

Call for Tender of Fluxys TENP GmbH for Supply of natural gas (H-gas)

Fluxys TENP GmbH (hereinafter referred to as "**Fluxys TENP**") intends to purchase through this transparent, non-discriminatory and market-oriented tender procedure natural gas (H-gas) (hereinafter referred to as "**natural gas**").

Delivery corridors:

Fluxys TENP is tendering for each of the following two delivery corridors one (1) lot of natural gas:

- 1) 12 August 2024, 06:00 hours, to 1 October 2024, 06:00 hours**
- 2) 11 November 2024, 06:00 hours, to 31 December 2024, 06:00 hours**

Interested bidders can send Fluxys TENP offers for both delivery corridors as well as an offer for only one delivery corridor. A separate supply contract will be concluded for each lot and delivery corridor.

Fluxys TENP will call off the delivery of the natural gas from the supplier within the above-mentioned delivery corridors.

At the time the contract is awarded, the exact delivery period within a delivery corridor will not yet be known. Fluxys TENP will inform the supplier of the exact delivery period and the hourly delivery quantities in good time.

Delivery point:

The natural gas should be delivered to Fluxys TENP at the virtual trading point of the market area Trading Hub Europe (THE) (hereinafter referred to as "**VTP THE**").

Delivery quantities per lot:

Delivery corridor	1	2
Number of lots	1	1
Delivery quantity	17,163 MWh	9,634 MWh

Price:

A fixed price in €/MWh is to be offered as the price for the natural gas quantities.

Interested bidders for the natural gas are requested to insert in the "**Tender Sheet for natural gas (H-gas)**" (**Annex A**) as price offer for the natural gas a fixed price in €/MWh.

Submission of offers:

To submit an offer for the lots, bidders are kindly requested to fill in the "**Tender Sheet for natural gas (H-gas)**" (**Annex A**) and to send it to Fluxys TENP as described in Section 2 (ii) of the attached Tender Rules.

General Rules for the Call for Tender of Fluxys TENP GmbH for Supply of natural gas (H-gas) ("Tender Rules")

1. The Tender Procedure

- (i) Fluxys TENP is issuing this call for tender in order to purchase natural gas (H-gas) (hereinafter referred to as "**natural gas**").
- (ii) The tender procedure consists of tender phase and subsequent award procedure for the successful bidder(s).
- (iii) Documents submitted by bidders in connection with the tender will be treated confidentially by Fluxys TENP 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 13 June 2024 at 14:00 hours and will end on 21 June 2024 at 14:00 hours.

Interested bidders have to submit to Fluxys TENP the creditworthiness proofs specified in Section 3 (i) or (ii) during the prequalification phase. In addition, a current extract from the commercial register and the audited annual financial statements for the last completed financial year are also requested. **This also applies to interested bidders who had successfully prequalified to participate in previous tenders (e.g. for fuel gas) of Fluxys TENP.** Fluxys TENP will give to each interested bidder a feedback to the submitted creditworthiness proofs and by doing this inform him about his eligibility to participate in the tender.

(ii) Tender phase

The tender phase will start at the same time as the prequalification phase on 13 June 2024 at 14:00 hours and will end on 27 June 2024 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 natural gas (H-gas)**" (**Annex A**) signed by a duly authorized representative by 27 June 2024 at 14:00 hours to Fluxys TENP **by e-mail to each of the following three e-mail addresses:**

- alexandra.moussa@fluxys.com
- daniel.weber@fluxys.com
- Communication.FluxysTENP@fluxys.com .

The offer shall be submitted by e-mail to the aforementioned addresses before the expiry of the tender deadline set in the invitation to tender. Receipt shall be effected by receipt of the e-mail to the e-mail addresses used by Fluxys TENP and shall be confirmed to the bidder by e-mail, including the time of receipt.

Fluxys TENP will send to the bidders a confirmation receipt by e-mail as soon as it has received the **"Tender Sheet for natural gas (H-gas)" (Annex A)** by e-mail.

Offers received after the set deadline will be rejected by Fluxys TENP.

Fluxys TENP is authorised to allow the binding period to elapse without awarding a tender.

(iii) **Award procedure**

Fluxys TENP will inform the successful bidder(s) about the contract award by 28 June 2024 at 14:00 hours at the latest. Fluxys TENP will inform the unsuccessful bidders also by 28 June 2024 at 14:00 hours at the latest.

The contract for one lot will be awarded to the offers which is commercially the most advantageous offers for Fluxys TENP and which will enable Fluxys TENP to cover its natural gas needs tendered through the lot. In the event that two bidders quote comparable commercial conditions for the same lot, the contract will be awarded to the bidder who submitted the earlier offer to Fluxys TENP.

The notification of the contract award will be sent to the successful bidder(s) by e-mail.

