



## **General Terms & Conditions for Entry/Exit Contracts of NEL Gastransport GmbH**

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

applicable from 1 October 2018

This document is a convenience translation of the German original. In case of discrepancy between the English and the German versions, the German version shall prevail.

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## Section 1 Conclusion of contract

1. The shipper concludes this entry/exit contract via the capacity booking platform jointly operated by the transmission system operators. The preconditions for contract conclusion are registration as shipper on the capacity booking platform and acceptance by the transmission system operator as a shipper pursuant to Section 2a. The registration on the capacity booking platform jointly operated by the transmission system operators in accordance with Section 6 of the Gas Network Access Ordinance (GasNZV) and the use of this platform shall be governed by the terms and conditions for the capacity booking platform published on the capacity booking platform operator's website. In the event of a failure of the capacity booking platform or the connected systems of the transmission system operators, booking requests for day-ahead capacity may be forwarded in text form direct to the transmission system operator. For this, the transmission system operator may offer alternative automated facilities. In this case, capacities shall be allocated at the regulated daily capacity tariff to the best of the transmission system operator's ability and without any guarantee on the basis of the chronological order in which binding requests are received.
2. The entry/exit contract for entry or exit capacity at market area interconnection points, storage points as well as at cross-border interconnection points shall be concluded upon the allocation of capacity at the end of the auction. Without prejudice to the foregoing clause, the entry or exit contract for interruptible within-day entry or exit capacities shall be concluded in the over-nomination procedure according to Section 13d hereinafter.
3. The following capacity types shall be allocated in the chronological order in which binding requests are received:
  - a) Exit capacity to end consumers,
  - b) Entry capacity from production and LNG facilities, and
  - c) Entry capacity from facilities within the meaning of Section 6 of GasNZV for biogas injection.

In these cases the contract shall be concluded upon receipt by the shipper of an electronic booking confirmation.

4. Entry/exit contracts in accordance with Paragraph 3 may be concluded as follows:  
with a term of
  - a) one year or longer – at any time,
  - b) less than one year– a minimum of 3 months prior to commencement of the contract term,
  - c) less than one month – a minimum of one month prior to commencement of the contract term,

- d) less than one gas day– a minimum of 2 hours prior but, as subject to Paragraph 5, up to 1 hour latest to commencement of the contract term to the full hour. Entry/exit contracts in accordance with a) to c) can be concluded for whole gas days only.
- 5. The transmission system operator shall be entitled to enlarge the lead time according to Paragraph 4, from up to 1 hour to 3.5 hours to commencement of the contract term on the full hour, particularly for one or more of the following criteria for the sake of integrity of the network especially for end consumers with generally unpredictable, extremely high and volatile gas consumption at individual exit points:
  - a) capacity demand at the respective network point,
  - b) possibility, availability and lead time of a necessary line pack
  - c) characteristics of topology of the network like
    - aa. distance to the next facility for pressure provision,
    - ba. pipeline diameter,
    - ca. density of end consumer with unpredictable, extremely high and volatile gas consumption,
  - d) profile and predictability of the respective end consumer's load profile.

The extension of this lead time takes place in steps of 15 minutes and is to be justified by the transmission system operator for each of the respective exit points on his website with a reasonable publishing time in advance. The lead time according to Paragraph 4 sub-item d from up to 2 hours shall extend respectively.

The right of the transmission system operator to stipulate technical offtake notices as well as compliance with technical restrictions regarding article 8 section 5 GasNZV shall remain unaffected.

- 6. The supplementary terms and conditions of the respective transmission system operator in the version applicable at the time of entry/exit contract conclusion shall be an integral part of this contract. In the event of conflict between the provisions of 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 supplementary terms and conditions. Deviations from this entry/exit contract are possible to provide bundling at cross-border interconnection points.

For the allocation of incremental capacities pursuant to Article 3 (1) of Regulation (EU) No. 2017/459 of the Commission dated 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No. 984/2013 as at the time these general terms and conditions take effect, the transmission system operators may specify additional and/or deviating provisions in respect of this entry/exit contract in the supplementary terms and conditions of the transmission system operator. These supplementary and/or divergent provisions in the supplementary terms and conditions of the transmission system operator repre-

sent the general terms and conditions pursuant to Article 27 Paragraph 3(e) and Article 28 Paragraph 1(b) of Regulation (EU) No. 2017/459 which a shipper has to accept to take part in the process for the binding allocation of incremental capacity and to gain access to capacity including possible deposits and specifications thereto how possible delays to capacity provision or disruption of the project are contractually stipulated. Supplementary terms and conditions of the transmission system operator for the allocation of new additional technical capacities at market area and cross-border interconnection points pursuant to Article 2 (3) of Regulation (EU) No. 984/2013 of the Commission dated 14 October 2013 as amended on 1 October 2016 will remain unaffected by this general terms and conditions. The supplementary terms and conditions referred to in the previous sentence shall prevail for concluded entry and exit contracts at the effective date of this general terms and conditions.

The transmission system operator and the shipper may agree on provisions deviating from this contract to realize projects pursuant to § 39, GasNZV.

7. The inclusion of any general terms and conditions of the shipper is contradicted.

## Section 2 Definition of terms

The following definitions of terms shall apply here. Terms used in the singular also imply the plural.

1. Active Balancing group manager  
Balancing group manager with booked bundled capacity from the active transmission system operator included in his balancing group
2. Active transmission system operator  
Transmission system operator who was designated at a certain market area or cross border interconnection point from the connected transmission system operators to receive the bundled nomination and to forward it to passive transmission system operator.
3. Connection user  
In accordance with Section 1 (3) NDAV (Ordinance Concerning General Conditions for Network Connection), shall also apply to medium and high-pressure networks.
4. Exit network operator  
Network operator with whom the shipper concludes an exit/withdrawal contract in accordance with Section 3 (1) sentence 1 GasNZV, also in the form of a supplier framework agreement.

5. 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 storage, or for transfer at market area boundaries and national borders. Several exit points grouped together within a zone in accordance with Section 11 (2) GasNZV shall also be deemed to be an exit point.

6. BEATE

Decision by the Federal Network Agency on provisions for the conversion of annual demand charges to demand charges for capacity rights of less than one year and for the proper determining of transport tariffs according to Section 15 (2) to (7) GasNEV of 24 March 2015 (Ref. BK9-14/608).

7. Balancing calorific value

Balancing calorific value is an advance estimate of an invoicing 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 invoicing gross calorific value is applied.

8. Balancing group number

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

9. Day ahead capacity

Capacity which can be booked on the day before the transporting gas day.

10. Entry network operator

Network operator with whom the shipper concludes an entry/injection contract in accordance with Section 3 (1) sentence 1 GasNZV.

11. Entry point

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

12. Gas business year

The period starting 1 October, 06:00 a.m. of a given calendar year until 1 October, 06:00 a.m. of the following calendar year.

13. Bundled nomination

Uniform nomination on a bundled booking point.



14. Bundled capacity  
Exit and the corresponding entry capacity which can be booked as bundle by a shipper.
15. Bundled booking point  
Summary of a bookable exit point and a bookable entry point between two domestic or a domestic and foreign market areas on which shippers may book a bundled capacity.
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 this determination of the Federal Network Agency.
17. Capacity  
Maximum hourly flow rate at an entry or exit point, expressed in kWh/h.
18. KARLA Gas  
Determination in the matter of Capacity Management and Auction Proceedings in the Gas Sector issued by the Federal Network Agency (BNetzA) (Reference BK7-10-001) dated 24 February 2011 or a BNetzA determination which supplements or supersedes that determination.
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. The delivery month corresponds to the period from day 1, 06:00 hours of the delivery month until day 1, 06:00 hours of the following month.
21. Passive balancing group manager  
Balancing group manager with booked bundled capacity from the passive transmission system operator included in his balancing group
22. Passive transmission system operator  
Transmission system operator who receives the forwarded bundled nomination from the active transmission system operator.
23. Capacity booking platform  
Common booking platform jointly operated by the transmission system operators.
24. Sub-balancing account  
Sub-balancing accounts are accounts assigned to a balancing group that allow entry and exit quantities to be assigned to shippers and/or partial quantities to be clearly tracked.

25. Day D

Day D is the delivery day, which commences at 06:00 hours and ends on the following day at 06:00 hours

26. Within-day capacity

Capacity pursuant to Section 2 No. 13a GasNZV which, after the end of the day ahead auction, is offered and allocated for the respective gas day from the first full hour of booking to the end of said gas day.

27. Interruptible capacity

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

28. Business days

In deviation from the definition of business days given in Section 2 no. 16 GasNZV, 'business days', with reference to deadlines, shall include every day except Saturdays, Sundays and public holidays. Any day recognized 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.

For all time indications, the official German time (Central European Time or Central European Summer Time (CET/CEST), as the case may be) shall apply.

29. Time format

For all time indications, the official German time (Central European Time or Central European Summer Time (CET/CEST) shall apply.

### **Section 2a Admission to the capacity booking platform and to systems of the transmission system operator for processing network access**

1. The transmission system operator may request from the shipper a copy of its entry in the register of companies or, in the case of foreign shippers, equivalent documents to provide substantiation of authority to act on behalf of the company. The form provided via the capacity booking platform shall be completed and signed by a person or persons authorized to act on behalf of the shipper, in accordance with sentence 1 of this Paragraph 1. The name of at least one person authorized to represent the shipper as a user of the capacity booking platform shall be stated in the form. Sentence 2 of this Paragraph shall also apply to any user who may be added after the completion of admission.
2. The transmission system operator shall be entitled not to admit the shipper to use the capacity booking platform if there are justified grounds for requesting a deposit in accordance with Section 36 or an advance payment in accordance with Section 36a and the shipper does not provide security or make an advance payment in due time.
3. The transmission system operator shall admit the shipper to the use of the capacity

booking platform immediately, but no later than 10 business days after receipt of the complete admission request in accordance with Paragraph 1 of this Section 2a, provided that the conditions for admission stated in Paragraphs 1 and 2 of this Section 2a have been met.

4. The shipper shall be obligated to notify the transmission system operator promptly of any changes relevant for admission, including the loss of a user. If the transmission system operator finds that the conditions for admission stated in Paragraphs 1 and 2 of this Section 2a are no longer met or are only met in part, the transmission system operator shall promptly notify the shipper thereof. The shipper shall be obligated to meet the missing conditions for admission stated in Paragraphs 1 and 2 of this Section 2a within 10 business days.
5. The shipper shall be obligated to use the access data provided to him with due care. Without limitation this includes protecting the access data from unauthorised use by third parties. The shipper shall promptly notify the transmission system operator if the access data have gone astray or if there is reasonable suspicion that they are in the possession of unauthorized third parties. All actions by the user confer rights and impose obligations upon the shipper.
6. The transmission system operator shall be entitled to withdraw any admission granted in the cases provided for in Sections 36 (9) and 37 and in the event of missing conditions for admission. The transmission system operator shall guarantee the performance of existing contracts, in particular with respect to the surrender of capacities under Section 16. In addition, the transmission system operator shall be entitled to deactivate the use of the capacity booking platform by individual users of the shipper for reasonable cause. The transmission system operator shall inform the shipper thereof promptly. The deactivation of the shipper or of individual users pursuant to the present paragraph shall entail the deactivation of the shipper and/or users for all systems of the transmission system operator. The shipper may apply for re-admission under the conditions stated above at any time.
7. When admitting the shipper to the capacity booking platform the transmission system operator shall also admit the shipper to the systems of the transmission system operator which are necessary for network access, and provide the shipper with the necessary access data. The provisions in Paragraphs 1-6 of this Section 2a apply mutatis mutandis to the use of said systems.

### **Section 2b Availability of the systems of the transmission system operator for processing network access**

1. The right to use the systems of the transmission system operator for processing network access exists solely to the extent that the state of the art and the technical availability of said systems will allow. The transmission system operator may temporarily limit the service scope of the systems of the transmission system operator for processing network access if and to the extent that this is necessary to guarantee the

security and integrity of said systems or to implement technical measures required to provide the services. The same applies in case of faults which are unforeseen or which, without limitation, are due to a power supply failure or to hardware and/or software faults and which result in a total or partial outage of the systems of the transmission system operator for processing network access. In such cases, there shall be no right to use the systems of the transmission system operator for processing network access. The transmission system operator shall in such cases promptly notify the shippers affected in an appropriate manner, minimize the impact on the shippers so far as possible and without undue delay restore the availability of the systems of the transmission system operator for processing network access so far as it is commercially reasonable.

2. The use of the systems of the transmission system operator for processing network access is accordingly restricted or not possible for the duration of the restricted availability or non-availability as described in Paragraph 1 of this Section 2b. Ongoing processes will be aborted. The transmission system operator shall notify the shippers if said processes can be recovered at a later time.
3. In case of a restriction or failure of the system(s) the transmission system operator shall offer an alternative communication path – as a minimum by data portal, email or fax – for nominations and renominations.

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

1. Upon the conclusion of an entry contract, the entry transmission system operator shall be obligated to make available 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 shall be obligated to provide the gas quantities to be transported in accordance with Sections 12, 13 and 14 at the booked entry point and deliver them to the entry transmission system operator. The entry transmission system operator shall be obligated to take delivery from the shipper of the gas quantity in accordance with sentence 1.
4. It is not necessary to ensure the physical identity of the gas. Gas quantities may be provided and off taken together with other gas quantities in a commingled stream.

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

1. Upon the conclusion of an exit contract, the exit transmission system operator shall be obligated to make available 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 shall be obligated to deliver to the shipper the gas quantities to be transported in accordance with Sections 12, 13 and 14 at the booked exit point. The shipper shall be obliged to take delivery from the exit network operator of the gas quantity in accordance with sentence 1 at the booked exit point.
4. It is not necessary to ensure the physical identity of the gas. Gas quantities may be received or provided together with other gas quantities in a commingled stream.

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

1. The shipper may feed gas to or offtake gas from the system if a balancing group contract is in place, the booked entry or exit point is included in a balancing group or sub-balancing account and the entry or exit gas quantity has been nominated if nomination requirements apply under Section 12 or 13.
2. Biogas quantities may be included in a separate biogas balancing group in accordance with Section 35 GasNZV. Subject to the exception pursuant to Section 29 Paragraph 4 Sentence 4, the priority transport of biogas can be ensured only if the biogas quantities concerned have been included in a separate biogas balancing group.
3. Booked capacity may only be used subject to any applicable capacity allocation restrictions and capacity usage restrictions.

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

1. Bundled capacity may be used only if the bundled booking point in the sense of Article 19 (3) of Regulation (EU) 2017/459 is included as an exit point in the delivering market area, and as an entry point in the receiving market area within the respective balancing groups formed.
2. Capacity may be used only subject to the prior conclusion of a balancing group contract or, in the case of bundled capacity, the prior conclusion of balancing group contracts and prior compliance with technical requirements (especially communications testing) for the use of the capacity.
3. The shipper shall, promptly, but no later than 18:00 hours on the day before delivery day, include in the balancing groups the bundled or non-bundled booking point at which it has acquired bundled or non-bundled day-ahead capacity. For firm within-day capacity, this inclusion shall be effected promptly after the end of the respective auction. For this purpose, the shipper shall notify the respective transmission system operators of the balancing group and/or sub-balancing account number during day-ahead and/or within- day booking. To make this inclusion possible, the shipper shall

provide the transmission system operator with the selectable balancing group or sub-balancing account numbers once before their first-time use no later than 12:00 hours on the last business day prior to the booking. Inclusion in good time will only be possible if a communication test has been successfully completed in advance between the transmission system operator and the designated balancing group manager in accordance with Section 13b, and the authorization required by Section 12 (1) has been submitted on one occasion.

4. A bundled booking point may be included in several balancing groups. Should the shipper wish to divide the bundled capacity booked by him at this point between several balancing groups/sub-balancing accounts, the shipper shall notify the respective transmission system operators of such division per bundled booking point. Paragraph 3 of this Section 6 shall apply mutatis mutandis. Sentences 1 and 2 shall not apply to bundled day-ahead or bundled within-day capacity.
5. Booked capacity may only be used subject to any applicable capacity allocation restrictions and capacity usage restrictions.
6. If several shippers include their bundled capacity in the same balancing group, or a single shipper or several shippers include bundled capacity in a balancing group in which non-bundled capacity has already been included, they are required to agree on the appointment of one balancing group manager who shall submit a consistent nomination for all capacities in accordance with Section 12 (1) herein below.

