipper for the past 12 months. In case the network usage period is less than 12 months, this period is used as a base for calculation of the provision of security amount, or
- b) the capacity fees receivable from the shipper for the two following months.

Deviating from Sentence 1, for a period of 6 months from the moment of admission according to Section 2a Item 2, the amount of the provision of security shall amount to twice the average monthly capacity fees for expected capacity bookings for a period of 12 months. The shipper shall be obligated to provide the transmission system operator with any requested information necessary for this purpose in text form. In the first 6 months, admission can be restricted to the extent of the expected capacity bookings. It is possible at any time to adapt the extent of admission after the shipper has previously increased its provision of security according to the amended expected capacity.

8. The transmission system operator may utilize a security provided that it has issued a payment reminder for overdue amounts after the delay has occurred and the reasonable deadline set for making the payment in the payment reminder has not been met.
9. Provisions of security provided must be returned without delay when the prerequisites for claiming them no longer apply. The transmission system operator must review the reasons justifying the provision of securities at least every six months. During such review the transmission system operator must verify whether the security amount meets the specifications as per Item 7. In the event that such review reveals that the realizable value of all securities provided exceeds the amount of the applicable value according to Item 7 not only insignificantly, the transmission system operator shall return the corresponding portions of the security amount. If several securities have been provided, the transmission system operator may choose which security to return. In the event that the realizable value of all securities provided falls below the amount of the applicable value according to Item 7 not only insignificantly, the transmission system operator may demand an adjustment of the provision of security. The shipper may demand a prepayment arrangement to be ceased after six months at the earliest if payments were made at due date during the last 12 month.

### **Section 37 Termination of contract**

1. This contract may be terminated without notice for a material reason ("wichtiger Grund").



2. A material reason shall in particular be given in the following cases:
  - a) serious, repeated violation of material contractual obligations despite issuance of warning or
  - b) the shipper fails to meet its obligation to provide a security or to make a prepayment as per Section 36 in due time or does not fully meet its obligation or
  - c) a request for initiation of insolvency proceedings for the shipper's assets has been filed and despite request, the insolvency administrator has not declared the continuation within the meaning of Section 103 German Bankruptcy Act (InsO) and in the case of requesting initiation of an insolvency proceeding by a third party, the shipper or the insolvency administrator does not prove the absence of a reason to open the insolvency proceeding within the meaning of Section 17 (2), 19 (2) German Bankruptcy Act (InsO) within five business days.

### **Section 38 Loyalty**

1. If during the term of a contract unforeseen circumstances should occur which have significant economic, technological or legal impact on the contract but for which the contract or terms and conditions have no provisions in place or which were not considered at contract conclusion and should as a consequence of this any contractual provision become unreasonable for one party to the contract, the affected party may demand of the other party a corresponding amendment of the contractual provisions, which takes into account the changed circumstances with all economic, technological and legal impact on the other party.
2. The party referring to such circumstances shall set forth and prove the necessary facts of that matter.
3. The right to amend the contractual provisions exists from the date on which the demanding party initially demands such amendments of the contractual provisions due to changed circumstances, unless an earlier demand by the demanding party was not reasonably feasible.

### **Section 39 Confidentiality**

1. The parties to the contract shall treat as confidential the content of a contract and all information obtained in connection with this contract (hereinafter referred to as "confidential information"), except as provided under Item 2 and Section 33, and shall not disclose or make available such confidential information to third parties without the other party's prior written consent. Each party shall exclusively use the confidential information for the purpose of the execution of the respective contract.
2. Each party shall be entitled to disclose confidential information obtained from the other party without written consent:

- a) to an affiliated company provided that it is bound by a confidentiality obligation in the same manner as the disclosing party,
  - b) to its representatives, advisors/consultants, banks and insurance companies if and to the extent that such disclosure is required for the proper performance of contractual obligations and prior to making such disclosure such persons or companies have obligated themselves to treat the information as confidential or if they are legally bound to do so by professional oath, or
  - c) to the extent that such confidential information:
    - is legitimately already known to the obtaining party at the date of its receipt from the other party,
    - is already publicly available or becomes available to the public other than through act or omission of the obtaining party, or
    - is required to be disclosed by a party due to an applicable law or a juridical or governmental order or a request of the regulatory authority; in such case the disclosing party must notify the other party accordingly without delay.
3. The confidentiality obligation shall end 2 years after expiry of the respective contract.
  4. Section 6a EnWG shall remain unaffected.

#### **Section 40 Legal succession**

1. Subject to Section 19, the assignment in whole or in part of contractual rights and/or obligations requires the other party's prior consent. The consent may only be withheld for material reason.
2. A transfer in whole as per Item 1 to an affiliated company within the meaning of Section 15 Corporate Law (AktG) shall not require prior consent, but only a written notification to the other party.

