

## Call for Tender of Fluxys Deutschland GmbH for Supply of Heating Gas

Fluxys Deutschland GmbH (hereinafter referred to as "**Fluxys Deutschland**") intends to purchase through this transparent, non-discriminatory and market-oriented tender procedure heating gas (H-gas) for the gas pressure regulating and metering station Achim II operated by Fluxys Deutschland.

The heating gas should be delivered to Fluxys Deutschland at the point Achim II in the market area GASPOOL.

**The delivery period runs from 1 January 2020, 06:00 hours, for an indefinite period.**

Fluxys Deutschland will assign the point Achim II to the case group RLMoT (so-called "consumption metering without a daily flat gas volume").

The bidder will make available the required heating gas quantities to Fluxys Deutschland accordingly in the amount needed and at the point of time needed and process the balancing.

No minimum purchase quantity and maximum purchase quantity will be agreed.

**The non-bindingly estimated yearly average quantity amounts to 90.000 kWh.**

The price to be indicated by the bidder consists of the European Gas Spot Index (EGSI) for GASPOOL of PEGAS in €/MWh for the respective gas day plus the bidder's handling fee expressed in €/MWh as a fixed additional charge on top of the EGSI for GASPOOL of PEGAS.

Bidders are requested to insert in the "Tender Sheet for Heating Gas" (**Annex A**) as price offer only the handling fee expressed in €/MWh as a fixed additional charge on top of the EGSI for GASPOOL of PEGAS.

The basis is the EGSI for GASPOOL of PEGAS for the respective gas day which is published on the website of PEGAS under the following link: <https://www.powernext.com/spot-market-data>.

To submit an offer, bidders are kindly requested to fill out the "Tender Sheet for Heating Gas" (**Annex A**) and to send it to Fluxys Deutschland as described in Section 2 (ii) of the attached Tender Rules.

# General Rules for the Call for Tender of Fluxys Deutschland GmbH for Supply of Heating Gas ("Tender Rules")

## 1. The Tender Procedure

- (i) Fluxys Deutschland is issuing this call for tender in order to purchase the heating gas (H-gas) required for the operation of the gas pressure regulating and metering station Achim II operated by Fluxys Deutschland in the market area GASPOOL.
- (ii) The tender procedure will consist of the tender phase with the prequalification phase and the subsequent award procedure for the successful bidder.
- (iii) Documents submitted by bidders in connection with the tender will be treated confidentially by Fluxys Deutschland and will be used only for the purposes of this call for tender.

## 2. Time schedule of the tender

### (i) Prequalification phase

The prequalification phase will start on 19 November 2019 at 14:00 hours and will end on 27 November 2019 at 14:00 hours.

Interested bidders have to submit to Fluxys Deutschland the creditworthiness proofs specified in Section 3 (i) respectively (ii) during the prequalification phase. After the expiry of the prequalification phase, Fluxys Deutschland will give to each interested bidder a feedback to the submitted creditworthiness proofs.

### (ii) Tender phase

The tender phase will start at the same time as the prequalification phase on 19 November 2019 at 14:00 hours and will end on 3 December 2019 at 14:00 hours.

Bidders who are eligible to participate in the tender due to their creditworthiness are kindly requested to send the "Tender Sheet for Heating Gas" (**Annex A**) signed by a duly authorized representative by 3 December 2019 at 14:00 hours to Fluxys Deutschland by fax to the fax number: +4921142090911 and in addition by e-mail to each of the following e-mail addresses:

- alexandra.moussa@fluxys.com
- info.fluxysnel@fluxys.com .

Fluxys Deutschland will send to the bidders a confirmation receipt by e-mail as soon as it has received the "Tender Sheet for Heating Gas" (**Annex A**). Offers received after the set deadline will be rejected by Fluxys Deutschland.