## **Section 7 Inclusion of entry and exit points in balancing groups**

1. The shipper may include an entry or exit point in several balancing groups/sub-balancing accounts. In such case the shipper shall notify the transmission system operators of the capacity quantities include in the respective balancing group/sub-balancing account at that point. Exit points to end consumers and entry points at biogas plants may only be booked by one shipper, and only included in one balancing group.
2. Entry and exit points may only be included in balancing groups or sub-balancing accounts with identical gas quality (H or L-gas).
3. The shipper shall include the entry or exit point where it has acquired non-bundled day-ahead capacity in accordance with Section 6 (3).

Any bundled or non-bundled capacity products with the exception of day-ahead and within-day capacity products shall be included no later than 12:00 hours on the business day preceding the delivery day. These capacity products can be included over the capacity booking platform or over the corresponding system of the transmission system operator for processing network access as part of the booking process. If the transmission system operator does not offer such a system the capacity products can be included by email or by fax.

4. To make this inclusion possible over the capacity booking platform or the system of the transmission system operator, the shipper shall provide the transmission system operator with the selectable balancing group or sub-balancing account numbers once before their first-time use no later than 12:00 hours on the last business day prior to the booking. The transmission system operator may waive the requirements of sentence 1 for his system.
5. The shipper shall warrant that it has been authorized by the balancing group manager to include on behalf of the balancing group manager entry or exit points in a balancing group or a sub-balancing account. If the shipper itself is not the balancing group manager, the transmission system operator reserves the right to require the shipper to submit a power of attorney documenting such authorization in justified individual instances. The shipper shall indemnify the transmission system operator against claims by third parties as a result of the shipper not holding the legally valid authorization by the balancing group manager warranted by the shipper.
6. Paragraphs 7 and 8 of this Section 7 only apply to entry/exit points to/from gas storage facilities that give the storage customers access to another market area or to the market of a neighboring country.
7. Entry and exit points at gas storage facilities at which the shipper has booked capacity which is not priced at a discounted transportation tariff in accordance with the provisions of Paragraph 2 lit. d) of the operative provisions of BEATE (hereinafter referred to as “non- discounted capacity”) may be included up to the level of the booking of the non- discounted capacity
  - in one or several specially designated balancing groups/sub-balancing accounts for non-discounted capacity, or
  - in any one or several other balancing groups/sub-balancing accounts without any special designation for non-discounted capacity.

The transmission system operator shall be entitled to specify in its supplementary terms and conditions that the allocation to the relevant account (discount account or non- discount account) may instead be made via different shipper codes.

8. Entry and exit points at gas storage facilities at which the shipper has booked capacity which is priced at a discounted transportation tariff in accordance with the provisions of Paragraph 2 lit. d) of the operative provisions of BEATE (hereinafter referred to as “discounted capacity”) may be included up to the level of the booking of the discounted capacity only in one or several balancing groups/sub-balancing accounts without any special designation for non-discounted capacity.

## Section 8 Bundled booking points

1. Market area interconnection points and cross-border interconnection points connecting transmission networks with each other shall be consolidated to form a single booking point for each flow direction. Capacities will only be bundled if the neighboring foreign transmission system operator facilitates the bundling. If the neighboring foreign transmission system operator does not facilitate the bundling then the provisions governing bundled capacities do not apply to the cross-border interconnection point concerned.
2. Shippers may book bundled capacity at bundled booking points on a firm basis. Booking enables the shipper to handle transport via a bundled booking using a bundled nomination provided the neighboring foreign transmission system operator facilitates the nomination. This arrangement applies to new contracts. Old contracts (contracts concluded on or before 31 July 2011) shall not be affected unless shippers holding exit and corresponding entry capacity contracts request the amendment of these contracts. Where there is still an old contract on one booking side, non-bundled capacity may only be sold on the other booking side until expiry of the contract at the latest.
3. At bundled and non-bundled booking points, transmission system operators may also offer bundled and non-bundled capacity with capacity allocation restrictions and capacity delivery restrictions.
4. Bundling in accordance with Paragraph 1 of this Section 8 shall be carried out between the relevant individual booking points of the transmission system operators.
5. In the event of the marketing of bundled capacity pursuant to Section 1 (2), the auction surcharge shall be split between the adjacent transmission system operators and shall be indicated 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 shall be entitled to change its share in the auction surcharge for the future by agreement with the adjacent transmission system operator.
6. The parties to the contract shall be entitled and obligated to terminate the entry or exit contract when the corresponding contract at the bundled booking point is terminated. Accordingly, the parties shall be entitled to amend the contract if the corresponding contract is amended. The rights and obligations under the entry or exit contract at the bundled booking point shall be suspended for such time as the performance obligations under the corresponding contract at the bundled booking point are suspended or the corresponding contract is not yet effective.
7. Holders of firm unbundled capacity at market area interconnection points and cross border interconnection points may convert such capacity into firm bundled capacity of the same capacity product within the auction of firm annual, quarterly or monthly capacity products at the respective market area interconnection point or cross border interconnection point. The conversion may only be carried out up to the amount and term of the bundled capacity and up to the amount and term of the unbundled capacity. Unbundled capacity may also be converted partially with respect to amount and term



provided that the conversion comprises at least one calendar month. To the extent unbundled capacity is converted, the shipper shall pay for the converted now bundled capacity the transportation tariffs as defined by Section 25 of the entry and exit contract for unbundled capacity plus any auction premium for the converted unbundled capacity. In addition, the shipper shall pay for such part of the converted capacity any auction premium resulting from the auction where the shipper booked the bundled capacity. The unbundled capacity held by the shipper shall be reduced by the capacity converted by the shipper in accordance with Sentence 1 of this Paragraph 7.

### **Section 9 Capacity products**

1. Without limitation, the capacity products listed below may be offered on a firm basis in accordance with Section 1 via the capacity booking platform:
  - a) Freely allocable entry capacity: Allows network use 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 use 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 use as with a., but is only permitted for feeding biogas to the system.
  - d) Freely allocable exit capacity for biogas: Allows the same use as with b., but is only permitted for off taking biogas.
  - e) Restricted allocable capacity: Allows use of the network of the booked entry point to one or more defined exit points or the use of the booked exit point from one or several defined entry points. Use of the virtual trading point is excluded.

The transmission system operator shall offer the products in accordance with subparagraphs a) - d) on the basis of a procedure which is transparent, non-discriminatory, and standardized between the transmission system operators, also on an interruptible basis. The transmission system operator shall only offer interruptible capacity at market area and cross-border interconnection points and at storage facilities with a term of more than one day if the corresponding firm capacity on a monthly, quarterly or annual basis has been sold at an auction surcharge, sold in full or has not been offered. The transmission system operator shall be entitled to offer interruptible day-ahead capacities at market area points, cross-border interconnection points and at storage facilities, as well as interruptible capacities with any other contract term at other points only if the firm capacities for the following day have been sold in full or have not been offered.

In their supplementary terms and conditions, transmission system operators may offer additional capacity products, including particularly capacity products with capacity allocation restrictions and capacity delivery restrictions as well as services related

thereto. Transmission system operators shall publish capacity allocation restrictions and capacity delivery restrictions affecting individual entry or exit points on the capacity booking platform.

2. Yearly capacity products for market area and cross-border interconnection points as well as at storage facilities shall always begin on 1 October of a given year; quarterly products shall begin on 1 January, 1 April, 1 July or 1 October of a given year, and monthly products shall begin on the first day of the month.
3. The transmission system operator shall market available capacity on a firm basis in the following order:
  - a) Free capacity
  - b) Capacity released as a result of renomination restrictions under Section 17
  - c) Surrendered capacity under Section 16
  - d) Withdrawn capacity under Section 18.
4. The transmission system operator may offer reverse flow capacities at cross-border and market area interconnection points. Normally, reverse flow capacities may only be booked on an interruptible basis. Nevertheless, the transmission system operator may offer reverse flow capacities on a firm basis.
5. Capacity products shall begin and end at the beginning and end of a gas day.

## **Section 10 Conversion of interruptible capacity or firm capacities with interruptible elements**

Holders of interruptible capacity or firm capacities with interruptible elements at market area interconnection points or cross-border interconnection points as well as at storage facility points may submit bids at an auction of firm capacities to convert their capacities into firm capacities or firm capacity products with less interruptible elements (Section 13 (2) GasNZV). The shipper may specify in a binding bid whether his interruptible capacity or capacity with interruptible elements is to be replaced in whole or in part by firm capacity or capacity with less interruptible elements. Both the partial conversion and the conversion of multiple interruptible capacities may be implemented in such manner that the transmission system operator permits separate bids to be made via the capacity booking platform.

1. Holders of interruptible capacity or firm capacity with interruptible elements may convert interruptible capacity into firm capacity or capacity with less interruptible elements if they make a binding declaration at the time of booking firm capacity or capacity with interruptible elements that their interruptible capacity is to be replaced in whole or in part by firm capacity or capacity with interruptible elements. Both partial conversion and the conversion of multiple interruptible capacities may be implemented in such manner that the transmission system operator permits separate bids to be made by the capacity booking platform.

2. If the shipper's capacity is converted in accordance with Paragraphs 1 or 2 of this Section 10, the shipper shall pay the applicable charges determined in the respective auction for firm capacity or capacity with interruptible elements (Paragraph 1) or published by the transmission system operator for firm capacity or capacity with interruptible elements (Paragraph 2). In addition, the shipper shall pay a possible auction surcharge, which arises when the capacity to be converted is booked. The interruptible capacity held by the shipper shall be reduced by the capacity or capacity with interruptible elements converted by the shipper in accordance with Paragraph 1 or 2 of this Section 10.
3. With the within-day conversion of interruptible capacity or capacity with interruptible elements to firm capacity or capacity with less interruptible elements, the shipper shall only pay the daily transportation tariffs for firm capacity or capacity with less interruptible elements to the extent of the conversion and irrespective of the time of conversion.

### **Section 11 Registration and deregistration of network use for supply to 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 dated August 20, 2007 (doc. no. BK7-06-067), or any determination replacing or amending the determination issued by the Federal Network Agency (GeLi Gas).
2. The booking of available capacities (e.g. subsequent bookings or additional bookings of capacities previously not booked) for supply to end-consumers that are directly connected to the transmission system of the transmission system operator shall not result in the initiation of registration or deregistration in accordance with GeLi Gas as stated in Paragraph 1 of this Section 11.
3. The shipper warrants that it is authorized by the balancing group manager and on behalf of the latter to carry out case-group changes for RLM exit points in accordance with GeLi Gas by making balancing-relevant changes to master data or by notifying the start of delivery. If the shipper itself is not the balancing group manager, the transmission system operator reserves the right to require the shipper to submit a power of attorney documenting such authorization in justified individual instances. The transmission of a copy of the power of attorney as an electronic document is usually acceptable for this purpose. The shipper shall indemnify the transmission system operator against claims by third parties as a result of the shipper not holding the legally valid authorization by the balancing group manager warranted by the shipper.

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

1. The balancing group manager appointed by the shipper for this purpose shall be responsible for nomination and renomination. The active balancing group manager shall be responsible for bundled nominations and bundled renominations. Bundled nominations and bundled renominations are governed by the "Business Requirements

Specification for the Nomination and Matching Procedures in Gas Transmission Systems” (NOM BRS) as amended, published at [www.entsog.eu](http://www.entsog.eu). The active balancing group manager must have been authorized by the passive balancing group manager to submit a bundled nomination in accordance with NOM BRS to the relevant transmission system operator. The respective active transmission system operator at the booking point concerned is named on the relevant transmission system operator’s website.

2. The balancing group manager shall nominate the gas quantities to be transported in connection with the use of firm capacity at a booking point by 14:00 hours of the day prior to the delivery day. This initial nomination shall be accepted if it is received by the transmission system operator by 14:00 hours. The nominated value in respect of the initial nomination shall otherwise be zero, unless the parties have agreed otherwise.
3. The nominating balancing group manager may replace his initial nomination by a re-nomination no later than two hours prior to the hour concerned. Renomination is permitted up to 90% of the capacity booked by the shipper at the booking point, subject to a minimum of 10% of the booked capacity. In the case of initial nominations of a minimum of 80% of the booked capacity, upward re-nomination of up to half of the non-nominated booked capacity shall be permitted. In the case of initial nominations of no more than 20% of the booked capacity, downward renomination of up to half of the nominated booked capacity shall be permitted. Allowable renomination amounts shall be rounded to whole kilowatt hours per hour using commercial rounding principles.
4. Nominations shall be first allocated to firm capacity products, and then to interruptible capacity products.
5. Renominations for firm capacity exceeding the amount permitted in accordance with Paragraph 3 of this Section 12 shall be accepted only up to the amount of total booked capacity. That part of the renomination which exceeds the quantity permitted shall be treated as a nomination of interruptible capacity, and shall be interrupted first.
6. Renomination of firm capacity falling below the quantity permitted by Paragraph 3 of this Section 12 shall be accepted. If interruption in the reverse flow direction is necessary, the renomination amount shall be raised to the minimum allowable renomination value.
7. The renomination restriction shall not apply to shippers that have booked less than 10% of the reported yearly technical capacity at the booking point on a firm basis.
8. If several shippers include a booking point in the same balancing group, the balancing group manager may set up a sub-balancing account for every shipper in the balancing group. In such case, the responsible balancing group manager shall nominate gas quantities to the corresponding sub-balancing account for each individual shipper. In such cases, the renomination limits stated in Paragraphs 3 and 7 of this Section 12 shall apply to the total capacity of the shipper included in sub-balancing accounts at

the respective booking point. In the event that sub-balancing accounts are not set up, the renomination limits shall apply to the total capacities at the booking point in a balancing group.

9. Nominations shall be submitted individually for each flow direction. Bundled capacity shall be nominated by submitting a bundled nomination. Bundled nominations shall be made by stating the point, direction of flow and balancing group code pairs in accordance with NOM BRS.
10. Day-ahead capacity and within-day capacity shall be disregarded when determining the permissible renomination range in accordance with Paragraph 3 of this Section 12.
11. The amount of booked capacity and the renomination limits calculated from such capacity in accordance with Paragraph 3 of this Section 12 shall be determined after 14:00 hours on the basis of the capacity booked under the entry or exit contract or the capacity included in the balancing group less capacity surrendered to the balancing group by 14:00 hours.
12. The amount of yearly technical capacity for each marketable capacity product as required in accordance with Paragraph 7 of this Section 12 shall be published via the capacity booking platform by the transmission system operators in March each year for the following gas year. As far as a market area interconnection point is affected, the transmission system operators concerned shall jointly agree on the amount of the technical capacity to be published. If there is a competing capacity allocation in several bookable network points, the publishing TSO will divide the totally available capacity amount for each marketable capacity product, using a proper and objective method, on all competing network points, but only for the purpose of the publication obligation stated in the first sentence of this paragraph.
13. Transmission system operator will base their operational planning/steering and balancing energy demand on the received nominations. To secure a reliable planning, the transmission system operators require nominations, which include the planned hourly time series for the whole gas day and predicted best as possible. The balancing group manager will therefore secure that every sent nomination will have a predictive accuracy and was created with the utmost care. If there is an incomprehensible nomination behavior re-occurring or the transmission system operator is concerned about lacking due diligence, the balancing group is asked by the transmission system operator on its request to give a written explanation of the reasons and necessity behind such a nomination behavior. If such a nomination behavior is permanently disadvantageous for the operational planning and steering and objectively observed cannot be proved to be properly justified, then the transmission system operator has the right to invoice the resulting damages, occurred by such a contractually non-conform nomination behavior to the shipper respectively the balancing group manager.
14. The active balancing group manager shall send the bundled nominations in accordance with Paragraph 9, sentence 2 to the active transmission system operator. The

active balancing group manager shall send the bundled nomination also on behalf of the passive balancing group manager. The active transmission system operator shall forward the bundled nomination to the adjacent passive transmission system operator as the matching partner. The passive transmission system operator shall check whether the authorisation of the passive balancing group manager in accordance with Paragraph 1 has been granted. At the end of the relevant matching cycle the relevant nomination confirmation shall be sent by the active transmission system operator to the active balancing group manager and by the passive transmission system operator to the passive balancing group manager.

15. Firm within-day capacity at market area interconnection points and cross-border interconnection points and at storage facility points can be nominated 45 minutes after the end of the auction. Transmission system operators may also accept an earlier nomination.
16. The transmission system operator should notify the balancing group manager by 18:30 hours each day of the portfolio of capacities within its balancing group per point for the following gas day as follows:
  - Designation of the point,
  - Point ID (preferably the DVGW Energy Identification Code),
  - Flow direction (entry or exit),
  - Capacity product, provided that this is allowed by the agreed EDIFACT data format,
  - Total firm capacity included,
  - Information as to whether a renomination restriction applies and, if so, lower and higher renomination limits in accordance with Paragraph 3 of this Section 12,
  - Total interruptible capacity included,
  - Firm and interruptible shares of temperature related and restricted capacity products included, if such products are offered.