#### **Section 41 Contract amendments**

1. The transmission system operator is entitled to amend the GTCs outlined in this contract with immediate effect, in case an amendment is necessary to comply with applicable laws or regulations and/or legally binding orders by national or international courts or authorities – particularly including determinations and related announcements of the Federal Network Agency – and/or to comply with generally approved technical standards. In such case the transmission system operator must notify the shipper thereof without delay. If contract amendments result in not insignificant economical disadvantages for the shipper, which the shipper has to prove, the shipper is entitled to terminate its contracts at the end of the month following the effective date, providing 15 business days' notice. No compensation shall be payable. This provision applies accordingly for amendments necessary in case of further consolidation of market areas.

2. The transmission system operator is furthermore entitled to amend the terms and conditions outlined in this contract with future effect in cases other than as outlined in Item 1, if the transmission system operator has a legitimate interest in amendments of the contractual designing of the grid access. A legitimate interest exists in particular if the amendments are based on the preparation of standardized entry and exit contracts as per Section (3) 3 GasNZV. The transmission system operator shall notify the shipper two months prior to the effective date about the amended terms and conditions of this contract in text form and publishes the amended terms and conditions of this contract on its website. In justified cases the transmission system operator can deviate from the period laid down in Sentence 2. The amendment of the terms and conditions of this contract shall be deemed accepted by the shipper unless the shipper terminates the contract within 30 business days of receipt of notification thereof. No compensation shall be payable. A termination shall be excluded if the amendment with respect to his contract result in no or only insignificant economical disadvantages. In case that the shipper sees not insignificant economical disadvantages for his contracts due to the amendment, the shipper has to prove them. The transmission system operator is obligated to notify the shipper of the start of the notice period and that if no termination is made the amended terms and conditions of this contract shall be deemed accepted.
3. Adjustments of fees are made according to Section 25.

#### **Section 42 Severability**

1. If any provision of this contract or of the appendices thereto is or becomes ineffective or unenforceable, the effectiveness of the other provisions of this contract or of the appendices thereto shall not be affected.
2. The parties to the contract commit themselves to replace any ineffective or unenforceable provision in a suitable procedure with provisions which achieve an economic result as similar as possible to that of the ineffective or unenforceable provision. This shall apply accordingly in case of gaps in the provisions.

#### **Section 43 Text form**

Any amendment to or termination of a contract shall only be effective if it is done in text form. The same shall apply to the waiver of the text form.

#### **Section 44 Place of jurisdiction and applicable law**

1. The ordinary jurisdiction shall apply.
2. The place of jurisdiction shall be the transmission system operator's registered office.
3. German law applies, excluding interstate conflict of law's provisions unless bindingly applicable. The UN convention on Contracts for the International Sale of Goods shall be excluded.

## **Section 45 Index of annexes**

The annexes below constitute an integral part of this contract:

- Annex 1            Oversupply/undersupply method applied (4 options)*
- Annex 2            Section 18 Low Pressure Connection Ordinance  
(Niederdruckanschlussverordnung – NDAV)*
- Annex 3            Supplementary Entry/Exit Contract Terms & Conditions  
of Fluxys TENP GmbH*
- Annex 4            OPERATING MANUAL of Fluxys TENP GmbH*

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**Annex 1: Oversupply/undersupply method applied (option 1)**

1. Method: Fixed date method  
The meter is read annually at a fixed date. In accordance with DVGW G 685, the reading may be taken between six weeks prior to and four weeks after the fixed date. Readings not taken on the fixed date are estimated as of the deadline by extrapolation. To determine oversupply/undersupply amounts network usage quantities during the period between the fixed dates are compared against the amounts allocated to the balancing group/sub-balancing account for the corresponding period. Changes of supplier are factored into the allocation monthly, and into quantity measurement up to the day. However move-ins and -outs are treated in accordance with GeLi Gas however.
2. Billing type:
3. Billing period:
4. Fee:
5. Weighting method:
6. Invoicing schedule: annually, no later than 3 months after the billing period
7. Invoicing of oversupply/undersupply billing statement together with network usage billing:
8. Invoice delivery:

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**Annex 1: Oversupply/undersupply method applied (option 2)**

1. Method: Appointment method  
Oversupply/undersupply amounts are calculated once annually at a fixed date independent of exit point reading cycle and from the network charges billing process and cycle. The consumption amounts for all SLP meters are appointed at a fixed date for a defined period and compared against the amounts allocated to the balancing group/sub-balancing account for the corresponding period. Changes of supplier are factored into the allocation and quantity period measurement up to the day. After one year the quantity for the period is reviewed and oversupply/undersupply billing corrected.
  2. Billing type:
  3. Billing period:
  4. Fee:
  5. Weighting method:
  6. Invoicing schedule: annually, no later than March 31
  7. Preparation of oversupply/undersupply billing statement together with network usage billing:
  8. Invoice delivery:
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***Annex 1: Oversupply/undersupply method applied (option 3)***

