# EFET

#### Version 2.0 (a)/May 11, 2007

**European Federation of Energy Traders**

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###### NOTE: USERS USING THIS GENERAL AGREEMENT AFTER 4 NOVEMBER 2021 ARE STRONGLY RECOMMENDED TO INCLUDE THE CLAUSE UPDATING THE IBOR INTEREST RATE DEFINITIONS PUBLISHED BY EFET ON ITS WEBSITE ON 4 NOVEMBER 2021.

**General Agreement**

**Concerning The Delivery And Acceptance Of Natural Gas**

Between

Trading Hub Europe GmbH

having its registered office at Kaiserswerther Straße 115, 40880, Ratingen, GERMANY

(“***THE***”) and

having its registered office at

(“***[abbreviation of name]***”)

(referred to jointly as the “**Parties**” and individually as a “**Party**”)

entered into on (the “**Effective Date**”)

# EFET

## European Federation of Energy Traders

**Election Sheet to the**

### General Agreement

with an Effective Date of

between THE and “**Party A**” “**Party B**”

###### PART I: CUSTOMISATION OF PROVISIONS IN THE GENERAL AGREEMENT

**§1**

**Subject of Agreement**

**§ 1.1 Subject of Agreement:**

§ 1.1 shall apply.

**§ 1.2 Pre-Existing Contracts:**

§ 1.2 shall apply.

###### §2

**Definitions and Construction**

**§ 2.4 References to Time:**

Time references shall be as provided in the General Agreement (CET).

###### §3

**Concluding and Confirming Individual Contracts**

**§ 3.1 Conclusion of Individual Contracts:**

§ 3.1 shall be reworded as follows:

**Conclusion of Individual Contracts:** Individual Contracts shall be concluded electronically via the platform operated by Enmacc GmbH (“Enmacc Platform”), in particular by means of the request-for-quote process. In case one Party does not have access to the Enmacc Platform, the Parties agree that Individual Contracts shall be concluded using the third-party email function provided on the Enmacc Platform.

The contract terms *Contract Quantity*, *Control Area*, *Kontrakt*, *Time Unit*, *Total Delivery* *Time* as well as the *Contract Price* and, if applicable, the *Relevant Price Index* are agreed upon using the Enmacc Platform. Further contractual terms such as the *Delivery Point*, the *Relevant System*, *Tolerance*, *Prevailing Meter Readings and Allocation Statements* may be agreed under Part II *Additional Provisions* of this Election Sheet with effect for each Individual Contract. The Parties may also agree upon further contract terms on an individual basis as an annex to each Individual Contract.

**§ 3.2 Confirmations:**

§ 3.2 shall be reworded as follows:

**Confirmations:** The conclusion of an Individual Contract as well as the terms agreed upon on the Enmacc Platform are documented electronically. Both Parties receive a confirmation of the agreed terms by email. The Parties may furthermore confirm the terms of the Individual Contract in writing. The existence of a confirmation is not a prerequisite for the effectiveness of an Individual Contract.

**§ 3.4 Authorised Persons:**

§ 3.4 shall be reworded as follows:

**Authorised Persons:** Individual Contracts may only be concluded between the authorised traders of the Parties. The Parties mutually acknowledge and represent to each other that, in the absence of written notice to the contrary, their respective traders , in particular those acting as such for the respective Party on the Enmacc Platform, are authorised without restriction to negotiate and conclude Individual Contracts under this General Agreement.

###### §5

**Primary Obligations for Options**

**§ 5.2 Premium for the Option:**

**After the first sentence the following new sentence shall be inserted:**

**“For this purpose, the Writer shall, within two Business Days after entering into the Option, transmit by facsimile to the Holder an invoice showing the Premium to be paid on the Premium Payment Date.”**

**§ 5.3 Exercise of Option and Deadline:**

If no Exercise Deadline is specified in respect of an Individual Contract which provides for an Option, the Exercise Deadline shall be as provided in § 5.3.

§ 5.4 Notice of Exercise:

In the case of written Exercise, the Holder shall simultaneously confirm the Exercise orally, provided that such confirmation may not be effected by leaving a message on a voicemail or similar verbal electronic messaging system).

###### §7

**Non-Performance Due to Force Majeure**

**§ 7.1 Definition of Force Majeure:**

7.1 shall not apply as written but instead shall be as follows:

For the purpose of the Agreement “Force Majeure” means any external event that can be attributed to the forces of nature or is brought on by actions of third party, which, even with best human judgment and experience, could not be foreseen, avoided or rendered harmless with commercially reasonable means, even after taking the greatest care appropriate to the circumstances and which must not be accepted by the Party claiming Force Majeure (“the Claiming Party”) because of its frequency, including, but not limited to:

The failure of communication or computer systems of the relevant Network Operator(s) which prevents the Claiming Party from performing its obligations of delivery or acceptance;

Force majeure shall not include any curtailment or interruption of transportation rights or any problem, occurrence or event affecting any relevant pipeline system unless this constitutes a Transportation Failure.”