The transmission system operator shall use its best efforts to supply complete and correct information.

Within-day capacities are not shown in the capacity portfolio report.

The transmission system operator shall be entitled to send the information listed above in up to two transmissions. The shipper hereby consents to the forwarding of such data to the balancing group manager. The transmission system operator shall transmit the capacity portfolio report using the EDIFACT data format. The parties may agree on alternative arrangements.

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

1. The shipper shall nominate to the entry network operator the entry quantities to be fed in at each entry point included in the shipper's balancing group. Exit nominations shall be submitted in the cases defined in Paragraphs 3 and 4 of this Section 13. It is not necessary to nominate physical biogas entry quantities. The respective transmission system operator may express a requirement for a technical entry notification in the

event of an entry according to sentence 3. The transmission system operator may waive nominations at entry points defined by itself.

Nominations shall first be allocated to firm capacity products, then to interruptible capacity products. Nominations shall be submitted individually for each flow direction. Nomination of balancing groups or sub-balancing accounts with day-ahead capacities shall be made from 18:30 hours. Transmission system operators may accept nominations before 18:30 hours to the best of their ability. Renomination rights remain unaffected.

2. Shippers may authorize a third party (e.g. the balancing group manager) to make nominations. This third party shall make nominations to the transmission system operator on behalf of the contracting shipper. The balancing group manager shall be authorized to submit combined nominations for several shippers in the event that the shippers have designated the same balancing group for the inclusion of their entry or exit points. If the balancing group manager does not submit a combined nomination as described above or a shipper submits a nomination directly, the capacities concerned shall be included in sub-balancing accounts.
3. At exit points that are not exit points to end-consumers the shipper shall nominate to the exit network operator the exit quantities to be off taken at the respective exit point. The transmission system operator shall be entitled to include provisions concerning such nominations in its supplementary terms and conditions.
4. If several shippers have booked capacities at the same exit point and included this exit point in different balancing groups, the respective shippers shall submit nominations to the exit network operator. This shall not apply if nomination is not required on the basis of allocation rules. Nomination obligations shall also apply if a shipper has included the same exit point in different balancing groups.
5. For operational handling of transport nomination and renomination and in the event of an amendment of the allocation rules resulting in a nomination obligation, the initial setup of communication processes between entry/exit network operators or infrastructure plant operators and shippers or the shipper's third-party contractor, if nomination is required at entry and exit points, is required, with an implementation period of a maximum 10 business days. This also applies to the active balancing manager and the passive balancing manager.
6. If a communication process for the requested booking point has already been set up in accordance with Paragraph 5 of this section 13 and the point concerned is not a complex point, the implementation period shall not exceed 10 business days. The transmission system operator shall use its best efforts to allow implementation within a shorter period. Without limitation, any points where specific services for the matching process are provided by third parties, manual processes for the implementation of matching are required for at least one party, foreign network operators are concerned or at least at one side of an interconnection point a pipeline owned jointly by several

network operators (“Bruchteilseigentum”) is concerned, shall be deemed to be a complex point. The transmission system operators shall indicate these complex points on the capacity booking platform.

7. If a communication process for the requested booking point has already been set up in accordance with Paragraph 5 of this Section 13 and if a complex point in accordance with Paragraph 6 of this Section 13 is not concerned, the implementation period shall not exceed one business day.
8. For entry/exit points implemented in accordance with Paragraphs 5 to 7 of this Section 13, no special implementation periods apply in the event of implemented balancing group numbers or shipper code combinations.
9. The applicable provisions outlined in Common Business Practice “CBP Harmonisation of the Nomination and Matching Process” in its current version, posted on the transmission system operator's website, shall apply to nominations and renominations. A deviation from the provisions mentioned in sentence 1 is allowed in the event that the adjacent transmission system operator at a cross-border interconnection point does not apply the provisions outlined in Common Business Practice CBP.
10. Except as otherwise provided for in Section 12, Section 13 shall also apply to nomination and renomination 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 undertake to be available for 24 hours on each gas day. Accessibility shall be ensured via one single phone number and via a further communication channel (email 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. Data in connection with nomination shall be exchanged consistently in machine-readable and appropriate form on the basis of whole numbers of units of energy [kWh / h] on an hourly basis. Any deviation from this procedure shall be agreed with the transmission system operator. For the exchange of all data and messages necessary for the nomination process, the transmission system operator and the nominating party agree to use the standard nomination modes using the Edig@s data format via an AS 4 link. If the transmission system operator keeps an AS 2 link ready, the transmission system operator may offer this AS 2 link for receiving nominations but only on network points, which are not included in the relevant definition of Article 3 (2) of Regulation (EU) No. 2017/459 of the Commission dated 16 March 2017. If these communication channels, stated in sentence 3 or 4, are not available, then nomination data shall be exchanged over an alternative communication channel specified by the transmission system operator.
3. The nominating party shall notify the transmission system operator promptly of any



obstacles to the establishment or use of interfaces as defined in Sections 13a to 13c, to mutual cooperation or to the procedures.

4. In the event that 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 are not met or if the nomination is incomplete. If the amount of the nomination exceeds the amount of the capacity included in the balancing group or sub-balancing account, the transmission system operator may limit the nomination to this amount. In this case, the shipper shall be deemed to have submitted a nomination with such limited amount. 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. Nominations for bookings of interruptible within-day capacity subject to the requirements of Section 13d may not be limited according to sentence 2 of this Paragraph 5.

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

1. The transmission system operator shall perform a communication test with the nominating party. During the communication test the transmission system operator checks whether the shipper or shipper's authorized contractor is able to transmit notices and communications concerning the processing of the contracts using the agreed nomination modes and agreed data formats to the transmission system operator, and receive such notices and communications from the transmission system operator. The transmission system operator shall advise the shipper of the specific requirements for the communication test. The shipper or its authorized contractor shall give advance notice of any changes affecting compliance with the communication requirements.
2. The transmission system operator shall have the right to repeat a communication test at any time during the term of the respective entry and exit contract.
3. For such time as the nominating party does not successfully complete the communication test pursuant to the criteria defined by the transmission system operator for reasons for which the nominating party is responsible, the transmission system operator may set all the nominations by the nominating party for the following gas days after the date when the communication test was not successfully completed to zero (0), using a standardized method of the respective transmission system operator.

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

1. The nominating party shall ensure that it submits nominations for the entry points and

exit points of the balancing group which require nomination to the respective network or plant operator.

2. At all points where nomination is required, the transmission system operator shall carry out matching with the adjacent grid or plant operators and synchronize all the nominations received with the adjacent system operators affected in each case, taking into account the lesser rule in accordance with the provisions of the Common Business Practice (CBP). The restriction for renominations pursuant to Paragraph 5, sentence 2 and Paragraph 6, sentence 2 of Section 12 hereinabove shall be taken into account, unless they are invalidated at a booking point by the aforementioned lesser rule.
3. If the respective pair of balancing group numbers or sub-balancing account numbers do not agree upon matching, or are unknown on either side, 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 13d Over-nomination at market area interconnection points and cross-border interconnection points and at storage facility points**

1. Booking interruptible within-day capacity through over-nomination is only possible if the firm capacity is marketed in full at the respective booking point or if interruptible capacity only is offered.
2. If the total nominations by the balancing group manager exceed the capacity included by the shipper in the balancing group or sub-balancing account for the particular combination of booking point and direction, then that proportion of the nomination shall be deemed an offer to book interruptible within-day capacity provided the requirements of Paragraph 1 are satisfied. The contract is concluded without any explicit declaration of acceptance by the transmission system operator. The transmission system operator shall inform the shipper that the interruptible within-day capacity has been booked.
3. Interruptible within-day capacity through over-nomination at a booking point may be used by the shipper on an interruptible basis subject to a lead time of two hours provided that booking point already has a balancing group or sub-balancing account in which the shipper has included capacity for the relevant gas day. If several shippers have included capacity in the same balancing group or the same sub-balancing account for the relevant gas day, then the over-nomination shall be distributed among the respective shippers pro rata the capacity which they have respectively included. The over-nomination shall be rejected if no capacity has been included in the balancing group or the sub-balancing account for the relevant gas day. In their supplementary terms and conditions the transmission system operators may make provision for the over-nomination option irrespective of whether capacity is included or not.
4. If interruptible intra-day capacity is booked via over-nomination at an entry or exit point at a gas storage facility using a specially designated balancing group/sub-balancing account for non-discounted capacity, this capacity shall be priced as non-discounted

capacity. If interruptible intra-day capacity is booked via over-nomination at an entry or exit point at a gas storage facility using a balancing group/sub-balancing account without any special designation for non-discounted capacity, this capacity shall be priced as discounted capacity.

5. The nomination replacement procedure according to Section 14 shall not apply to over-nomination.

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

1. Transmission system operators shall offer a nomination replacement procedure if technically feasible and economically viable. This requires the transmission system operator and shipper to conclude a separate contract. The transmission system operator shall indicate on its website whether a nomination replacement procedure is offered. If a nomination replacement procedure is offered, the conditions for such procedure shall be published on the transmission system operator's website.
2. The nomination replacement procedure may be agreed to begin or end on the first day of a month. An implementation deadline of 10 business days applies to the conclusion and termination of contracts for such procedures. When initially applying the procedure, the shipper shall notify the entry or exit network operator of the entry or exit points whose metering data are to be utilised in the nomination replacement method, in addition to concluding the agreement 20 business days before the nomination replacement procedure agreed with the entry network operator is applied. Sentence 3 shall apply mutatis mutandis to notice of termination of application of the nomination replacement procedure.
3. The nomination replacement procedure shall be applied only if sufficient firm capacity is booked for the respective points in an entry or exit contract. A nomination replacement procedure shall not be applied to capacity booked as interruptible.
4. If the transmission system operator offers an online flow control or time lag method, the prerequisite 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 may connect a flexible flow source with entry or exit points whose metering data are utilised in the nomination replacement procedure. The transmission system operator with whom the shipper has concluded the nomination replacement procedure agreement shall also be responsible for controlling the entry quantities at the agreed entry point. This is based on metering data from one or more entry or exit points. The shipper shall make the metering data available. With the time-lag method, the hourly metered value shall be deemed to be a nomination for the entry point; the maximum time lag shall be 4 hours.

### **Section 15 Technical feed in and offtake notices**

1. For end-consumers with recording demand metering and generally unpredictable, extremely high and volatile gas consumption, the exit network operator may require prior technical offtake notice and compliance with the technical limits stated in Section 8 (5) GasNZV, where this is necessary for maintaining system integrity on the network. In any such case, the exit network operator shall publish the relevant metering point. In addition, the exit network operator shall notify the shipper in writing under an existing contract in advance of retroactive introduction of the obligation to submit technical offtake notices in advance.
2. If the exit network operator requires offtake notices in accordance with Paragraph 1 of this section 15, EDIG@s-messages shall be used. If the shipper is not able to generate EDIG@s-messages, the parties may agree on another format on a transitional basis. For this purpose, the parties shall agree on the type, extent, technical details of provision and documentation of data.
3. The procedure stated hereinabove shall apply mutatis mutandis to technical feed in notices in accordance with Section 13 (1).

### **Section 16 Surrender of capacity**

1. The shipper shall be entitled to surrender booked firm capacity in whole or in part, with respect to the booking period and quantity, to the transmission system operators via the joint booking platform (capacity booking platform) at any time up to 14:00 hours on the day before delivery day. Any subsequent primary use or secondary marketing of the surrendered capacities by the shipper is excluded, except as provided for in Paragraph 8 of this Section 16.
2. Bundled firm capacity may be surrendered in bundled form only.
3. Confirmation of capacity surrender shall be given to the shipper via the joint booking platform with a time stamp. This confirmation shall not release the shipper from its payment obligation.
4. Capacity may be surrendered for any day or days in the future and for any proportion of the capacity originally booked.
5. The transmission system operators shall market surrendered capacities as primary capacity under the applicable rules. They may combine surrendered capacities and any primary capacity that is still available to offer products of longer duration. Surrendered capacity shall be marketed subordinated to primary capacity available for the period in question. If a shipper surrenders capacity by 09:00 hours on the 7th calendar day prior to the day of the notification of the amount of the capacity offered in an annual, quarterly or monthly auction, said surrendered capacity shall be taken into account for the calculation of the marketable capacity for the relevant auction. The foregoing cannot be guaranteed for capacity surrendered after the above deadline. If the capacity is not taken into account for the calculation as described above, it will be

offered in subsequent auctions of products with shorter terms.

6. If the transmission system operator markets surrendered capacity, in whole or in part, the shipper shall be released from its obligation to pay for such surrendered capacity which has been marketed. The extent of release from the obligation to pay depends on the revenues obtained for surrendered capacity subject to a maximum limit of the regulated transport tariff for the period of primary marketing and the amount of re-marketed capacity. If the capacity surrendered by the shipper was obtained at an auction, the obligation to pay the surcharges to be added to the regulated transport tariff remains unaffected.
7. If several shippers surrender capacity for a particular day, the capacities shall, in the event of a capacity surplus, be re-marketed by the transmission system operator in the order in which they were surrendered (time stamp).
8. Surrendered capacity that could not be re-marketed shall be made available again to the shipper daily for the following day after the completion of day-ahead marketing, but no later than 18:30 hours for use in the balancing group in which it had been included prior to surrender.
9. The transmission system operator shall issue to the shipper a credit note for the tariff referred to in Paragraph 6 of this Section 16. Such credit notes shall be issued monthly and shall be set off against any outstanding transportation tariffs.
10. The release of the shipper from payment obligations in accordance with Paragraph 6 of this Section 16 shall apply only upon the receipt of the credit note by the shipper. Credit notes shall be issued in the month following marketing of the capacity.
11. The transmission system operator shall notify the shipper by 18:30 hours of the capacity amount which has been made available again in accordance with Paragraph 8 of this Section 16.
12. The provisions of Section 16 shall not apply to exit points to end-consumers. Section 16 GasNZV shall remain unaffected.

### **Section 17 Offering by transmission system operator of firm capacity left unused at short notice in accordance with Section 16 (2) GasNZV**

1. The transmission system operator may offer firm capacity booked by the shipper that cannot be used in whole or in part for the next day, taking into account existing re-nomination rights.
2. The shipper shall remain obligated to pay charges if capacity is successfully re-marketed.
3. Section 16 (4) GasNZV shall not apply.

### **Section 18 Withdrawal of capacity left unused for a significant time in accordance with 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 by the shipper over a significant period at any entry or exit point with the exception of market area and cross border interconnection points if a contractual congestion occurs. For market area and cross border interconnection points Section 18a shall apply to the withdrawal of capacities insufficiently utilized in the long term.

A contractual congestion shall be deemed to exist in the event of a network access denial in accordance with Section 20 EnWG (Energy Industry Act).

2. Withdrawal shall apply to all contracts in place for the entry or exit point which have a combined term of at least one year, irrespective of the terms of the individual contracts concerned.
3. Capacity shall be withdrawn in the amount of firm capacity booked by the shipper left continuously unused on an hourly basis over a period of 3 consecutive months or more in the preceding calendar year. One of the three months shall be January, February, March, October, November or December. If several such periods of three consecutive calendar months can be identified, the minimum amount of capacity continuously not utilised in each such period shall be determined and then the lowest such minimum value shall be determined. Capacity shall only be withdrawn up to said lowest minimum value. The capacity to be withdrawn shall be determined on the basis of the capacity continuously available to the shipper during the previous calendar year, in terms of both timing and quantity. Any partial resale, surrender or reduction in booked capacity by the shipper shall be taken into consideration.
4. The shipper shall be entitled to appeal against the withdrawal of capacity in accordance with Section 16 (4) GasNZV.
5. If several shippers have booked capacities at an entry or exit point and include such capacities in same balancing group in a combined nomination, the transmission system operator may withdraw capacity from the respective shippers proportionately, weighted by the capacity booked at that entry or exit point. This shall not apply if the balancing group manager makes nominations for each shipper in separate sub-balancing accounts.
6. Section 16 shall apply mutatis mutandis to the invoicing and handling of withdrawn capacity that is actually marketed.