**(iii) Award procedure**

Fluxys Deutschland will inform the successful bidder about the contract award by 4 December 2019 at 14:00 hours at the latest. Fluxys Deutschland will inform the unsuccessful bidders also by 4 December 2019 at 14:00 hours at the latest.

The contract for the delivery of the required heating gas quantities will be awarded to the offer which is commercially the most advantageous offer for Fluxys Deutschland and which will enable Fluxys Deutschland to cover its required heating gas. In the event that two bidders quote comparable commercial conditions, the contract will be awarded to the bidder who submitted the earlier offer to Fluxys Deutschland.

The notification of the contract award will be sent to the successful bidder by e-mail and shall be confirmed by the successful bidder on the same day by e-mail for verification reasons. Any such confirmation shall not affect the validity of the offer submitted or contract award.

The bidder selected for the contract award shall be obligated to conclude the “Contract for the Supply of Heating Gas” on the basis of its respective offer and shall be bound to its offer in this respect. A specimen of the “Contract for the Supply of Heating Gas” to be concluded is attached to these Tender Rules as **Annex B** and shall be an integral part of these Tender Rules. By submitting an offer, the bidder accepts the terms and conditions of the “Contract for the Supply of Heating Gas” (as attached as **Annex B**).

Upon contract award, the conditions of the “Contract for the Supply of Heating Gas” shall apply.

**3. Creditworthiness proofs**

(i) In order to be eligible to participate and to submit a successful offer in the tender procedure, the bidder must comply with the creditworthiness requirements of Fluxys Deutschland. The creditworthiness of the bidder is not sufficient if he submits to Fluxys Deutschland during the prequalification phase a rating of one of the rating agencies listed below which fails to meet the following minimum requirements:

- a Standard & Poor's long-term rating of BBB- or better,
- a Fitch rating of BBB- (long-term) or better,
- a Moody's long-term rating of Baa3 or better, or,
- a Dun & Bradstreet rating with a Risk Indicator 3 or better,
- a Creditreform rating (credit index score 2.0) of at least risk class II or better (in accordance with Creditreform Rating Map Germany in the currently valid version); or, if risk classes according to Creditreform (credit index score 2.0) are not available for the shipper,
- 235 points or less according to Creditreform (credit index score 2.0).

Furthermore, Fluxys Deutschland will check publicly available information on the economic standing of the bidder.

- (ii) In case the bidder does not have a rating as specified in Section 3 (i) or in case the rating fails to meet the minimum requirements listed in Section 3 (i), the bidder has to submit to Fluxys Deutschland during the prequalification phase a provision of security as proof for sufficient creditworthiness. Initially it is sufficient that the provision of security is a written confirmation of a bank that it will issue a bank guarantee for the benefit of Fluxys Deutschland in case of contract award to the bidder. The bank issuing this bank guarantee must have at least a Standard & Poor's long-term rating of A- or a Moody's long-term rating of A3, or it should be part of the German savings and cooperative banks sector.

The amount of the bank guarantee is 50,000.- € (in words: fifty thousand Euro). The bank guarantee should be valid until three (3) months after the end of the heating gas delivery period.

The written confirmation of the bank has to be submitted to Fluxys Deutschland until the end of the prequalification phase at the latest. The prequalification phase will end on 27 November 2019 at 14:00 hours.

Fluxys Deutschland kindly asks interested bidders to get in contact early in order to clarify open questions regarding the provision of security.

- (iii) Fluxys Deutschland will not consider offers which were submitted without sufficient creditworthiness proofs.  
In the event that any bidder does not meet the abovementioned creditworthiness requirements of Fluxys Deutschland, Fluxys Deutschland shall be entitled to reject such bidder by reason of that fact alone.

#### **4. Miscellaneous**

- (i) This call for tender is being conducted in German and English and is subject to German law with the exception of international private law.
- (ii) Fluxys Deutschland shall make no charge for bidders' participation in the tender procedure. Each party in the tender procedure shall meet its own expenses incurred in that context.