1. Method: Monthly method  
Meters are read on a rolling basis. The transmission system operator divides consumption quantities into individual months. To determine oversupply/undersupply amounts, consumption quantities – appointed for the billing month – are compared against the amounts allocated to the balancing group/sub-balancing account for the corresponding period. Changes of supplier are factored into the allocation and quantity period measurement up to the day.
2. Billing type:
3. Billing period:
4. Fee:
5. Weighting method:
6. Invoicing schedule: monthly, in the following year
7. Preparation of oversupply/undersupply billing statement together with network usage billing: no
8. Invoice delivery:

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***Annex 1: Oversupply/undersupply method applied (option 4)***

1. Method: Rolling billing  
Meters are read on a rolling basis. To determine oversupply/undersupply amounts, individual customers' network usage quantities for the billing period are compared against the amounts allocated to the balancing group/sub-balancing account for the corresponding period. Changes of supplier are factored into the allocation and quantity period measurement up to the day.
2. Billing type:
3. Billing period:
4. Fee:
5. Weighting method:
6. Invoicing schedule: rolling, within deadlines per GeLi Gas
7. Preparation of oversupply/undersupply billing statement together with network usage billing:
8. Invoice delivery:

## Annex 2

### Low Pressure Connection Ordinance

#### (Niederdruckanschlussverordnung – NDAV)

#### Section 18 Liability in case of disturbances of connection usage

(1) To the extent the network operator is liable due to contract, connection usage relation or tortious acts for damages suffered by the shipper due to interruptions or irregularities of the connection usage and default of the company or its vicarious agents or servants is required

1. regarding financial loss willful misconduct or gross negligence shall be assumed subject to refutation,
2. regarding damages to property willful misconduct or negligence shall be assumed subject to refutation.

In case of financial loss pursuant to Sentence 1 Number 1 liability due to other negligence shall be excluded.

(2) Liability of the network operator for damages to property towards its connection users caused neither by willful misconduct nor gross negligence shall be respectively limited to 5.000 Euro. Liability for damages to property not caused by willful misconduct shall per damaging event be limited to

1. 2,5 million Euro in case of up to 25.000 connection users connected to its own network;
2. 10 million Euro in case of 25.001 to 100.000 connection users connected to its own network;
3. 20 million Euro in case of 100.001 to 200.000 connection users connected to its own network;
4. 30 million Euro in case of 200.001 to one million connection users connected to its own network;
5. 40 million Euro in case of more than one million connection users connected to its own network.

Damages of connection users connected to mid and high pressure shall be implied in the aforementioned limits.

(3) Section 1 and 2 shall also apply to connection users' claims in tort against third-party network operators in terms of Section 3 Number 27 Energy Industrial Act. Liability of third-party network operators in terms of Section 3 Number 27 Energy Industrial Act shall totalling be limited per damaging event to three times the maximum amounts it is liable towards its own connection users in accordance to Section 2 Sentence 2. If the third-party network operator has no own connection users connected to its network in terms of this Ordinance, the liability shall totalling be limited to € 200 million. Damage claims of costumers who are not covered by

this Ordinance and which are claimed against the third party due to tort may be regarded for the maximum amounts pursuant to Sentences 2 and 3 if case by case these claims are limited in accordance with Section 2 Sentence 1. At request the network operator shall be obliged to inform its connection users about the facts related to the damaging caused by a third-party network operators in terms of Section 3 Number 27 Energy Industrial Act to the extent the facts are known to it or can be cleared up by it using reasonable effort and its knowledge is necessary to claim for damages.

(4) Liability for financial loss of the network operator to whose network the connection user is connected, or of a third-party network operator to whom the connection user claims for damages, caused by gross negligence shall be respectively limited towards its connection users to 5.000 Euro and per damaging event to 20% of the maximum amounts listed under Section 2 Sentence 2 and Section 3 Sentence 2 and 3. Section 2 Sentence 3 and Section 3 Sentence 1, 4 and 5 shall apply accordingly.

(5) If the sum of individual damage claims exceeds the respective limit, the damage claim shall be proportionately reduced in relation of the sum of all damage claims to the respective limit. If costumers who are not covered by this Ordinance are regarded for the maximum amounts in accordance with Section 2 Sentence 2 or Section 3 Sentence 4 in connection with Section 4 respectively, such customer shall be regarded with respect to the reduction in accordance with Sentence 1. In case of claims pursuant to Section 3 the quota of damaging claims may not exceed the quota of customers of the third-party network operator.

(6) Claims for damages below 30 Euro neither caused by willful misconduct nor by gross negligence shall be precluded.

(7) The aggrieved connection user shall inform the network operator or if it is certain the company liable to pay compensation about the damage.