### **Section 18a Withdrawal of capacities insufficiently used in the long term at market area and cross border interconnection points**

1. At market area and cross border interconnection points, the transmission system operator shall withdraw capacities if required by the Federal Network Agency. The transmission system operator shall regularly provide the Federal Network Agency with all data necessary to monitor the extent to which booked capacities under contracts with an effective duration of more than one year or succeeding quarters covering at least two years are used. Each primary use or secondary trading of withdrawn capacity by the shipper is excluded subject to sentence 4. Withdrawn capacity that could not be re-marketed will be made available again to the shipper on each day for the following day no later than 18:30 hours for use in the balancing group in which it was included prior to surrender. Furthermore the rights and obligations of the shipper under the entry/exit contract shall remain unaffected until the time of marketing of the capacity by the transmission system operator and to the extent to which the capacity is not marketed by the transmission system operator.
2. Section 16 shall apply mutatis mutandis to the invoicing and handling of withdrawn capacity that is actually marketed.

### **Section 19 Secondary trading**

1. In accordance with Section 12 (2) GasNZV, the shipper may only transfer booked capacity for use or assign booked capacity to a third party by using the capacity booking platform. Bundled capacity may only be transferred for use or assigned as bundled capacity. The transfer for use and assignment of entry and exit contracts/contract rights shall be subject to the following provisions.
2. The shipper may transfer for use capacity rights (with or without nomination rights) under an entry or exit contract by a third party in whole or in part without the permission of the transmission system operator. The shipper shall remain obligated towards the transmission system operator to perform its obligations under the entry or exit contract, including without limitation the payment of charges.
3. The shipper may assign the entry or exit contract to a third party in whole or in part with the permission of the transmission system operator. The third party concerned shall be subject to approval by the transmission system operator. Permission may only be withheld for reasons that would justify the rejection of initial conclusion of an entry or exit contract with the third party in question. Without limitation, the transmission system operator shall be deemed to have such justification in the event that the third party meets the conditions for requiring a deposit under Section 36 and has not provided a deposit. The assignment of an entry or exit contract to a third party shall be binding upon the transmission system operator provided each shipper being party to the assignment has submitted to the transmission system operator a request for consent in text form to this effect by no later than 11:00 hours on day D-3 business days, and the transmission system operator has given its consent. Sentence 2 applies mutatis mutandis. The transmission system operator shall use its reasonable efforts to

facilitate an assignment even if the participating shippers only request consent by 11:00 hours on day D-1. The transmission system operator shall be entitled to request that at the time of the assignment, the transferring shipper has included all of the capacities concerned in a balancing group or sub-balancing account, and that the assignee shipper must also specify a balancing group or sub-balancing account when the secondary marketing is concluded.

Where an entry or exit contract is assigned to a third party for a period of less than one year pro rata temporis, the transportation tariffs for the assigned capacity shall be determined using the multiplier relevant for the term of the assigned capacity according to the Federal Network Agency's 'Determination of 24 March 2015 setting out requirements for converting annual demand charges to demand charges for capacity rights of less than one year and for the proper determining of transport tariffs according to Section 15 (2) to (7) GasNEV (BEATE).

## **Section 20 Technical requirements**

1. The shipper shall ensure that the gas available for entry meets the requirements in accordance with Section 19 GasNZV. Gas quantities to be delivered shall be in accordance with Code of Practice G 260, 2nd 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 number. Section 36 (1) GasNZV states the technical requirements for biogas entry.
2. On its website the transmission system operator shall publish the technical requirements, including gas quality and pressure specification, for the gas to be fed in at the respective entry or exit points. These published technical requirements shall form an integral part of the entry or exit contract and may further narrow the requirements referred to in Paragraph 1 sentence 2 of this Section 20 and/or provide for additional requirements. Either party shall be entitled to request that an impartial third party investigate whether the gas quality conforms to the transmission system operator's requirements in accordance with sentence 1. If the parties cannot reach agreement on an impartial third party within one month of the receipt of the other party's request, such investigation shall be conducted by the Engler-Bunte-Institut at Karlsruhe University. The party requesting the investigation shall bear the cost of investigation if compliance is confirmed. If compliance is not confirmed, the respective other party shall bear the cost.
3. The transmission system operator shall notify shippers in text form, as promptly as possible given the circumstances, of any changes in technical requirements which may be necessary as a result of statutes or official regulations or changes to technical rules of the DVGW. The transmission system operator shall amend the respective contracts affected by changes with effect from the effective date of the amendments or technical rules of DVGW in accordance with sentence 1. In the event that a change in technical requirements is necessary to fulfil the transmission system operator's obligations under applicable laws and ordinances to cooperate, the transmission system



operator shall be entitled to make such changes to the respective contract concerned within 4 months after notifying the shipper thereof in text form. A change of the technical requirements in accordance with sentence 3 may become necessary, without limitation, if the transmission system operator agrees with other transmission system operators, with due consideration for Section 15 (1) EnWG and Section 7 (1), Paragraph 2 GasNZV, upon provisions on the gas quality at a network interconnection between said transmission system operators and if said gas quality differs from the technical requirements published so far in accordance with Paragraph 2, sentence 1 without violating the specifications pursuant to Paragraph 1 and Paragraph 2 sentence 2. If the contractual changes referred to in sentences 1 and 3 have an adverse effect on the shipper's use of capacity, the shipper shall be entitled to terminate the respective contract as of the effective date of the change with 3 months' notice. If the transmission system operator provides notice under sentence 1 less than 4 months in advance of the effective date of the change, the shipper shall be entitled to terminate the contract in question without notice as of the effective date of the change.

4. In deviation from sentence 3 of Paragraph 3 of this Section 20, the transmission system operator shall be entitled to change gas quality or pressure specifications without the shipper's consent by giving advance notice of 3 years before the start of the conversion period. The transmission system operator shall inform the shipper thereof in text form as early as possible under the given circumstances.

In case of a change of gas quality from L-gas to H-gas as part of the L-gas/H-gas market area conversion, the transmission system operator shall give the shipper minimum notice of 2 years and 4 months before the anticipated start of the conversion period. The conversion date for balancing purposes as part of the market area conversion which is within the said conversion period, and which is the first day of the month from which allocation values are notified in H-gas balancing groups only, shall be announced at least 1 year before the conversion. The shipper shall be obligated to notify the balancing group manager of the conversion period and the conversion date for balancing purposes. The shipper shall ensure that the entry and exit points that are relevant to the conversion are included in H-gas balancing groups/sub-balancing accounts according to the existing deadlines in advance of the conversion date for balancing purposes.

In deviation from Paragraphs 1 and 2 of this Section 20, the transmission system operator may, with the shipper's consent, change the gas quality or pressure specification subject to a shorter period of notice.

If a new entry or exit contract begins during the notice periods after the transmission system operator has announced a change, the notice periods already applicable shall also apply to that contract. Any change in gas quality or pressure specifications shall be limited to the entry or exit points affected by the

change. The contract affected by the change shall be amended with effect from the effective date of the change in gas quality or pressure specifications. In the event that the transmission system operator changes gas quality or pressure specifications in accordance with Paragraphs 1 and 2 of this Section 20 without the shipper's consent, the shipper shall be entitled to terminate the contract for the corresponding entry or exit points with one year's notice as of the effective date of the change in gas composition or pressure specifications.

5. In deviation from Paragraphs 3 and 4 of this Section 20, the transmission system operator shall be entitled to change the gas quality from L-gas to H-gas without giving the shipper any prior notice and without the shipper's consent once the conversion charge no longer applies. Sentence 1 of this Paragraph 5 shall not apply in the event of a change of market area allocation, which is governed by Paragraph 7 of Section 31. The transmission system operator shall inform the shipper of the gas quality change without delay after agreement of the conversion schedule among the network operators concerned, but not less than 13 months prior to the conversion date for balancing purposes. In justified cases the conversion date for balancing purposes may be postponed within the notice period commenced. The date may also be brought forward by no more than three months relative to the original conversion date for balancing purposes, as advised, as long as a minimum notice period of six months prior to the changed conversion date for balancing purposes is observed. The shipper shall not be entitled to terminate the contract on account of the gas quality change after the conversion tariff is no longer charged. The opportunity to feed the existing national gas production capacities into the system shall be retained to the extent required in future.

## **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 specifications for gas quality or pressure in accordance with Section 20 (1) and (2) (hereinafter referred to as "off-spec gas"), the entry network operator shall be entitled to refuse acceptance of the off-spec gas in whole or in part. In any such case, the shipper shall immediately adjust its nomination at the entry point concerned accordingly and reduce the supply of off-spec gas at that entry point accordingly. None of the transmission system operator's rights as towards the shipper shall be affected.
2. If gas quantities supplied by the exit network operator at the exit point do not meet the technical specifications for gas quality or pressure in accordance with Section 20 (1) and (2), the shipper shall be entitled to refuse acceptance of the off-spec gas in whole or in part. The exit network operator shall in any such case immediately reduce the supply of off-spec gas at that exit point accordingly. None of the shipper's rights as towards the exit network operator shall be affected.
3. In the case of reduction in accordance with the preceding provisions, renominations shall be made immediately in order to avoid imbalances.

4. Each party shall promptly inform the other party if it becomes aware of the supply of off-spec gas at an entry or exit point, or expects off-spec gas to be supplied.

### **Section 22 Allocation of quantities**

1. The entry network operator to whom entry nominations were submitted in accordance with Section 12 (1) and (2) and Section 13 shall determine for each balancing group or sub-balancing account the gas quantities fed in at entry points and allocate such quantities to the respective balancing groups or sub-balancing accounts based on nominations or using the allocation procedure specified by the transmission system operator.
2. In allocating biogas entry quantities, any liquefied petroleum gas quantities added by the entry network operator for conditioning for adjustment to the calorific value required for the entry network operator's network in accordance with Section 36 (3) GasNZV shall not be taken into consideration.
3. The exit network operator shall allocate gas quantities taken off at exit points to storage facilities, at market area interconnection points and at cross-border interconnection points to the respective balancing groups or sub-balancing accounts on the basis of nominations or using the allocation procedure specified by the transmission system operator.
4. For each balancing group or sub-balancing account, the exit network operator shall determine the gas quantities taken off at exit points to metered end-consumers ("RLM") based on metered values and shall allocate such quantities accordingly to the balancing group or sub-balancing account concerned.
5. For each balancing group or sub-balancing account the exit network operator shall determine the gas quantities taken off to end-consumers with standard load profiles at exit points and shall allocate such quantities to balancing groups or sub-balancing accounts on the basis of the standard load profile determined by the exit network operator.
6. If entry or exit points are included in several balancing groups, shippers and the respective entry/exit network operators shall agree on and implement allocation rules in the entry/exit contract to ensure that gas quantities allocated to this point are only accounted for once.

### **Section 23 Meter operation**

1. Metering data determined by the transmission system operator, as the standard metering operator, or a third party in accordance with Section 5 of the German metering operation law (Messstellenbetriebgesetz, MsbG) shall be used by transmission system operators for balancing and calculating supply overruns and deficits and capacity limit overruns.
2. Regarding the performance of meter operations the transmission system operator, if

he is the standard metering operator, is a meter user in the sense of the German Weights and Measures law and to this extent is responsible for meeting all of the requirements and obligations imposed by the said law.

3. Unless otherwise agreed between the connection user and a third party in accordance with Section 5 of the German metering operation law (MsbG), the provisions outlined below shall apply, in which case the transmission system operator shall be the meter operator and shall provide metering data to the shipper.
4. The transmission system operator shall determine the type, number and size of metering and control devices, in accordance with Section 8 of the German metering operation law (MsbG). Such determinations shall be appropriate with respect to the consumption amount and consumption behavior and shall also give adequate consideration to energy industry interests. The transmission system operator shall provide and operate the metering and control devices required for measurement and meter reading for metered end-consumers.
5. For remote reading, a suitable, externally dialable telecommunications connection without time limit and a 230 V connection shall be available on the end consumer's premises. The transmission system operator may use a GSM modem instead of a telecommunications connection. Upon request, the transmission system operator shall notify the end consumer of the relevant technical specifications (distances between connections, connections to metering installation etc.). Remote reading shall be available prior to commencing supply to a RLM meter or the conversion of an SLP into an RLM meter. The establishment and use of telephone and electricity connections shall be free of charge to the transmission system operator. Any cost incurred as a result of delays caused by the transmission system operator shall not be borne by the shipper or the end consumer. Any cost incurred as a result of delays caused by the end consumer shall not be borne by the transmission system operator.
6. The transmission system operator shall notify the shipper promptly, but no later than at 13:00 hours each day, 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 shall be calculated using the balancing calorific value.

After the end of the supply month, all load profiles shall be plausibility-checked in accordance with DVGW (German Technical and Scientific Association for Gas and Water) code of practice G 685 and substitute values shall be calculated or corrected if applicable. Load profiles shall be converted using the calorific value used for invoicing. The transmission system operator shall notify the shipper of the load profile at RLM exit points for the supply month no later than on day M +10 business days. Any correction shall be highlighted in the data submitted.

If the transmission system operator calculates replacement values using DVGW code of practice G 685, the load profile shall also be submitted to the shipper, converted using the balancing calorific value, within M +10 business days.

The calorific value and compressibility factor Z shall be published on MSCONS.

Transmission system operators have an obligation to submit, without delay, to a shipper upon the shipper's request the load profiles at RLM exit points to end-consumers, which are recorded and read out at hourly intervals.

7. For RLM exit points, the load profile determined according to Paragraph 1 of this Section 23 shall be corrected on day M+12 business days using the invoicing gross calorific value in accordance with DVGW code of practice G 685. If a correction of the gas law deviation factor (K) is necessary in accordance with DVGW code of practice G 486 this shall also be taken into account. For all RLM timelines, the exit network operator shall on day M+12 business days notify the market area coordinator of the complete monthly timeline converted using the balancing gross calorific value and the complete monthly timeline converted using the invoicing gross calorific value in the applicable ALOCAT format as amended from time to time.
8. For end consumers supplied using the load profile method, metering devices shall be 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 in accordance with a schedule determined by the transmission system operator. If an agreement in accordance with Section 40 (2) sentence 2 EnWG is in place, the shipper shall observe the meter reading schedule specifications stated therein.

The transmission system operator shall arrange for interim meter readings in accordance with GeLi Gas between regular readings, including without limitation upon a change of supplier, relocation of the end-consumer, termination of this contract or a material change in demand. If this is not possible, the transmission system operator may estimate consumption by way of extrapolation or on the basis of the last reading. Due consideration shall be given to the actual situation.

9. The shipper shall make additional payment to the transmission system operator for any additional reading requested by the shipper.
10. The review of the metering equipment and the metering error process will take place as stated in Section 71 of the German metering operation law (MsbG) and under consideration of the generally accepted technical rules. If an inspection of metering equipment reveals that error margins have been exceeded, the amount overcharged or undercharged shall be reimbursed or paid as the case may be.

If the error of an SLP end-consumer's metering device cannot be determined with accuracy or the device does not give any reading or cannot be read properly, the transmission system operator shall estimate consumption for the period since the last accurate meter reading on the basis of the average consumption for the metering periods preceding and following reading, or the previous year's consumption. Due consideration shall be given to the actual situation.

If the extent of an erroneous RLM end-consumer's metering device cannot be determined with accuracy or the device does not give any reading or cannot be read properly, replacement values for missing or implausible values shall be determined in accordance with the latest valid version of DVGW code of practice G 685, as part of Section 71 of the German metering operation law (MsbG).

Claims in accordance with paragraph 1, sentence 1 shall be restricted to the reading period preceding determination of the error, unless the impact of the error can be determined over a longer period. In any such case, claims shall be limited to a maximum of three years.

11. Unless otherwise agreed in accordance with Section 5 of the German metering operation law (MsbG), metering data provided by the metering operator to the transmission system operator and processed by the transmission system operator should be used as a basis for implementation and invoicing under the contract. Section 10 (2), (3) and (4) shall apply in the event that the metering data are not made available to the transmission system operator or not made available properly to the transmission system operator or the data made available are implausible.
12. A written request from the connection user and the shipper is required for recording demand metering with an annual offtake of less than 1,500,000 kWh and a maximum hourly offtake rate of less than 500 kWh/h in accordance with Section 24 (1) GasNZV, or below the limits specified by the transmission system operator in accordance with Section 24 (2) GasNZV.

The shipper shall bear the cost of changeover from standard load profile metering to recorded demand profile metering in the cases described above, unless otherwise agreed.

Following conversion and commencement of recorded demand metering, charges for recorded demand metering shall be in accordance with the price list published by the transmission system operator, regardless of actual consumption and annual energy quantities.