**Annex A**

## Tender Sheet for Heating Gas

for the delivery period from 1 January 2020, 06:00 hours, for an indefinite period

Deadline for receipt of the offers: **3 December 2019, 14:00 hours**

Bidder: \_\_\_\_\_

E-mail address: \_\_\_\_\_

We have read, understood and accepted the “Tender Rules” of Fluxys Deutschland GmbH for the Call for Tender for Supply of Heating Gas. We hereby submit the following legally binding offer in accordance with the “Tender Rules” of Fluxys Deutschland GmbH:

Delivery point	Price offer
Achim II	[only the handling fee expressed in €/MWh as fixed additional charge on top of the European Gas Spot Index (EGSI)* for GASPOOL of PEGAS]

\* (<https://www.powernext.com/spot-market-data>)

We hereby agree and acknowledge that the present offer shall constitute a binding offer to enter into a “Contract for the Supply of Heating Gas” (as attached as **Annex B**) with Fluxys Deutschland GmbH. The acceptance of our abovementioned offer by Fluxys Deutschland GmbH leads automatically to the conclusion of such contract. Fluxys Deutschland GmbH and the bidder will promptly sign the “Contract for the Supply of Heating Gas” for documentation purposes.

\_\_\_\_\_  
Place, Date

\_\_\_\_\_  
Signature(s)

# Contract for the Supply of Heating Gas

- hereinafter referred to as "**Contract**" -

between

Fluxys Deutschland GmbH  
Elisabethstraße 11  
D - 40217 Düsseldorf

- hereinafter referred to as "**Fluxys Deutschland**" -

and

[Supplier]

[address of Supplier]

- hereinafter referred to as "**Supplier**" -

- hereinafter referred to individually as "**Party**" or jointly as "**Parties**" -

## Recitals

In the “Call for Tender of Fluxys Deutschland for Supply of Heating Gas” (tender period: 19 November 2019 to 3 December 2019), the Supplier has been awarded the contract to supply heating gas under the conditions mentioned in this Contract.

The Parties to this Contract conclude the following Contract for documentation purposes:

### Article 1 Definitions

- (i) For the purposes of this Contract, the definitions of the “General Terms & Conditions for Entry/Exit contracts of Fluxys Deutschland GmbH” which are published on the website of Fluxys Deutschland are applied, unless expressly otherwise stated herein.
- (ii) For the purposes of this Contract, “**Delivery Point**” shall mean the point Achim II of Fluxys Deutschland in the market area GASPOOL (hereinafter referred to as “**Achim II**”).

### Article 2 Object of the Contract

- (i) Fluxys Deutschland shall buy and accept and the Supplier shall sell and deliver to Fluxys Deutschland the heating gas according to the provisions of this Contract for the delivery period from 1 January 2020, 06:00 hours, for an indefinite period.
- (ii) The Supplier shall hold available the contract quantities mentioned in Article 3 and deliver them in accordance with Article 4.
- (iii) Fluxys Deutschland shall take delivery of and pay for the heating gas quantities which it has bought in accordance with para. (i) and which the Supplier is obligated to deliver in accordance with para. (ii).

### Article 3 Contract Quantities

- (i) Fluxys Deutschland will assign the point Achim II to the case group RLMoT (so-called “consumption metering without a daily flat gas volume”). The Supplier will make available the required heating gas quantities to Fluxys Deutschland accordingly in the amount needed and at the point of time needed and process the balancing. No minimum purchase quantity and maximum purchase quantity will be agreed between the Parties.

### Article 4 Quantity Notifications

- (i) Fluxys Deutschland allocates the required heating gas quantities as RLMoT in the balancing group of the Supplier and the Supplier makes available the respective quantities in the balancing group.