The bidder selected for the contract award shall be obligated to conclude the "Contract for the Supply of natural gas (H-gas)" on the basis of his respective offer and shall be bound to his offer in this respect. A specimen of the "Contract for the Supply of natural gas (H-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 natural gas (H-gas)" (**Annex B**).

Upon contract award, the conditions of the "Contract for the Supply of natural gas (H-gas)" (**Annex B**) shall apply.

In case a German bidder is selected for the contract award, Fluxys TENP would prepare only a German version of the "Contract for the Supply of natural gas (H-gas)" (**Annex B**) and would abstain from the preparation of an English version of the "Contract for the Supply of natural gas (H-gas)" (**Annex B**), provided that this bidder agrees.

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 TENP.

The creditworthiness of the bidder is not sufficient if he submits to Fluxys TENP 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 TENP 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 TENP 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 authorised to do business in the Federal Republic of Germany that it will issue a bank guarantee for the benefit of Fluxys TENP 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.

For each lot for which the bidder wishes to submit a bid, the amount of the guarantee is the product of the natural gas quantity of the respective lot in the delivery corridor multiplied by the fixed price offered by the bidder in €/MWh. In case of contract award to the bidder for both delivery corridors only one bank guarantee is necessary. The bank guarantee should be valid until three (3) months after the end of the natural gas delivery period.

The written confirmation of the bank has to be submitted to Fluxys TENP until the end of the prequalification phase at the latest. The prequalification phase will end on 21 June 2024 at 14:00 hours.

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

- (iii) Fluxys TENP 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 TENP, Fluxys TENP 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 TENP 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 natural gas (H-gas)

Deadline for receipt of the offers: **27 June 2024, 14:00 hours**

Bidder: _____

E-mail address: _____

We have read, understood and accepted the "Tender Rules" of Fluxys TENP GmbH for the Call for Tender for Supply of natural gas (H-gas).

We hereby submit the following legally binding offer for natural gas (H-gas) in accordance with the "Tender Rules" of Fluxys TENP GmbH:

Delivery point VTP THE	Price offer Fixed price [in €/MWh]	
	Lot for delivery corridor 1	Lot for delivery corridor 2
Natural gas (H-gas)		

Delivery corridor 1: 12 August 2024, 06:00 hours, to 1 October 2024, 06:00 hours

Delivery corridor 2: 11 November 2024, 06:00 hours, to 31 December 2024, 06:00 hours

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

Place, Date

Signature(s) and company stamp

Contract for the Supply of natural gas (H-gas)

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

between

Fluxys TENP GmbH
Elisabethstraße 5
D - 40217 Düsseldorf

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

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 TENP GmbH for Supply of natural gas (H-gas)" (tender period: 13 June 2024 to 27 June 2024), the Supplier has been awarded the contract to supply natural 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, "**Delivery Point**" shall mean the virtual trading point of the market area Trading Hub Europe (THE) (hereinafter referred to as "**VTP THE**").
- (ii) A "**Working Day**" is any day that is not a Saturday, Sunday or public holiday in one of the 16 German federal states. Any day recognised as a public holiday in any German Federal State shall be deemed to be a public holiday. 24 and 31 December shall always be deemed to be public holidays.

Article 2 Object of the Contract

- (i) Fluxys TENP shall buy and accept and the Supplier shall sell and deliver to Fluxys TENP natural gas (H-gas) according to the provisions of this Contract within the delivery corridor from DD Month 2024, 06:00 hours, to DD Month 2024, 06:00 hours.
- (ii) The Supplier shall hold available the contract quantity of the natural gas (H-gas) mentioned in Article 3 for the duration of the delivery corridor. Fluxys TENP shall be obligated to inform the supplier in good time of the exact delivery period and the hourly delivery quantities within the delivery corridor. The supplier shall be obligated to deliver the contract quantity of natural gas in accordance with the quantity notification described in Article 4.
- (iii) Fluxys TENP shall take delivery of and pay for the natural gas quantity 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 Quantity

As a result of the "Call for Tender of Fluxys TENP GmbH for Supply of natural gas (H-gas)" (tender period: 13 June 2024 to 27 June 2024), the Supplier has to deliver the following natural gas quantity (H-gas) to Fluxys TENP at the Delivery Point:

Number of lots: 1, Quantity: [xx,xxx] MWh

as specified in the "Tender Sheet for natural gas (H-gas)" submitted by the Supplier and attached as **Appendix 1** to this Contract.

Article 4 Quantity Notifications

- (i) Fluxys TENP will notify the Supplier of the natural gas quantity which Fluxys TENP wishes to take delivery of at the Delivery Point after agreement on the hourly delivery structure. Fluxys TENP will inform the Supplier of the exact delivery period and the hourly delivery quantities in good time before the quantities are called off.