13. The quantity of biogas entering the system shall be stated in "kWh" as the product of volume at normal conditions multiplied by invoicing calorific value, i.e. the calorific value for invoicing determined for the entry point. The transmission system operator shall be entitled to calculate replacement values if no metering data are available for biogas quantities delivered by the shipper. Replacement values shall be determined in accordance with DVGW code of practice G 685.

## **Section 24 SLP surplus and shortfall quantities**

1. Invoicing of surplus and shortfall quantities by the transmission system operator shall be in accordance with the guideline drawn up by the associations AFM+E, BDEW,

BNE and VKU entitled “Processes for Determining and Billing Surplus and Shortfall Quantities” (*“Prozesse zur Ermittlung und Abrechnung von Mehr-/Mindermengen Strom und Gas”*) as amended, subject to Paragraphs 2 to 7.

2. The transmission system operator shall calculate the surplus and shortfall quantities when the measurement values and data required for invoicing have been determined. For each SLP exit point, the consumption of the SLP exit points determined in accordance with DVGW code of practice G 685 shall be compared with the final quantity allocated by the transmission system operator to the balancing groups and/or sub-balancing accounts including any substitute allocation values of the market area manager for the respective surplus/shortfall period which have been divided up by the transmission system operator.
3. The surplus/shortfall period always covers the booking period and the balancing period. Surplus quantities arise as quantity differences in the surplus/shortfall period if the exit gas quantity at the exit point is less than the gas quantity allocated by the transmission system operator to the balancing group/sub-balancing account. Shortfall quantities arise as quantity differences in the surplus/shortfall period if the exit gas quantity at the exit point is greater than the gas quantity allocated by the transmission system operator to the balancing group/sub-balancing account. The transmission system operator shall pay the shipper for surplus quantities. The transmission system operator shall invoice the shipper for shortfall quantities. Invoices shall be raised even with zero surplus/shortfall quantities.
4. The shipper may request the ongoing monthly transmission of a monthly list of allocation quantities broken down by day and by exit point.

The transmission system operator shall provide the requested allocation list for all exit points assigned to the shipper for balancing purposes in month M. When requested, the allocation lists shall be transmitted in the third month following month M and before the transmission of the first surplus/shortfall invoice containing the month concerned. No allocation list shall be transmitted for months in which the shipper is not allocated any exit points for balancing purposes.

The balanced quantities shown in the allocation list by exit point must be given in kWh rounded to 3 decimal places using commercial rounding principles. The balanced quantity notified by the transmission system operator for the surplus/shortfall period may differ from the total of daily values in the allocation list by exit point as a result of rounding differences. Rounding differences may result in differences between the allocation list by exit point and the balancing group result from the allocation processes up to a maximum of 744 kWh per balancing group and month. Where such differences exceed 744 kWh per balancing group, the shipper shall be entitled to require the transmission system operator to provide appropriate proof.

5. The surplus/shortfall quantities shall be respectively invoiced or credited by the transmission system operator to the shipper in electronic format on the basis of the standard national surplus/shortfall price published by the market area manager, as may

change from time to time, for the invoicing period.

Invoices shall be raised not earlier than the end of the second month following the end of the month in which the surplus/shortfall period ends (M + 2M) and not later than the end of the third month in which the surplus/shortfall period ends (M + 3M).

Before invoicing, the transmission system operator shall communicate the balanced quantity in an electronic format if balancing has taken place in the surplus/shortfall period. In this case the invoice shall be raised by not later than the end of the 10th business day following the communication of the balanced quantity.

6. The settlement of surplus and shortfall quantities between transmission system operator and shipper shall only be exempt from energy tax if one party to the contract has received a declaration by the other party's responsible customs office in accordance with Section 38 (3) of the Energy Tax Act (EnergieStG). The other party shall be notified promptly in writing of any changes pertaining to the declaration, including for example the revocation thereof by the responsible customs office.
7. Corrections to surplus/shortfall quantity invoices between transmission system operator and shipper after the 1 April 2016 which were initially raised before 1 April 2016 using the old procedure shall without exception be carried out with the old procedure used up until 31 March 2016. The parties shall always use the pricing method which was valid at the time when the surplus/shortfall quantity was first settled.

## **Section 25 Tariffs**

1. The shipper shall be obligated to pay to the transmission system operator the transportation tariffs stated in the respective contract in accordance with the price list, including the respective specific capacity charge, plus any surcharge for capacity in accordance with Section 1 (2) and the metering point operation charge plus any applicable concession or other charges and taxes including biogas pass-on costs in accordance with Section 20 b of the Gas Transport Tariff Ordinance (GasNEV) and market area conversion costs to be passed on in accordance with Section 19 a, Energy Industry Act (EnWG). The charges applicable under the pricelist of the transmission system operator shall be posted on the transmission system operator's website.
2. In determining revenue caps in accordance with Section 17 (1) of the Incentive Regulation Ordinance (ARegV) and adjusting such caps in accordance with Section 17 (2) ARegV in conjunction with Section 4 (3) to (5) ARegV, the transmission system operator shall be entitled to adjust transportation tariffs if this results in a transportation tariffs increase. The transmission system operator shall adjust transportation tariffs if this results in lower tariff charges. In such cases, the transmission system operator shall adjust tariff charges in accordance with Section 17 ARegV in conjunction with the provisions of Section 2 (2) and (3) GasNEV and Section 5 (3) ARegV. The transmission system operator shall notify the shipper promptly in text form of adjusted transportation tariffs (price list).
3. Transportation tariffs may only be adjusted with effect from January 1 of the following



calendar year.

4. In the event of an increase in transportation tariffs and charges, the shipper may terminate the contract either in whole or partially, with reference to the amount of capacity booking, by 10 business days' notice in writing with effect from the effective date of the adjustment. If the shipper does not receive the information in accordance with Paragraph 2 sentence 5 of this Section 25 at least 20 business days prior to the effective date of the adjustment, the shipper shall in deviation from sentence 1 of this Paragraph 4 be entitled to terminate the contract in whole or partially, with reference to the amount of capacity booking, within 10 business days after receiving such information with 5 business days' notice in writing, with effect from the effective date of the adjustment at the earliest. Partial termination under sentences 1 and 2 of this Paragraph 4 shall only be permitted if the capacity is reduced consistently for the whole remaining term of the contract. The shipper shall not have any termination right under sentences 1 and 2 of this Paragraph 4 if the increase in transportation tariffs is lower or equal to the increase in the consumer price index for Germany (VPI) as published by the Federal Statistical Office ("Statistisches Bundesamt"). For this purpose, the relevant increase shall be the increase in the annual average of the VPI compared to the preceding year last published by the Federal Statistical Office before the date of the announcement of the adjustment of transportation tariffs.
5. The discount for discounted capacity at entry/exit points to/from gas storage facilities which give the storage customers access to another market area or to the market of a neighbouring country will only be granted to the shipper in accordance with the provisions of Paragraph 2 lit. d) of the operative provisions of BEATE if the shipper can prove to the transmission system operator that it complies with the conditions detailed in Section IX No. 8 (Requirement 2) of the grounds of the BEATE decision. If the storage operator no longer provides such proof, the non-discounted capacity as stated by the transmission system operator for the relevant entry or exit point shall apply to the discounted capacity from the time such proof is found to be lacking. The transmission system operator shall inform the shipper in text form without delay that the discount is no longer granted. In such case, the shipper is entitled in accordance with Paragraph 4, sentences 1 to 3 to terminate the respective contract.
6. In the event that taxes and other public levies due on transportation tariffs and charges under the respective contract – including taxes and other public charges on services forming the basis for transportation tariffs and charges under the respective contract – are introduced, eliminated or adjusted, the transmission system operator shall implement a corresponding increase or reduction in transportation tariffs and charges under the respective contract as of the effective date of the introduction, elimination or adjustment of such taxes/public charges, unless the revenue cap applies.
7. In the event that revenue caps are adjusted in view of hardship in accordance with Section 4 (4) sentence 1 no. 2 ARegV, the transmission system operator shall be entitled to adjust transportation tariffs in accordance with the Federal Network Agency determinations, or on January 1 of the following calendar year.

8. The transmission system operator shall also be entitled and/or obligated to adjust transportation tariffs and charges in accordance with Paragraph 1 of this Section 25 if such adjustments are required pursuant to legal or regulatory changes or judicial decisions.
9. The right and obligation of the transmission system operator to adjust transportation tariffs shall apply to all entry and exit capacities, regardless of the manner in which they are allocated.
10. The transmission system operator shall pay to the shipper a flat rate for network costs avoided in connection with biogas physically fed directly to the system, in the amount provided for by law. Network costs avoided shall be settled finally on a monthly basis on the basis of the technical quantity calculation in accordance with Section 23 (11). Any liquefied petroleum gas quantities added by the network operator for conditioning for adjustment to the calorific value required for the network operator's network in accordance with Section 36 (3) GasNZV shall not be taken into consideration.
11. The conditions concerning transportation tariffs, charges and payments stated in the supplementary terms and conditions of the transmission system operator posted on the internet shall also apply.
12. For exit points to end-consumers, the shipper shall pay the stated charges for metering point operation and service in accordance with Paragraph 1 of this section for such time as the transmission system operator is the standard metering operator in accordance with Section 2 (4) and section 3 of the German metering operation law (MsbG) at the respective exit point to the end-consumer. The transmission system operator shall inform the shipper immediately if a change has occurred in the metering operation.

## **Section 26 Invoicing and payment**

1. The transmission system operator can set out procedures for invoicing and any payments on account in its supplementary terms and conditions. The network use billing process provided for by GeLi Gas shall remain unaffected.
2. If there is a reasonable indication of an evident error in the invoice, the shipper shall be entitled to postpone or refuse payment.
3. The transmission system operator shall be entitled to charge a flat late payment penalty. The shipper shall be entitled to prove that the loss or damage suffered by the transmission system operator by reason of late payment is lower than such penalty.
4. The transmission system operator shall refund any overpayment and the shipper shall pay any outstanding amount resulting from calculation errors in invoice amounts or invoicing data. Invoices shall not be corrected later than three years from the receipt of the invoice concerned.
5. The parties may only offset counterclaims that are uncontested or upheld by enforceable judgment.

6. The place of performance for payments is the transmission system operator's administrative centre. Payments are deemed made on time when the amounts concerned are credited to the transmission system operator's specified bank account within the payment period indicated by the transmission system operator.

## **Section 27 Taxes**

1. The shipper shall pay the applicable charges plus energy tax at the applicable rate on gas quantities delivered by the transmission system operator to a shipper who is not a supplier within the meaning of Section 38 (3) of the Energy Tax Act (EnergieStG).

Such a delivery shall be deemed to have taken place, without limitation, in the event that the transmission system operator delivers 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 that is a registered supplier within the meaning of Section 38 (3) EnergieStG, the shipper shall document to the transmission system operator that it meets the requirements of Section 38 (3) EnergieStG by submitting a current registration certificate in accordance with Section 78 (4) of the Energy Tax Regulation (EnergieStV) issued by the responsible customs office, establishing that the shipper is entitled to purchase gas quantities tax-free as a registered supplier. Documentation that the shipper meets the requirements of Section 38 (3) of EnergieStG shall be provided to the respective transmission system operator no later than one week before the date of delivery. If adequate documentation that the shipper meets the requirements of Section 38 (3) EnergieStG is not submitted within the prescribed period, the transmission system operator may invoice the shipper for charges due plus energy tax at the applicable rate on the gas quantity delivered.

The shipper shall notify the transmission system operator promptly in writing if the shipper is not or is no longer a supplier within the meaning of Section 38 (3) EnergieStG. A current delivery confirmation from the customs administration is required for address changes, company name changes and changes in legal organisational form. The shipper shall reimburse the transmission system operator for resulting energy tax payable if this requirement is not met on time.

2. All transportation tariffs and charges stated in the contract do not include applicable taxes. The shipper shall pay such taxes in addition to the transportation tariffs and charges.
3. The charges per the relevant contract and these provisions, plus any surcharges thereon, represent the payment amount for the purposes of the Value Added Tax Act (UStG), and do not include Value Added Tax (VAT). The shipper shall pay VAT at the applicable rate to the transmission system operator in addition to such charges, unless the reverse charge mechanism applies. If the recipient of the service fulfils the conditions of the Value Added Tax Act, it shall submit to the other party as proof of the applicability of the reverse charge mechanism the certificate for resellers of natural

gas (UST 1 TH) in accordance with Section 13b sub-section 2 (5), lit. b and subsection 5 of the Value Added Tax Act for the first time one week before the delivery as well as the current certificate after expiry of the validity period of the previous certificate without being explicitly asked to do so. If invoicing is by way of a credit note procedure in accordance with Section 14 (2) sentence 2 of the Value Added Tax Act, the invoice must carry the note "Gutschrift" ("credit") (Section 14 (4) no. 10 of the Value Added Tax Act).

### **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 the construction, modification and expansion of systems. The transmission system operator shall be released from obligations under this contract if and to the extent that the transmission system operator is not able to fulfil its contractual obligations as a result of such measures. The shipper shall be obligated to cooperate, without limitation by restricting network usage during maintenance activities planned by the transmission system operator.
2. The transmission system operator shall give the shipper proper advance notice of measures under Paragraph 1 of this Section 28 in an appropriate manner if and to the extent that network usage under this contract should actually be impaired, in whole or in part. In the event of any scheduled maintenance work planned in advance, the transmission system operator shall, in addition to the obligations under EU Regulation 715/2009, inform the shipper about the duration and likelihood of any restricted use of the network no later than 15 business days before any such restriction occurs. This advance notice requirement may only be underranged if advance notice is not possible for reasons for which the transmission system operator is not responsible or the remedial action necessary to eliminate any interruption of service would be delayed by such advance notice. In any such case the transmission system operator shall inform the shipper immediately on the duration and the reason for a restricted use.
3. In the event that measures under Paragraph 1 of this Section 28 that do not constitute measures within the meaning of Section 16 (2) EnWG restrict the agreed capacity and/or gas flow at the respective entry or exit point affected for more than 14 gas days per gas year, the shipper shall be released from its payment obligations for the duration and scope of restriction beyond 14 gas days. This period shall be reduced pro rata for contracts with a term of less than one year. The shipper shall also be released from its obligations.

Notwithstanding the provision in Paragraph 1 of this Section 28, the following agreement applies to transport capacity with a minimum contract term of one quarter and which is not transport capacity to network connection points to end-consumers: The transmission system operator shall, in the event of any maintenance measures, charge the shipper regardless of any actual restrictions to network use from the 15th

gas day of the possible restrictions the transportation tariffs payable for a corresponding interruptible capacity, less a 30% risk deduction, cumulated for the relevant gas year and for each of the entry and/or exit points affected thereby until the end of the period stated pursuant to Paragraph 2 sentence 2 of this Section 28 and to the extent of the contractually agreed firm capacity.

4. The provisions of this Section 28 shall apply mutatis mutandis in the event that third parties carry out measures in accordance with Paragraph 1 this Section 28 and the transmission system operator is, as a result of such measures, in whole or in part not in a position to perform its obligations under the contract.
5. Paragraph 1 sentences 2 and 3 and Paragraph 2 of this Section 28 shall apply mutatis mutandis in the event that the transmission system operator is entitled by law or provisions of contracts with third parties to interrupt network connection or the use of a network connection.

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

1. The transmission system operator shall be obligated to provide booked interruptible capacity at an entry or exit point as long as the use of booked firm capacity is not affected. The transmission system operator shall also be entitled to interrupt booked interruptible capacities in whole or in part if it is requested by another transmission system operator of the same market area in accordance with Section 16 (1), EnWG to interrupt such capacities to avoid detrimental impact on booked firm capacities on its network.
2. The transmission system operator shall give the shipper or, in the cases provided for in Section 13 (2) and Section 12 (1), the designated balancing group manager, at least 3 hours' advance notice of the interruption, unless it is not possible to give such notice due to operational reasons. The transmission system operator shall notify the shipper of the reasons for the interruption without undue delay no later than upon the occurrence of the interruption.
3. In the event of interruption at an exit point to an end-consumer, the shipper shall ensure that the withdrawal is reduced by the end-consumer accordingly. The renomination deadlines in accordance with the supplementary terms and conditions of the transmission system operator shall not apply as long as renomination is technically and operationally feasible. If use continues despite an interruption, Section 30 shall apply mutatis mutandis.
4. Interruption of interruptible capacity at an entry or exit point shall be effected in the chronological order of the respective entry/exit contract concluded, starting with the most recently concluded contract. If under the process according to sentence 1 there are two or more interruptible capacities of equal status and if the transmission system operator does not interrupt all capacities, the nominations for these capacities shall be reduced on a pro-rata basis. Biogas capacity shall be interrupted with a lower priority than other interruptible capacity. According to Article 35 of Commission Regulation (EU)

2017/459, the preceding sentence does not apply at market area interconnection points or cross-border interconnection points.