## Article 5 Price

- (i) The price for the heating gas quantities to be delivered consists of the European Gas Spot Index (EGSI) for GASPOOL of PEGAS in €/MWh for the respective gas day plus the bidder's handling fee expressed in €/MWh as a fixed additional charge on top of the EGSI for GASPOOL of PEGAS.

The basis is the EGSI for GASPOOL of PEGAS for the respective gas day which is published on the website of PEGAS under the following link: <https://www.powernext.com/spot-market-data>.

- (ii) Fluxys Deutschland pays to the Supplier for the heating gas quantities delivered at the Delivery Point in accordance with this Contract the following handling fee expressed as a fixed additional charge on top of the EGSI for GASPOOL of PEGAS:

[ ] €/MWh

as specified in the "Tender Sheet for Heating Gas" submitted by the Supplier and attached as **Appendix 1** to this Contract.

- (iii) The Supplier shall pay all fees, charges, taxes and other costs incurred up to the point where the heating gas quantities are delivered.

## Article 6 Invoicing and Payment

- (i) The heating gas quantities agreed under this Contract and delivered to Fluxys Deutschland shall be invoiced by the Supplier in the month following the delivery. The invoiced heating gas quantities shall be deemed to be the heating gas quantities which the Supplier delivered to Fluxys Deutschland. In addition to the natural gas price, VAT shall be charged at the rate prevailing and shall be shown separately.
- (ii) The invoices shall be transmitted by the Supplier to Fluxys Deutschland by means of electronic invoicing indicating the account details for the payments.

## Article 7 Force Majeure

- (i) For the purposes of this Contract, events of Force Majeure are deemed to be all unforeseeable and external events and/or circumstances, which are beyond the sphere of influence of the Party affected and which could not have been avoided applying utmost diligence and which cause a non-fulfilment or a delay in fulfilment of the contractual obligations by the Party affected. Inability of a Party to pay, however caused, shall not be deemed to be Force Majeure.

Such events or circumstances of Force Majeure shall include particularly any of the following events: act of God, natural disasters, terrorist attacks, power failure, failure of telecommunications connections, strikes, lock-outs and/or labour disputes, suspension or withdrawal of any consent, legal provisions or measures by governments, courts or authorities, irrespective of whether such measures are lawful and any breakage or breakdown of pipelines and/or of the installations which are directly or indirectly used for



production and transportation of natural gas. Strikes, lock-outs and/or labour disputes are deemed to be events of Force Majeure if the Party affected did not cause these events through an unlawful act and as long as the Party affected can only achieve their settlement under unreasonable conditions for the Party affected.

- (ii) The Party affected by Force Majeure shall notify the other Party immediately thereof and shall provide the other Party with details on the expected duration and on the cause of the disruption. The Party affected by Force Majeure shall promptly take all technically feasible and economically viable steps to resume the performance of its obligations as soon as possible. The Parties are obligated to ensure the fulfilment of this Contract with all technically possible and economically reasonable measures.
- (iii) If a Party is prevented from performing or fulfilling its contractual obligations due to Force Majeure in accordance with this Article 7, said Party shall be released from its contractual obligations. The other Party shall be released from its corresponding contractual obligations to the extent and as long as said first Party is prevented from performing its contractual obligations due to Force Majeure. Either Party may terminate this Contract if the event of Force Majeure lasts for a continuous period of at least ninety (90) Days.

#### **Article 8 Liability**

The liability of the Parties shall be in accordance with the law.

#### **Article 9 Term and Termination**

- (i) This Contract shall enter into force with retroactive effect on contract award. It documents the mutual rights and obligations of the heating gas delivery by the Supplier on the basis of a successful offer in the call for tender of Fluxys Deutschland for supply of heating gas. This Contract shall run for an indefinite period and can be terminated with a notice of three (3) months to the end of the quarter.
- (ii) Notwithstanding para. (i), this Contract may be terminated with immediate effect only for reasonable cause. The infringement of a major obligation under this Contract by one of the Parties shall constitute reasonable cause. This Contract may also be terminated with immediate effect in the event of repeated infringements of this Contract.
- (iii) Fluxys Deutschland shall also be entitled to terminate the Contract with immediate effect if an admissible application for the instigation of insolvency proceedings against the assets of the Supplier has been filed.
- (iv) Notice of termination shall not be valid unless made in writing.