Each quantity notification shall contain:

- a. the THE balancing group code of Fluxys TENP,
 - b. the validity period,
 - c. the hourly quantity in kWh.
- (ii) The quantity notification shall be made using the nomination portal of the VTP THE.
- (iii) The quantity notification shall be made by e-mail not later than 14:00 hours of the penultimate Working Day before the delivery period.

Article 5 Gas Quality

The natural gas (H-gas) to be delivered under this Contract shall be the gases of the second gas family in accordance with the Code of Practice G 260 on gas quality issued by the DVGW (Deutscher Verein des Gas- und Wasserfaches e.V.) in the version applicable at the given time.

Article 6 Price

- (i) Fluxys TENP pays to the Supplier for the natural gas quantity delivered at the Delivery Point in accordance with this Contract the following fixed price:

Fixed price of the natural gas (H-gas) for the contract quantity in accordance with Article 3:

[] €/MWh

as specified in the "Tender Sheet for natural gas (H-gas)" submitted by the Supplier and attached as **Appendix 1** to this Contract.

- (ii) The Supplier shall pay all fees, charges, taxes and other costs incurred up to the point where the natural gas quantity is delivered.

Article 7 Invoicing and Payment

(i) The contract quantity agreed under this Contract and delivered to Fluxys TENP in accordance with Article 3 shall be invoiced by the Supplier in the month following the delivery by the third (3.) Working Day at the latest. The invoiced natural gas quantity shall be deemed to be the natural gas quantity which the Supplier delivered to Fluxys TENP. In addition to the price of the natural gas (H-gas), VAT shall be charged at the rate prevailing and shall be shown separately. The due date of the invoice is the twentieth (20.) calendar day of the calendar month following the delivery month.

(ii) Invoices are issued in Euro and the payment of invoices shall be made in Euro.

The invoices shall be transmitted by the Supplier to Fluxys TENP by means of electronic invoicing indicating the account details for the payments.

(iii) Objections to the correctness of the invoice shall be made immediately, in any case not later than within two weeks after receipt of the invoice. Any objections regarding errors which cannot be recognized by Fluxys TENP through no fault of its own can also be raised after the expiry of the aforementioned deadline immediately after Fluxys TENP has gained knowledge of the reason for the objection. In the event of an obvious miscalculation, the amount shown in the invoice may be adjusted by the amount of the deficiency in question, accompanied by a written explanation of the adjustment made.

(iv) Each Party may offset its undisputed claims or claims which have been validated by due legal process against those claims established under this Contract. Furthermore, the Parties may offset claims under this Contract only against those claims arising from this Contract or other contracts existing between the Parties.

Article 8 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 8, 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 9 Liability

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

Article 10 Term and Termination

- (i) This Contract shall enter into force with retroactive effect on contract award. It conclusively documents the mutual rights and obligations of the natural gas delivery by the Supplier on the basis of the successful offer in the call for tender of Fluxys TENP for supply of natural gas (H-gas). This Contract shall end at the end of the delivery period without notice having to be given.
- (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 TENP shall also be entitled to terminate the Contract with immediate effect if an admissible application for the opening 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 11 Confidentiality

- (i) The Parties are obligated to treat as confidential and in compliance with the applicable data protection laws, in particular EU GDPR (EU General Data Protection Regulation), all the information received in connection with this Contract. This does not apply to that information which is either in the public domain or which is bound to be disclosed by way of a legal provision or an order issued by a court of law or public authority.
- (ii) 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.
- (iii) 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 legal provision or an order issued by a court of law or public authority; in any such case, the disclosing Party shall inform the other Party thereof without undue delay.
- (iv) 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.
- (v) The confidentiality obligation shall remain in force for a period of five (5) years beyond expiry or termination of this Contract.
- (vi) Section 6a of the German Energy Industry Act (EnWG) shall remain unaffected.

Article 12 Written Form

- (i) All declarations, notifications of natural gas quantities or other notifications mentioned in this Contract shall be made in writing. Provided that the other Party agrees, such declarations, notifications of natural 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 13 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 14 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 15 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 16 Contacts

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

For Fluxys TENP:

Fluxys TENP GmbH
Alexandra Moussa
Commercial Operator
Elisabethstraße 5
D - 40217 Düsseldorf
Phone No.: +49 211 420909 25
Mobile Phone No.: +49 172 7328227
Fax No.: +49 211 420909 11
E-mail address: alexandra.moussa@fluxys.com

For the Supplier:

[Supplier]
[Contact person]
[Position]
[Street]
[Postal code, town]
[Phone No.]
[Mobile Phone No.]
[Fax No.]
[E-mail address]

Article 17 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 TENP GmbH

(Supplier)

Appendix 1:
Copy of the “Tender Sheet for natural gas (H-gas)” received from the Supplier