5. In cases provided for in Section 16 (1) and (2) EnWG, the transmission system operator may deviate from the procedure laid down in Section 29 (4) if the safety or reliability of the network would otherwise be jeopardised or compromised.

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

In the event that the sum of all nominations of booked firm capacities for any hour at an entry or exit point is higher than the available firm capacity after the interruption of all interruptible capacities in accordance with Section 29, such nominations shall be reduced in accordance with lit. a) and b) of this Section 29a. This shall be without prejudice to the provisions of Sections 34 and 35.

- a) The firm capacity nominations of all biogas balancing groups/sub-balancing accounts shall be considered preferentially. Such nominations shall not be reduced provided that the available capacity is sufficient. If the available capacity is insufficient, then lit. b) of this Section 29a shall apply.
- b) If the remaining firm capacity resulting from lit. a) of this Section 29a is less than the amount of the sum of all nominations relating to capacity included in the balancing group/sub-balancing accounts, the firm capacity shall initially be distributed on a pro rata basis taking into account the ratio of the firm capacities included in the balancing group/sub-balancing accounts. In the event that any capacity remains because more firm capacity has been distributed to one or more balancing accounts than was nominated and the nomination of at least one other balancing group has been reduced, then such residual amounts shall be distributed additionally on the basis of the ratio of the capacities included. If residual amounts remain again after this distribution, the distribution process shall be repeated considering the capacities included until the residual amounts have been distributed.

In the event of the reduction of nominations, the shipper shall be promptly notified of the cause and the estimated duration of the reduction.

### **Section 30 Capacity overrun**

1. The shipper shall be entitled to use booked capacity at the entry and/or exit point in the amount included in the balancing group/sub-balancing account. The shipper shall not be entitled to any use exceeding that amount.
2. If, contrary to Paragraph 1, sentence 2 of this Section 30, the allocated hourly gas quantities exceed 100% of the capacity included in the balancing group for an entry or exit point at the respective entry or exit point in question, an hourly capacity overrun shall be deemed to have occurred. With RLM exit points, the hourly load profile plausibility- checked in accordance with DVGW code of practice G 685 at M+10 business

days and if necessary corrected with substitute values and converted with the invoicing gross calorific value, will be used instead of the allocated hourly gas quantities. An hourly overrun shall not increase the booked capacity.

3. In the event that several shippers have booked capacities at an entry and/or exit point and included such capacities in the same balancing group, the transmission system operator shall be entitled to invoice each shipper for capacity overruns proportionately weighted by the capacity included at that entry and/or exit point. This shall not apply if the balancing group manager makes nominations in separate sub-balancing accounts for each shipper.
4. If the shipper exceeds the capacity included, a contractual penalty shall be payable in accordance with the supplementary terms and conditions and/or price list of the transmission system operator.
5. The provisions of Paragraph 4 of this Section 30 shall be without prejudice to the rights of the transmission system operator to claim compensation for additional loss or damage caused by overruns. Contractual penalties already paid shall be set off against such compensation payable for specific capacity overruns.
6. Paragraph 1 sentence 2 and Paragraphs 2 to 5 of this Section 30 shall not apply to market area interconnection points and cross-border interconnection points provided the over-nomination requirements in accordance with Section 13d are met.

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

1. In accordance with Section 16 EnWG, the transmission system operator shall be entitled to introduce capacity allocation restrictions or use restrictions for the necessary period, modify existing allocation requirements or use restrictions or convert booked firm capacity into interruptible capacity to the extent necessary to ensure the safety and reliability of the transmission system operator's network.
2. The transmission system operator shall also be entitled to adopt measures under Paragraph 1 of this Section 31 if capacity usage differs from the load flow simulation assumptions made in accordance with good gas industry practice under Section 9 (2) GasNZV, and if the different capacity usage forces the transmission system operator to modify the assumptions applied in determining capacity as per Section 9 GasNZV so that capacity can no longer be offered in the amount previously offered. The transmission system operator shall be entitled to adopt measures under Paragraph 1 of this Section 31 if capacity and steering instruments such as load flow commitments and balancing gas to secure the firm, freely allocable capacity required by the transmission system operator cannot be obtained, cannot be obtained in full or can only be obtained at conditions which are economically not reasonable and other network or market measures are not possible. Measures applied by the transmission system operator under this Paragraph shall be reported in advance to the Federal Network Agency, stating the reasons.
3. If the entire booked firm capacity at a point is not equally affected by the measures in

accordance with Paragraph 1 of this Section 31, the transmission system operator shall determine on a non-discriminatory basis for which capacities or contracts these measures are to be implemented. In the case of the conversion of booked firm capacity into interruptible capacity, the booked firm capacity shall be converted into interruptible capacity in proportion to the firm capacity booked by the shippers. For the interruption of this capacity, Section 29 shall apply provided, however, that interruption shall be carried out in the chronological order in which firm capacity was booked. Interruption shall be carried out following the interruption of existing interruptible capacity bookings. Section 29 (4) sentences 2, 3 and 4 shall apply mutatis mutandis.

4. The transmission system operator shall notify the shipper promptly in advance in the event that the shipper's rights are to be restricted under Paragraphs 1 to 3 of this Section 31; in the event of developments which can be foreseen by the transmission system operator well in advance (e.g. as a result of market area mergers) the transmission system operator shall normally give the shipper at least three months' advance notice of such restrictions. In each case, the transmission system operator shall notify the shipper of the reasons for such restrictions.
5. The shipper shall be entitled to extraordinarily terminate the contracts concerned, in whole or in part, within 14 calendar days of the notification date, if the amendment continues for longer than 14 calendar days in any contract year. Termination shall take effect on the effective date of the amendments to the contracts concerned. If the terminated capacity is firm capacity at a cross-border interconnection point or market area interconnection point, the shipper shall be entitled to require the transmission system operator to auction the terminated capacity again at the same point.
6. The contracts concerned shall be amended accordingly if the shipper does not exercise its right of termination. If an amendment results in firm capacity being converted into interruptible capacity in whole or in part, the applicable charges for interruptible capacity in accordance with Section 25 shall apply to the converted portion. In any such case, any auction surcharges shall be eliminated pro rata from the date of adjustment by the transmission system operator. If capacity allocation limitations or use conditions are imposed or changed, the respective charges under the supplementary terms and conditions of the transmission system operator shall apply. Any auction surcharges shall continue to apply in any such case.
7. The transmission system operator may assign entry and exit points to another market area subject to 2 years and 4 months' advance notice given to the shipper. If a market area change has to take place within a shorter period of time, the transmission system operator shall give reasons for this. Reasons for a reassignment may include but shall not be limited to flow-mechanical requirements. The transmission system operator shall inform the shipper of the market area change without delay. The shipper may object to the market area change within a period of 4 weeks of becoming aware thereof, if the period of notice pursuant to sentence 1 was not observed and if there are supply contracts for the exit points in question with a term ending after the reallo-



cation date. The shipper shall provide proof thereof to the transmission system operator, stating the end of the contract term, the expected supply quantity and the service. Entry and exit points for which such proof has been furnished will be reassigned to the new market area but, for the shipper in question, they will be accounted for in the previous market area until the end of the contract term but no later than until the end of the period pursuant to sentence 1. The shipper shall assign the entry and exit points affected to a separate balancing group/sub-balancing account which only contains these exit points. The transmission system operator shall inform the market area manager about the separate balancing group and the separate sub-balancing account. If the proof pursuant to sentence 7 is not furnished by the shipper within 4 weeks, or if the entry and exit points affected have not been assigned to a separate balancing group/sub-balancing account, the points shall be accounted for in the new market area as of the reallocation date.

### **Section 32 Transmission System Operator's contact persons and availability**

The information of the transmission system operator's contact persons are posted on its website.

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

The transmission system operator shall be entitled to disclose consumption, invoicing and contract data to other system operators or market area managers to the extent that and for such time as such disclosure is necessary for the proper performance of the respective contract. The transmission system operator shall also be entitled to gather, store and process data received from the shipper or the shipper's user as part of the use of the capacity booking platform or of its systems for processing network access, and as permitted under data protection acts. The shipper consents to automated data processing by the transmission system operator or 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 that it is prevented from performing such obligations by force majeure in accordance with Paragraph 2 of this Section 34. The other party in each case shall be released from its obligations to the extent that and for such time as the first party is prevented from performing its obligations by force majeure.
2. Force majeure is defined as any unforeseeable external event that is unavoidable, even by the exercise of due care reasonably to be expected and the deployment of resources which the party concerned could be reasonably expected to deploy from the technical and economic point of view. Such events shall include without limitation natural disasters, terrorist attacks, power failures, telecommunications failures, strikes and lawful lockouts or statutory provisions or acts of governments, courts or authorities

(regardless of their legality).

3. The affected party to the contract shall notify the other party promptly, stating the circumstances of force majeure and their expected duration. The affected party shall endeavor to restore its ability to fulfil its obligations as soon as possible, deploying all technically feasible and economically viable resources to do so.
4. If a party to the contract utilizes third-party services to perform contractual obligations, an event which would constitute force majeure or other circumstances within the meaning of Paragraph 2 of this Section 34 for the third party concerned shall also constitute circumstances of force majeure for that party to the contract.

### **Section 35 Liability**

1. The transmission system operator shall be liable for damage to property (“Sachschäden”) and financial loss (“Vermögensschäden”) suffered by the shipper at all pressure levels as a result of the interruption of or disturbances in network access in accordance with Section 5 GasNZV in conjunction with Section 18 NDAV (Ordinance Concerning General Conditions for Network Connection). (see Appendix 1)
2. Each of the parties shall be liable to the other party for death, personal injury or damage to health, unless the party itself and its statutory representatives or vicarious agents (“Erfüllungs- und Verrichtungsgehilfen”), have neither acted willfully nor negligently.
  - a) In all other respects each of the parties shall be liable to the other party for damage to property and financial loss arising out of a culpable breach of their contractual obligations. In the event of a breach of a material contractual obligation (“wesentliche Vertragspflichten”), each of the parties shall be liable to the other party for damage to property (“Sachschäden”) and financial loss (“Vermögensschäden”), unless such loss or damage was not caused by a willful act or omission or negligence on the part of the party itself, its statutory representatives or vicarious agents. The liability of the parties in the event of damage to property or financial loss caused by slight negligence shall be limited to the loss or damage typically foreseeable in connection with such contracts.
    - (i) Material contractual obligations are obligations the performance of which is prerequisite to the proper performance of the contract, and the performance of which the parties to the contract normally rely on and may at all times expect.
    - (ii) Loss or damage typically foreseeable is loss or damage a party to the contract foresaw as a possible consequence of a breach of contract or ought to have foreseen as a possible consequence of a breach of contract under the circumstances of which the party was aware at that time or ought to have been aware at that time if it had exercised due care (“verkehrsübliche Sorgfalt”).

- (iii) It is to be assumed that the typical loss or damage in connection with contracts of this type is EUR 2.5 million for damage to property and EUR 1 million for financial loss.
  - b) In the event of a breach of non-material contractual obligations, each of the parties shall be liable to the other party for damage to property and financial loss, unless such loss or damage was not caused by a wilful act or omission or gross negligence on the part of the party itself, its statutory representatives or vicarious agents.
    - (i) In the case of damage to property or financial loss caused by gross negligence, the liability of the parties and their statutory representatives or managing vicarious agents (“Leitende Erfüllungs- und Verrichtungsgehilfen”) shall be limited to the loss or damage typically foreseeable in connection with such contracts.
    - (ii) In the case of damage to property caused by gross negligence, the parties' liability for ordinary vicarious agents (“einfache Erfüllungsgehilfen”) shall be limited to EUR 1.5 million for damage to property, and EUR 0.5 million for financial loss.
- 3. Section 16 and 16a EnWG shall not be affected. Measures in accordance with Section 16
  - (2) EnWG shall include, without limitation, action taken to ensure a secure natural gas supply for domestic customers in accordance with Section 53a EnWG.
- 4. The parties' liability under mandatory provisions of the Public Liability Act (“Haftpflichtgesetz”) and other laws shall not be affected.
- 5. Paragraphs 1 to 5 of this Section 35 shall also apply to the statutory representatives, employees, vicarious agents of the parties, if and to the extent that these conditions are applicable to the respective party.

### **Section 36 Deposit**

- 1. The transmission system operator may in justified cases require the shipper to pay a reasonable deposit or to make advance payment in accordance with Section 36a for all payment claims arising from the commercial relationship with the shipper. The reasons for any such request for a deposit or advance payment shall be stated to the shipper in text form. If the transmission system operator has requested a deposit from the shipper, the transmission system operator can, if there still is a justified case, at any time request a changeover to advance payment in accordance with Section 36a. In such case, the deposit, if used, shall be refunded without delay upon receipt of the first advance payment.
- 2. Without limitation, the transmission system operator shall be deemed to have reasonable cause for requiring a deposit or advance payment if:
  - a) the shipper

aa) is in arrears with a significant amount, i.e. usually at least 10% of the charge payable by this shipper according to the last invoice or a request for a down-payment, and has failed to make the payment in full upon receipt, after having gone into arrears, of an explicit request for payment in writing threatening withdrawal of the shipper's network access and termination of the shipping contracts or

bb) has been in arrears twice in twelve months with payments due, or

- b) enforcement measures have been initiated against the shipper for financial claims (Sections 803 - 882a Code of Civil Procedure (ZPO)), unless said financial claims are insignificant
- c) an earlier entry or exit contract between the transmission system operator and the shipper has been terminated effectively in accordance with Section 37 (2), lit. b) within the last 2 years before the signing of this contract, or the permission to use the capacity booking platform has been effectively withdrawn from the shipper during this time.

In addition, the transmission system operator shall be deemed to have reasonable cause for requiring a deposit or advance payment if, according to information obtained from a generally recognised credit agency or rating agency, the shipper does not have an appropriate credit rating.

Without limitation, the shipper's credit rating shall be deemed inappropriate if it fails to meet at least one of the following requirements:

- 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 Dun & Bradstreet 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.

This shall also apply if the shipper does not have a corresponding comparable rating of any other recognized rating agency.

The transmission system operator shall disclose to the shipper in full the data and the essential content of the information obtained that gives the transmission system operator reasonable cause for concern.

The shipper may rebut the claim that it does not have an appropriate credit rating by furnishing appropriate proof of its creditworthiness within 5 business days. Such proof can be submitted e.g. in the form of an auditor's certificate, a confirmation of sufficient

liquidity by a bank authorized to do business in Germany, an up-to-date annual report as well as any other information relevant to the shipper's creditworthiness, as may be required.

3. Deposit types include irrevocable, unconditional bank guarantees, irrevocable unconditional corporate guarantees (binding letters of comfort and affiliate guarantees), and irrevocable, unconditional, abstract guarantees of a bank authorised to do business in the Federal Republic of Germany. The type of deposit shall be determined at the discretion of the shipper. The transmission system operator may also accept cash or assignments of receivables.
4. The shipper shall provide the deposit to the transmission system operator within 7 business days of the corresponding request.
5. The requirements for individual deposit types are as follows:
  - a) Bank securities must be provided in the form of an unconditional, irrevocable and abstract indemnity letter or guarantee of a bank authorized to do business in the Federal Republic of Germany. The bank issuing the deposit shall 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 deposit shall 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
    - a Dun & Bradstreet credit rating with a Risk Indicator 3 or better,
    - a Creditreform credit index score (credit index score 2.0) of 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) risk classes are not available for the shipper.

The corporate guarantee or indemnity amount shall not exceed 10% of liable equity capital of the company providing the deposit. The shipper shall document compliance with this requirement to the transmission system operator upon providing the deposit.

- c) Any cash deposit provided shall be deposited to an account specified by the transmission system operator. Interest shall be payable on such amounts at the base rate published by Deutsche Bundesbank on the first bank business day of the month.
- d) The indemnity or guarantee amount shall be payable and shall include a general 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. An abstract indemnity or guarantee letter shall be valid for at least

12 calendar months, and shall expire no later than two months after the end of the contract term.