#### **Article 10 Confidentiality**

- (i) The Parties shall treat as confidential the content of this Contract and all information which they obtain in connection with said Contract (hereinafter referred to as “**Confidential Information**”) and shall not disclose such Confidential Information or make it accessible to third parties without the prior written consent of the other Party.

The Parties undertake to use the Confidential Information obtained exclusively for the purpose of performing this Contract.

- (ii) Either Party shall be entitled to disclose, without the written consent of the other Party, any Confidential Information obtained from the other Party to the extent that this Confidential Information
- was legitimately known to the Party receiving the information at the time it was obtained from the other Party;
  - was already in the public domain or becomes publicly available other than through an act or omission of the receiving Party; or
  - has to be disclosed by a Party due to a statutory provision or a court or official order; in any such case, the disclosing Party shall inform the other Party thereof without undue delay.
- (iii) Confidential Information may be disclosed by a Party (hereinafter referred to as "**Disclosing Party**") to an affiliate of the Party in accordance with Article 15 German Stock Companies Act (Aktiengesetz) without the prior written consent of the other Party, provided that such affiliate shall be obligated to keep such information confidential on the same terms as set forth herein and provided further that the Disclosing Party shall remain responsible for any breach of said obligation.
- (iv) The confidentiality obligation shall remain in force for a period of two (2) years beyond expiry or termination of this Contract.
- (v) Section 6a of the German Energy Industry Act (EnWG) shall remain unaffected.

#### **Article 11 Written Form**

- (i) All declarations, notifications of heating gas quantities or other notifications mentioned in this Contract shall be made in writing. Provided that the other Party agrees, such declarations, notifications of heating gas quantities or other notifications may also be made by electronic data transfer (e.g. e-mail) or by phone.
- (ii) Any subsidiary verbal agreements shall be deemed null and void. Unless otherwise agreed hereinabove, any amendments or additions to this Contract as well as the termination or cancellation of this Contract shall not be valid unless made in writing. Any waiver of this written form requirement shall likewise not be valid unless made in writing.

#### **Article 12 Assignment**

Each Party shall be entitled to assign its rights and/or obligations under this Contract only subject to the prior written consent of the other Party. Said consent shall not be unreasonably withheld.

### **Article 13 Severability**

- (i) If individual provisions of this Contract are or become legally ineffective or impracticable, the effectiveness of the other provisions and the existence and the duration of this Contract shall not be affected or impaired thereby.
- (ii) In this case, the Parties will replace the legally ineffective or impracticable provision(s) of this Contract with effect from the time of the legal ineffectiveness or impracticability of the provision(s) by (a) different provision(s) which comes closest to the original provision(s) regarding its economic success and its purpose.
- (iii) Para. (i) and para. (ii) apply accordingly for unconscious regulation gaps in this Contract.

### **Article 14 Changes in Circumstances**

- (i) If unforeseeable circumstances occur during the term of this Contract which have considerable economic, technical or legal effects on this Contract but which were not contemplated herein or could not reasonably have been taken into account at the time of execution of this Contract, the Parties may request an amendment of the Contract to the extent that it would be unreasonable for the requesting Party to fulfil or perform a particular provision of this Contract.
- (ii) The request shall indicate the grounds on which it is based and the suggested amendment of the Contract.
- (iii) The request for amendment shall be submitted to the other Party within a reasonable time from the moment the requesting Party becomes aware of the circumstance and of its effects on the performance of the Contract. The Parties shall then consult one another in order to revise the Contract on a fair basis.