6. The deposit amount shall be the higher of the following amounts:
  - a) twice the average monthly capacity charges receivable from the shipper for the past 12 months. If the network use period is less than 12 months, this period shall be used as a basis for calculation of the deposit amount, or
  - b) the capacity charges receivable from the shipper for the two following months.

In deviation from sentence 1 of this Paragraph 6, for a period of 6 months from the moment of admission according to Section 2a (2), the amount of the deposit shall amount to twice the average monthly capacity charges 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 in text form.

7. The transmission system operator may restrict the shipper's admission to the capacity booking platform in accordance with Section 2a so that the shipper can only book capacities up to the extent to which the total charge for the capacities requested correspond to the amount of the deposits made. It is possible at any time to adapt the extent of admission after the shipper has previously increased its deposit in accordance with the amended expected capacity.
8. The transmission system operator may have recourse to the deposit provided that it has issued a payment due notice for overdue amounts after payment has been delayed and the reasonable deadline set for making payment has not been met. In such a case the transmission system operator may request that another deposit be made under the conditions detailed in Paragraph 8 of this Section 36. The shipper shall make said deposit within 7 days of the request.
9. Deposits provided shall be returned promptly in the event that the reasons for the requirement of securities no longer apply. The transmission system operator shall review the reasons justifying the requirement for a deposit or advance payment every six months. During such review, the transmission system operator shall verify whether the deposit amount meets the requirements of Paragraph 6 of this Section 36. In the event that such review reveals that the realizable value of all securities provided exceeds the amount of the applicable value in accordance with Paragraph 6 of this Section 36 temporarily, the transmission system operator shall return the corresponding portion of the deposit. If several deposits have been provided, the transmission system operator may choose at its discretion which deposits to return. In the event that the realizable value of all deposits provided falls below the amount of the applicable value in accordance with Paragraph 7 of this Section 36 by a more than insignificant amount, the transmission system operator may require the shipper to adjust the amount of such securities accordingly.
10. The transmission system operator may also return a deposit if the shipper has not booked any capacity 12 months after its admission to the capacity booking platform. At the same time as the deposit is returned, the shipper's right to book capacity or its

admission to the capacity booking platform will be withdrawn. In this case the transmission system operator shall give the shipper 8 weeks advance notice in text form of the withdrawal of its admission. The deposit will not be returned and admission will not be withdrawn if the shipper appeals in text form within 4 weeks of the advance notice. The period according to sentence 1 begins to run again on receipt of the appeal by the transmission system operator.

### **Section 36a Advance payment**

1. The shipper shall be entitled to make an advance payment instead of providing a deposit. To do so, the shipper shall state to the transmission system operator in text form within five business days of the receipt of the request for a deposit by the transmission system operator that it will make an advance payment instead of the deposit.
2. If the transmission system operator requests an advance payment in accordance with Section 36, Paragraph 1 or if the shipper avoids providing a requested deposit in accordance 36a, Paragraph 1, the shipper shall be required to make future payments in response to capacity charge requests as advance payments.
3. The transmission system operator may request an advance payment once every month, every fortnight or every week.
4. The amount of the advance payment shall be determined on the basis of the average monthly capacity charge requests made to the shipper over the past 12 months. If the actual period of use is less than 12 months, said actual period shall be used as a basis for calculating the average monthly capacity charge requests. If the circumstances of a particular case give reason to believe that the actual capacity charge requests are higher or lower than the average capacity charge requests calculated, then this shall be duly taken into account by the transmission system operator when determining the amount of the advance payment. To this end the transmission system operator may ask the shipper to provide a booking forecast, or the shipper may submit a booking forecast. However, the transmission system operator shall not be bound by any such forecast in a given case.
5. The transmission system operator shall advise the shipper by the 13<sup>th</sup> business day of the month preceding the month M of the amount of the monthly advance payment and the advance payment to be made according to the selected period. The advance payment shall be made in time so that it is credited to the transmission system operator's account by the last business day of the month preceding the month M, and for advance payments made every two weeks or every week, by the last business day of the week preceding the delivery week. The transmission system operator shall be entitled to request proof from the shipper that the payment order was issued in good time.
6. The advance payment shall be offset from the capacity charge requests made by the transmission system operator for the month M in which the payment was made.
7. If a particular advance payment does not suffice to cover the charge requests for the

month M in question, the shipper shall pay the difference by the date on which the charges are due and payable in accordance with the transmission system operator's terms and conditions concerning charges and payment. If a particular advance payment exceeds the capacity charge request for the month in question, the difference shall be reimbursed to the shipper.

8. The transmission system operator may restrict the shipper's admission to the capacity booking platform in accordance with Section 2a so that the shipper can only book capacities up to the extent to which the total charges for the capacities requested correspond to the amount of the advance payment made. It is possible at any time to adjust the scope of admission after the shipper has previously increased its advance payment in accordance with the amended expected capacity.
9. The transmission system operator shall check the first time after 6 months of the first advance payment, and then every 6 months thereafter, whether there is reasonable cause for requiring an advance payment as provided for in Section 36 (2). The shipper may request after 18 months at the earliest that the advance payments be stopped, provided there is no longer any reasonable cause for requiring advance payments as provided for in Section 36 (2) above and provided that the shipper's payments over the previous 18 months have been made in full and on time. If it has been established that the conditions requiring advance payments to be made no longer exist, the transmission system operator shall confirm to the shipper that advance payment are no longer required. The duty to make advance payments ends upon receipt of said confirmation.
10. The transmission system operator may include additional provisions on payment intervals and due dates in the supplementary terms and conditions. The foregoing shall be without prejudice to the transmission system operator's option to agree upon preliminary invoices as part of the conditions concerning charges and payment.

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

1. This contract may be terminated with immediate effect for good cause ("wichtiger Grund").
2. Without limitation, the following shall be deemed to constitute reasonable cause for the termination of the contract with immediate effect:
  - a) serious, repeated breach of material contractual obligations despite the issue of a notice to desist or
  - b) failure of the shipper to promptly meet its obligation to provide a deposit in accordance with Section 36 or make advance payment in accordance with Section 36a or to pay such deposit or make such advance payment in full.



### **Section 38 Good faith clause**

1. Should unforeseen circumstances arise during the term of the contract which have significant technical, economic, commercial or legal impact on the contract and for which there are no provisions in the contract or the standard terms and conditions or which were not taken into consideration upon the conclusion of the contract and should it therefore become unreasonable for either party to remain bound by any of the provisions of the contract, the party affected by any such change shall be entitled to require the other party to amend the provisions of the contract to reflect the changed conditions and to take into account all the commercial, technical and legal effects on the other party.
2. The party relying on such circumstances shall set forth and prove the facts of the matter.
3. The party concerned shall become entitled to require an amendment of the contract provisions as a result of changes in circumstances upon the date when the party concerned first requests such amendments, except where the party concerned cannot reasonably be expected to have made such request at an earlier date.

### **Section 39 Confidentiality**

1. The parties shall keep the content of the contract and all information obtained thereunder by one party from the other party (hereinafter referred to as “confidential information”) confidential and shall not disclose or make available such confidential information to third parties without the prior written consent of the other party, except as provided under Paragraph 2 of this section 39 and Section 33. Each party shall use the confidential information solely for the purpose of performing the respective contract.
2. Either party shall be entitled to disclose confidential information obtained from the other party without written consent:
  - a) to an affiliated company which is subject to the same confidentiality obligations 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 person or company has itself entered into an obligation to keep the confidential information confidential or is under a statutory obligation of confidentiality by virtue of its profession; or
  - c) to the extent that such confidential information
    - has already been lawfully disclosed to the party receiving such information prior to the date of its receipt from the other party,
    - is already public knowledge or becomes available to the public other than through the act or omission of the obtaining party,
    - is required to be disclosed by a party under applicable law or by a judicial or

government order, or by a request of a regulatory authority.

3. The confidentiality obligation shall end 2 years after expiry of the respective contract.
4. Section 6a EnWG shall not be affected.

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

1. Subject to Section 19, contractual rights and obligations shall not be assigned whether in whole or in part without the prior written permission of the other party, which permission shall not be withheld except for reasonable cause.
2. Assignment of all of the rights and obligations of a party under the contract to an affiliated company as defined by Section 15 Joint Stock Corporation Act (AktG) shall not require the prior permission but only the written notification of the other party.

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

1. The transmission system operator may amend the general terms and conditions outlined in this contract for the future if
  - a) change is required in order to comply with applicable laws, regulations or legally binding orders by national or international courts or authorities – including without limitation determinations and related announcements of the Federal Network Agency – or to comply with generally approved technical standards; this also covers relevant common network operating tools (including Business Requirements Specification) according to Article 8 (3a) of Regulation (EC) No. 715/2009its. Or
  - b) in the event that the transmission system operator has a justified interest in changes to the contractual arrangements for network access. Without limitation, the transmission system operator shall be deemed to have such a justified interest if the changes are in connection with the issue of standardized entry and exit contracts in accordance with Section 3 (3) GasNZV.
2. The transmission system operator shall give the shipper two months' advance notice of any such amended terms and conditions of the contract in text form and publish the amended terms and conditions of the contract on its website. In justified cases, the transmission system operator may deviate from said notice period of two months, but the notice period should in any case not be less than 15 business days. Without limitation, a justified case shall be deemed to exist if a change pursuant to Paragraph 1, lit. (a) of this Section 41 is required Amendments to the terms and conditions of this contract shall be deemed to have been accepted by the shipper unless the shipper terminates the contract within 30 days of the receipt of notification thereof, with said termination taking effect from the time the amendments to the terms and conditions of this contract become effective. The termination notice period shall be reduced to an appropriate period if the transmission system operator deviates from said notice period of two months pursuant to Paragraph 2, sentences 2 and 3. No compensation

shall be payable to the shipper. The shipper shall not be entitled to terminate the contract if the amendment concerned does not represent any or any significant commercial or financial disadvantage to the shipper. In the event that the shipper considers that any such amendment would represent significant financial disadvantage to the shipper, the shipper shall submit evidence of such disadvantage. The transmission system operator shall notify the shipper of the start of the termination notice period, and in the case described in Paragraph 2, sentence 5, of a reduced period, and of the fact that the amended contract terms and conditions will be deemed to have been accepted by the shipper in the event that the shipper does not terminate the contract.

3. Adjustments of charges shall be subject to Section 25.

### **Section 42 Severability**

1. If any provision of this contract or the appendices hereto is or becomes ineffective or inoperable, the other provisions of this contract or appendices hereto shall remain in full force and effect.
2. The parties shall replace any ineffective or inoperable provision by a provision with as near as reasonably possible the commercial and financial effect intended by the provision so replaced. This shall apply mutatis mutandis to matters not provided for in the contract.

### **Section 43 Text form**

Any amendment to or termination of a contract shall not be effective unless made in text form. The same shall apply to any waiver of the requirement for amendments or terminations to be made in text form.

### **Section 44 Venue for disputes and applicable law**

1. Any disputes arising between the parties out of or in connection with the contract shall be submitted to the courts of ordinary jurisdiction.
2. The venue for disputes shall be the place where the transmission system operator has its registered office.
3. The contract shall be governed by and construed and interpreted in accordance with German law to the exclusion of interstate conflict of law rules shall not apply as long as these are not mandatory law. The UN Convention on Contracts for the International Sale of Goods shall not apply.

## **Section 45 List of appendices**

The following appendix shall constitute an integral part of this contract:

- |            |   |
|------------|---|
| Appendix 1 | Section 18 NDAV   |
| Appendix 2 | Supplementary Terms & Conditions of NEL Gastransport GmbH   |
| Appendix 3 | Supplementary Terms & Conditions of Business of NEL Gastransport GmbH<br>for allocating new technical capacities as of 6 March 2017 |

## **Appendix GTC 1: § 18 Low Pressure Connection Ordinance (Niederdruckanschlussverordnung / NDAV)**

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
  - a. regarding financial loss willful misconduct or gross negligence shall be assumed subject to refutation,
  - b. 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
  - a. 2,5 million Euro in case of up to 25.000 connection users connected to its own network;
  - b. 10 million Euro in case of 25.001 to 100.000 connection users connected to its own network;
  - c. 20 million Euro in case of 100.001 to 200.000 connection users connected to its own network;
  - d. 30 million Euro in case of 200.001 to one million connection users connected to its own network;
  - e. 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. Paragraph 1 and 2 shall also apply to connection users' claims in tort against third-party network operators in terms of § 3 number 27 Energy Industrial Act. Liability of third-party network operators in terms of § 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 paragraph 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 paragraph 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 § 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 paragraph 2 sentence 2 and paragraph 3 sentence 2 and 3. Paragraph 2 sentence 3 and paragraph 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 paragraph 2 sentence 2 or paragraph 3 sentence 4 in connection with paragraph 4 respectively, such customer shall be regarded with respect to the reduction in accordance with sentence 1. In case of claims pursuant to paragraph 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.

## **Appendix GTC 2: Supplementary Terms & Conditions of NEL Gastransport GmbH**

The supplementary Terms & Conditions supplement the GTC of NEL Gastransport GmbH (NGT) dated 30 July 2018.

### **Section 1 Dynamically Allocable Capacity**

- (1) In addition to the capacity products pursuant to Section 9 (1) GTC NGT shall also offer dynamically allocable capacities. NGT publishes on its website a list of all network points at which NGT shall make available a dynamically allocable entry capacity or dynamically allocable exit capacity available.
- (2) The dynamically allocable entry capacity shall enable network access on a firm basis from the booked entry point up to one or more agreed exit points. The energy quantity in kWh of the gas injected and withdrawn at the network points defined in accordance with sentence 1 must be the same in each hour. Where the shipper withdraws quantities at exit points other than those defined or at variance with the provision in sentence 2 (hereinafter referred to as "Variance"), the dynamically allocable entry capacity in the amount of the Variance may be used solely on an interruptible basis. The Variance shall be calculated in each balancing group or sub-balancing account. Consequently, a firm usage of dynamically allocable entry capacity can only then be ensured, when the dynamically allocable entry capacity will be included in the same balancing group or sub-balancing account as the capacity at the agreed exit points.
- (3) The dynamically allocable exit capacity shall enable network access on a firm basis from one or more agreed entry points up to the booked exit point. The energy quantity in kWh of the gas injected and withdrawn at the network points defined in accordance with sentence 1 must be the same in each hour. Where the shipper withdraws quantities at exit points other than those defined or at variance with the provision in sentence 2 (hereinafter referred to as "Variance"), the dynamically allocable exit capacity in the amount of the Variance may be used solely on an interruptible basis. The Variance shall be calculated in each balancing group or sub-balancing account. Consequently, a firm usage of dynamically allocable exit capacity can only then be ensured, when the dynamically allocable exit capacity will be included in the same balancing group or sub-balancing account as the capacity at the agreed entry points

### **Section 2 Allocation Procedure**

NGT shall upon request provide information about the allocation procedure in accordance to section 22 (1) and (3) GTC.

### **Section 3 Usage of IT-portals**

As a service NGT offers the opportunity to use IT-portals, for example for management of nominations or for data administration. The terms of service shall be agreed upon registration or activation.

### **Section 4 Invoicing and Payment**

- (1) Booked entry and exit capacity shall be invoiced in advance in monthly instalments, at prices in accordance with NGT price list. Entry and exit capacity which has been booked after invoicing in accordance with sentence 1 shall be settled separately ex- post. The

shipper shall make said payments by the tenth (10<sup>th</sup>) working day following receipt of the invoice.

- (2) The contractual penalty for capacity overrun, as set out in NGT Price List, shall be billed on a monthly basis in arrears. The shipper shall make said payments by the tenth (10<sup>th</sup>) working day following receipt of the invoice.
- (3) The place of performance for payments shall be the administrative headquarters of NGT. Payment shall be deemed to have been made in a timely manner if the invoice amount is irrevocably credited to an account of NGT within the deadlines specified in this section.

### **Section 5 Over-nomination without capacity inclusion**

- (1) In addition to section 13d (3) GTC, an interruptible within-day entry/exit contract via over-nomination shall also be concluded, even though no booked capacities have been included in the balancing group or sub-balancing account. In this case the entry/exit contract shall be concluded with the shipper who is also the balancing group manager of the balancing group or sub-balancing account which was over-nominated. The entry/exit contract according to Sentence 1 for the following Gas Day shall only be concluded, if the over-nomination is processed after 18:30 hours.
- (2) Pursuant to section 13d (2) last sentence NGT shall inform the shipper about booking interruptible within-day capacity via over-nomination by e-mail.
- (3) Pursuant to section 36 (7) GTC and section 36a (8) GTC NGT shall be entitled to allow booking interruptible within-day capacity via over-nomination only up to the extent to which the total charge for the capacities requested, correspond to the amount of the deposits according to section 36 GTC or the advanced payment according to section 36a GTC made.