### **Article 15 Contacts**

The contacts for the communication under this Contract shall be the following:

#### **For Fluxys Deutschland:**

Fluxys Deutschland GmbH  
 Alexandra Moussa  
 Commercial Operator  
 Elisabethstraße 11  
 D - 40217 Düsseldorf  
 Tel. No.: +49 211 420909 25  
 Fax No.: +49 211 420909 11  
 E-mail address: alexandra.moussa@fluxys.com

#### **For the Supplier:**

[Supplier]  
 [Contact person]  
 [Street]

[Postal code, town]  
 [Tel. No.]  
 [Fax No.]  
 [E-mail address]

**Article 16**  
**Applicable Law and Arbitration**

- (i) Any disputes arising out of this Contract shall be exclusively and finally settled by a court of arbitration.
- (ii) The court of arbitration shall be made up of three arbitrators, one of whom shall act as chairman of the court of arbitration. The chairman shall be fully educated and trained to be a judge. The court of arbitration shall be formed by the Party instituting arbitration proceedings describing the matter in dispute, appointing an arbitrator and calling upon the other Party to appoint a second arbitrator, and the two named arbitrators then selecting the chairman. If either Party fails to appoint an arbitrator within a period of four (4) weeks, the Party that instituted the arbitration proceedings shall be entitled to ask the president of the relevant court to propose a second arbitrator. The proposal shall be binding on both Parties. If the arbitrators have not selected the chairman within a period of four (4) weeks, either Party shall be entitled to ask the president of the relevant court to propose a chairman. The proposal shall be binding on both Parties.
- (iii) The venue for any arbitration proceedings shall be Düsseldorf.
- (iv) The court of jurisdiction pursuant to Section 1062 of the German Code of Civil Procedure (Zivilprozessordnung) shall be the Düsseldorf Higher Regional Court. The language for the arbitration proceedings is the German language. In all other respects, Sections 1025 to 1065 of the German Code of Civil Procedure (Zivilprozessordnung) shall apply to the arbitration proceedings.
- (v) This Contract and its interpretation shall be exclusively governed by German law. The laws on the International Sale of Goods, particularly the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall not apply.
- (vi) For this agreement the German wording shall be decisive. In case of any inconsistencies between the German and the English wording, the German wording shall therefore prevail.

In witness thereof, this Contract has been duly executed in two (2) originals.

\_\_\_\_\_  
 Place, Date

\_\_\_\_\_  
 Place, Date

\_\_\_\_\_  
 Fluxys Deutschland GmbH

\_\_\_\_\_  
 (Supplier)

**Appendix 1 (Copy of the submitted Tender Sheet of the Supplier)**

## Tender Sheet for Heating Gas

for the delivery period from 1 January 2020, 06:00 hours, for an indefinite period

Deadline for receipt of the offers: **3 December 2019, 14:00 hours**

Bidder: \_\_\_\_\_

E-mail address: \_\_\_\_\_

We have read, understood and accepted the “Tender Rules” of Fluxys Deutschland GmbH for the Call for Tender for Supply of Heating Gas. We hereby submit the following legally binding offer in accordance with the “Tender Rules” of Fluxys Deutschland GmbH:

Delivery point	Price offer
Achim II	[only the handling fee expressed in €/MWh as fixed additional charge on top of the European Gas Spot Index (EGSI)* for GASPOOL of PEGAS]

\* (<https://www.powernext.com/spot-market-data>)

We hereby agree and acknowledge that the present offer shall constitute a binding offer to enter into a “Contract for the Supply of Heating Gas” (as attached as **Annex B**) with Fluxys Deutschland GmbH. The acceptance of our abovementioned offer by Fluxys Deutschland GmbH leads automatically to the conclusion of such contract. Fluxys Deutschland GmbH and the bidder will promptly sign the “Contract for the Supply of Heating Gas” for documentation purposes.

\_\_\_\_\_  
Place, Date

\_\_\_\_\_  
Signature(s)