### **Appendix GTC 3: Supplementary Terms & Conditions of Business of NEL Gastransport GmbH for allocating new technical capacities as of 06 March 2017**

These Supplementary Terms and Conditions of Business define provisions that supplement or differ from the General Terms and Conditions of Service of NEL Gastransport GmbH (“transmission system operator”) in the version dated 30 July 2018 governing new technical capacities at the cross border points listed in Annex 1 of these Supplementary Terms and Conditions of Business in accordance with Article 2 Section 3 of Commission Regulation (EU) No. 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council, in the version applicable on October 1, 2016.

#### **Article 1 General, scope**

1. In addition to the procedure for the Network Development Plan Gas 2016, the transmission system operators GASCADE Gastransport GmbH (“GASCADE”), Gasunie Deutschland Transport Services GmbH (“Gasunie”) and ONTRAS Gastransport GmbH (“ONTRAS”) jointly carried out a market survey from 21 August until 16 October 2015 under the name “more capacity” to determine the need for new transport capacities for high calorific natural gas at the boundaries of the GASPOOL market area. The aim of the market survey was to be able to estimate the future need for new cross-market-area transport capacities as early and as realistically as possible. Fluxys Deutschland GmbH has been involved in the “more capacity” project since April 2016; NEL Gastransport GmbH (“NGT”) has also been involved in it since July 2016. Offering levels have been derived from the non-binding demand for cross-market-area capacities determined on the basis of the survey. The new technical capacities determined in the above manner are to be allocated in capacity auctions.
2. The new technical capacities will not exist at the time the capacity auctions are held, and the transmission system operator has not made a final decision on network expansion measures to create the new technical capacities (hereinafter referred to as “network expansion”). Creation of the new technical capacities depends in particular on all necessary permissions for network expansion and operation of the network being obtained, as well as on the regulatory framework and the permissions required in this regard. In view of the above, Article 2 Sections 3 and 4 of the current version of the cooperation agreement and Article 1 Section 5 of the transmission system operator’s General Terms and Conditions of Service specify that the transmission system operators can conclude in their Supplementary Terms and Conditions of Business arrangements for new technical capacities which supplement or differ from their General Terms and Conditions of Service.
3. As long as no provisions that supplement or differ from the General Terms and Conditions of Service are concluded in these Supplementary Terms and Conditions of Business, the General Terms and Conditions of Service of the transmission system operator shall otherwise apply to new technical capacities.
4. Definitions:
  - a. New technical capacities: New technical capacities at cross border points in accordance with Article 2 Section 3 of Commission Regulation (EU) No 984/2013

of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council, in the version applicable on 1 October 2016 (“NC CAM”).

- b. Existing capacities: Available capacities in accordance with Article 2 Section 1 No. 20 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 at the time of the 2017 annual auction, not including the new technical capacities.
- c. Performance period of the entry or exit contract: The period of time for which the contractual rights and obligations of the transmission system operator and the transport customer apply in accordance with Articles 3 and 4 of the transmission system operator’s General Terms and Conditions of Service.

## **Article 2 Marketing horizon**

1. New technical capacities shall be offered for a period of up to 25 years as of the anticipated commissioning of the underlying network expansion measures.
2. In deviation from Article 2 Section 1, new technical capacities shall be offered at cross border points in accordance with Article 11 NC CAM to the extent that a bundled capacity product is formed with the new technical capacities and this product does not represent a new technical capacity in accordance with Article 2 Section 3 NC CAM on the part of the neighboring transmission system operator.

## **Article 3 Conclusion of contracts**

1. The entry or exit contract relating to new technical capacities between the transport customer and the transmission system operator shall be formed by allocation of the capacities in accordance with Article 1 Section 2 of the transmission system operator’s General Terms and Conditions of Service. Subject to the provisions in Section 3 of this Article 3 and contrary to Article 1 Section 2 of the transmission system operator’s General Terms and Conditions of Service, the entry or exit contract shall be fully effective subject to the condition precedent that the following conditions a) to e) are met cumulatively:
  - a. Upon completion of the respective auctions for new technical capacities on the primary capacity platform, all offered standard capacity products of the existing capacities with an equivalent or higher quality at the cross border points have been marketed across the transmission system operators in the respective flow direction (existing capacities are booked out with priority). The existing capacities of OPAL Gastransport GmbH shall be exempt from booking out with priority.
  - b. As part of an economic assessment based on the entry and exit contracts concluded subject to the condition precedent, the transmission system operator has determined that the measures to create new technical capacities for an offering level are cost-effective.
  - c. All necessary regulatory permissions for capacity allocation for the new technical capacities have been obtained.

- d. The costs of the expansion measures required for creating the new technical capacities have been acknowledged by the regulatory authorities.
  - e. The transmission system operator's management has agreed to expansion of the network. Management shall not deny this consent arbitrarily or for irrelevant reasons.
2. If one or more of the conditions in Section 1 a) to e) of this Article 3 are not met by 30 June 2019 or the entry or exit contract has not been declared fully effective by the transmission system operator in accordance with Article 3, they shall be regarded as not having occurred and the entry or exit contract shall become definitively ineffective.
  3. Regardless of the occurrence or non-occurrence of one or more conditions in accordance with Section 1 a) to e) of this Article 3, the transmission system operator shall be authorized at any time to decide by 30 June 2019 that the entry or exit contract shall be fully effective.
  4. The transmission system operator shall give the transport customer written notice of the occurrence or non-occurrence of the conditions in accordance with Section 1 a) to e) or in accordance with Section 3 of this Article 3. With regard to the conditions in Section 1 a), the information shall be provided no later than 30 June 2017, with regard to Section 1 b), the information shall be provided no later than 28 February 2018, with regard to Section 1 c), the information shall be provided no later than 31 August 2017, and with regard to Section 1 d) and Section 1 e), the information shall be provided no later than 30 June 2019.
  5. The transmission system operator shall give the transport customer written notice that the entry or exit contract is fully effective immediately after the occurrence of the conditions in accordance with Section 1 a) to e) of this Article 3 or in accordance with Section 3 of this Article 3.
  6. If one or more conditions in accordance with Section 1 a) to e) of this Article 3 do not occur or the transmission system operator exercises its special right of termination in accordance with Article 7 Section 1, all and any claims for liability against the transmission system operator shall be excluded.
  7. The capacity allocation of the auctions shall be published by the transmission system operator in aggregated form after the end of the auctions, taking into account the need to keep business and trade secrets confidential. Transport customers who take part in the capacity auctions shall receive separate confirmations of the respective capacity allocation of the capacity auctions from the transmission system operator.

#### **Article 4 Auction process**

1. New technical capacities shall be marketed in accordance with the terms and conditions of business of the primary capacity platform. The terms and conditions of business shall be published by the platform operator on its website.
2. As part of the auctions on the primary capacity platform, multiple auctions per cross border point for similar capacity products can be held simultaneously for new technical capacities in order to present multiple offering levels. Without prejudice to the provisions in Article 3, only the entry or exit contract that corresponds to the highest offering level for which the transmission system operator has determined the cost-effectiveness of the expansion measure in accordance with Article 3 Section 1 b) shall become effective. The transmission system operator shall cancel the other allocations by giving the transport customer written notice.

## Article 5 Tariffs

1. The transmission system operator shall generally charge variable tariffs for the new technical capacities in accordance with Article 5 Section 2. The transmission system operator shall examine whether and to what extent charging fixed tariffs instead of variable tariffs can be applied. Legal and regulatory permissibility, and necessary official permissions, in particular the approval of fixed tariffs by the Federal Network Agency, are requirements for the potential charging of fixed tariffs by the transmission system operator. Furthermore, the charging of fixed tariffs must be at least equivalent for the transmission system operator in economic terms to charging variable tariffs. If the aforementioned requirements are met, the transmission system operator may specify by the end of 31 December 2017 for each cross border point that fixed tariffs are applied instead of variable tariffs in accordance with Article 5 Section 2. If the transmission system operator does not specify by the end of 31 December 2017 that fixed tariffs are to be applied, variable tariffs shall continue to apply in accordance with Article 5 Section 2. The transmission system operator shall notify the transport customer immediately as soon as it has been established that fixed tariffs will be charged.
2. Article 25 of the transmission system operator's General Terms and Conditions of Service shall apply both for charging variable tariffs and for charging fixed tariffs subject to the provision that the Parties
  - a. agree variable and/or fixed tariffs for the performance period of the entry or exit contract in each case from 1 October to 31 December. The tariffs as defined here are the variable and/or fixed tariffs that are formed in future in accordance with regulatory requirements or are approved in future by the regulatory authorities, as well as the other tariffs or tariff components stated in Article 25 Section 1 of the General Terms and Conditions of Service and any future cost allocations that will apply in each case on 1 October of a year in the respective performance period of the entry or exit contract according to the price sheet published on the transmission system operator's website; and
  - b. agree variable and/or fixed tariffs for the performance period of the entry or exit contract in each case from 1 January to 30 September. The tariffs as defined here are the variable and/or fixed tariffs that are formed in future in accordance with regulatory requirements or are approved in future by the regulatory authorities, as well as the other tariffs or tariff components stated in Article 25 Section 1 of the General Terms and Conditions of Service and any future cost allocations that will apply in each case on 1 January of a year in the respective performance period of the entry or exit contract according to the price sheet published on the transmission system operator's website.
  - c. Without prejudice to the provisions in Sections 2 and 3 of Article 7, Article 25 Section 3 Sentence 1 and Article 4 of the transmission system operator's General Terms and Conditions of Service shall not apply in the cases specified in a) and b) since price adjustments are not involved.
3. As part of the auction, the specific capacity tariff currently applying at the time of the auction and formed in accordance with regulatory requirements shall be used. However, use of the specific capacity tariff in accordance with Sentence 1 shall not constitute an agreement on the tariffs and shall say nothing about the level of the actually agreed tariffs to be charged for the performance period of the entry or exit contract in accordance with Section 1 of this Article 5. There is consequently no price adjustment within the meaning of Article 25 Section 3 Sentence 1 and Article 4 of the transmission system operator's General Terms and Conditions of Service.

## **Article 6 Rights and obligations of the transmission system operator and the transport customer**

1. Prior to the expiry of the deadline for the special right of termination in accordance with Article 7 Section 1, or until the transport customer prematurely waives the special right of termination in accordance with Article 7 Section 1, the transmission system operator shall not be obliged to take measures to provide new technical capacities. Following expiry of the deadline for the special right of termination in accordance with Article 7 Section 1, or after the transport customer has prematurely waived the special right of termination in accordance with Article 7 Section 1, the transmission system operator shall endeavor to take economically justifiable measures to ensure that the capacities allocated to the transport customer are made available in good time for the performance period of the entry or exit contract. In particular, the full scope of the waiver of all transport customers of the special right of termination in accordance with Article 7 Section 1, in relation to the allocated new technical capacities in accordance with Article 3 Section 1 Sentence 1 per cross border point for the respective performance periods of the entry or exit contracts, shall be taken into account in assessing whether the measures are economically justifiable within the meaning of Section 1. Overall, the transport customers' waiver of the special right of termination in accordance with Article 7 Section 1 has to occur at least to the extent that it would enable the transmission system operator to determine the cost-effectiveness of the new technical capacities of an offering level offered in the 2017 annual auction in accordance with Article 3 Section 1 b). In addition, the status of the necessary permissions under public law and the regulatory framework shall be taken into account, especially the approval of the costs of the required expansion measures needed for the creation of the new technical capacities, without an economical tenability of the transmission system operator is not fulfilled, shall be taken into consideration. To the extent that the transmission system operator is not required to endeavour to implement measures or in the case of measures not being economically justifiable, the performance period of the respective entry- or exit contract can be affected and Article 6 Section 3 will be applicable mutatis mutandis. If it is requested by the transport customer, the transmission system operator will review possible measures to provide the new technical capacities at an earlier date to reduce the postponement of the performance period of the respective entry- or exit contract. For this purpose the transmission system operator can submit an offer to the transport customer in which the transport customer would have to accept the costs, responsibilities and risks of the measures required for the new technical capacities in case the conditions precedent in accordance with article 3 section 1 do not come to bear or the special right of termination in accordance with Article 7 Section 1 has been exercised by transport customer.
2. Furthermore, the transmission system operator shall, once the entry or exit contract has become fully effective in accordance with Article 3, endeavor to take all economically justifiable measures in order to coordinate the commissioning of the infrastructure for the new technical capacities with the upstream or downstream network operators at cross border points. In particular, the necessary permissions under public law and the regulatory framework shall be taken into account in assessing whether the measures are economically justifiable within the meaning of Section 2.
3. If in the course of the network expansion that falls under the responsibility of the transmission system operator it turns out that the new technical capacities at the cross border points cannot be created to the beginning of the performance period of the entry or exit contract, in particular due to the lack of definitive permissions under public law, the

transmission system operator shall notify the transport customer immediately and inform it whether and when the start of the performance period of the entry or exit contract can be expected. The delay may also cover the entire performance period of the entry or exit contract. During the delay both the transmission system operator's obligations to provide capacities and the transport customer's obligations to pay tariffs shall be suspended. Any further claims by the Parties against each other shall be excluded.

4. If transport capacities upstream or downstream of the cross border points of the transmission system operator are not available at the start of the performance period of the entry or exit contract, the transport customer shall still be obliged to fulfill the contract, in particular to pay the tariffs agreed in the entry or exit contract, and shall not be authorized to rescind or otherwise terminate the entry or exit contract
5. In relation to Section 4, that shall mean in particular that the transport customer shall not be authorized to plead Article 313 of the German Civil Code (*BGB*) (Interference with the basis of the transaction) or Article 314 *BGB* (Termination for a compelling reason of contracts for the performance of a continuing obligation).

## **Article 7 Special right of termination**

1. The transport customer and the transmission system operator shall be entitled to terminate the entry or exit contract until the end of 31 January 2018 with immediate effect ("special right of termination in accordance with Article 7 Section 1"). Provided that the transport customer prematurely waives its special right of termination in accordance with Article 7 Section 1 for all performance periods of the entry or exit contracts of new technical capacities at the respective cross border point, the provisions of Article 6 Section 1 Sentence 2 shall apply. In the event of a premature waiver of the special right of termination in accordance with Article 7 Section 1 by the transport customer, the transmission system operator shall also waive its special right of termination in accordance with Article 7 Section 1.
2. The transport customer shall be authorized to terminate the entry or exit contract, provided that variable tariffs are applied for it, after publication of the variable tariffs by the transmission system operator for the respective performance period in accordance with Article 5 Section 2 a) and b) of these Supplementary Terms and Conditions of Business with a period of notice of 10 working days to the respective start of the period as of when the tariffs apply, if the specific capacity tariff formed and agreed in accordance with Article 5 Section 2 a) and b) of these Supplementary Terms and Conditions of Business exceeds the maximum tariff limit defined for the performance period in accordance with Annex 1 of these Supplementary Terms and Conditions of Business. The special right of termination in accordance with Sentence 1 shall exist solely in relation to the respective performance period of the entry or exit contract in accordance with Article 5 Section 2 a) and b) to which the published tariffs apply.
3. The transport customer can terminate the respective entry or exit contract in relation to the performance period that can be terminated in accordance with Section 2 in full or in part in accordance with the level of the capacity booking. A partial termination in accordance with Sentence 1 shall be permitted only as a uniform reduction of the originally booked capacity for the respective performance period in accordance with Article 5 Section 1 a) and b).



## **Article 8 List of appendices**

The following appendix shall constitute an integral part of these Supplementary Terms & Conditions of Business of NEL Gastransport GmbH for allocating new technical capacities as of 06 March 2017:

Appendix 1 STC for allocating new technical capacity

**Appendix STC 1 for allocating technical capacity:**

**Maximum tariff limit for the special right of termination in accordance with article 7 (2) of the Supplementary Terms and Conditions of Business of NEL Gastransport GmbH for allocating new technical capacities as of 06 March 2017**

- I. Network point Greifswald-NEL (EIC: unknown)\*  
Gas flow direction: [Entry]  
Capacity product: [DZK1, DZK2]

Period of application	Maximum tariff limit (specific capacity tariff)
01.10.2019 – 31.12.2025	4,97 €/(kWh/h)/a
ab 01.01.2026	4,27 €/(kWh/h)/a

\*Final EIC will be communicated after the auction.