###### §9

**Suspension of Delivery or Acceptance**

§ 9 shall be amended as follows:

The following paragraphs are added at the end of § 9:

“In addition to any rights arising under the above, where Party B is in default to provide credit support as required under § 16.1 in relation to an Individual Contract, Party A is entitled to immediately cease (i.e. without the need of a prior written notice and the expiry of three (3) Business Days after sending such notice) further delivery of Natural Gas and be released (and not merely suspended) from its underlying delivery obligations under the relevant Individual Contract, until such time as Party A has received the required Credit Support Document.

For the avoidance of doubt, if a Termination Amount is calculated pursuant to § 11.1 (Termination Amount), any payments that are withheld under this § 9 will be treated as "other amounts" under § 11.1 for the purpose of calculating the Termination Amount.”

######

###### §10

**Term and Termination Rights**

**§ 10.2 Expiration Date:**

§ 10.2 shall not apply and there shall be no Expiration Date.

**§ 10.4 Automatic Termination:**

§ 10.4 shall apply to *Party A* and *Party B*, with termination effective as of the following date: immediately at the occurrence of the Material Reason. The applicability of § 10.4 is subject to admissibility under the respective applicable law.

###### § 10.5(a)(i) Cross Default and Acceleration:

§ 10.5(a)(i) shall be amended as follows:

in line two between the words “or,” and “in the case of” the following wording shall be inserted: “in the case of a demand to deliver any Performance Assurance such Performance Assurance is not delivered within the period set out in § 17.1, or,

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###### § 10.5(b) Cross Default and Acceleration:

§ 10.5(b)(i) shall not apply.

###### § 10.5(c) Winding-up/Insolvency/Attachment:

§ 10.5 (c) (iv) applies and the applicable period is:

* (a) zero (0) days if a Party or its Credit Support Provider makes the application under § 10.5(c) (iv) itself, without prejudice to the provision under § 10.4;
* b) zero (0) days if a request is made against a Party or its Credit Support Provider pursuant to § 10.5(c) (iv) and such Party or its Credit Support Provider is in default in the performance of its obligations to the other Party or to third parties or is in a situation justifying the opening of insolvency proceedings, without prejudice to the provision under § 10.4;
* c) fourteen (14) calendar days in all other cases. The other Party is entitled to request Performance Assurance in accordance with § 17.1, § 10.5 (a) (i);

###### § 10.5(d) Failure to Deliver or Accept:

###### § 10.5(d) shall apply.

**§ 10.5 Other Material Reasons:**

The Material Reasons shall be limited to the cases specified in the General Agreement, unless one party cannot reasonably be expected to continue the contractual relationship until the agreed termination or until the expiry of a notice period, taking into account all circumstances of the individual case and the weighing of mutual interests . Except that the following Material Reasons shall also apply to both Parties:

The failure of a Party to make one or more payments under any Specified Transactions (after giving effect to any applicable notice requirement or grace period), in an aggregate amount of at least € 100,000.

For the purposes of this clause: the word “Specified Transactions” means (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between the Parties to this Agreement which is a Commodity swap, Commodity option, cap transaction, floor transaction, collar transaction, agreement for the purchase, sale or transfer of any Commodity or any other Commodity trading or Commodity derivative transaction or any other similar transaction (including any option with respect to any of these transactions) and (b) any combination of these transactions; and

For the purposes of this clause: the word “Commodity” means any tangible or intangible commodity of any type or description (including, without limitation, electric power, electric power capacity, natural gas, natural gas liquids, heating oil and other petroleum by-products or fuels, as well as certificates for greenhouse gas emissions allowances, or certificates certifying the quality of electricity as being produced from renewable or other sources including but not limited to Renewable Obligations Certificates (“ROCs”), Renewable Energy Certificates ("RECS"), Dutch Green Certificates or other certificates).

###### §12

**Limitation of Liability**

**§ 12 Application of Limitation:**

§ 12 shall be replaced in its entirety as follows:

1. Any liability not addressed in the following shall be excluded.

2. In case of wilful misconduct (Vorsatz) or gross negligence (grobe Fahrlässigkeit) on part of the Parties or their legal representatives (gesetzlicher Vertreter) or assistants in performance (Erfüllungsgehilfen) the Parties are liable in accordance with the provisions of German law.

3. In case of slight negligence (einfache Fährlässigkeit), the parties shall only be liable in case of a breach of a substantial contractual obligation (wesentliche Vertragspflicht). In this case the parties’ liability is limited to the typical and predictable loss or damage. Substantial contractual obligations are defined as obligations, whose fulfilment is necessary to enable proper performance of his Agreement and on whose performance the other Party lawfully and reasonably relies.

4. The liability for the damage to life, body or health (Verletzung von Leben, Körper oder Gesundheit), the liability under the Product Liability Act (Produkt­haftungs­gesetz), the liability for guaranteed quality characteristics (garantierte Beschaffenheits­merk­male) and the liability for claims due to malicious actions (arglistiges Verhalten) of one Party shall not be affected by the provisions above. In these cases, the parties are liable in accordance with the provisions of applicable law.

###### §13

**Invoicing and Payment**

**§ 13.2 Payment:** Initial billing and payment information for each Party is set out in § 23.2 (***Notices and Communications***) of this Election Sheet.

**§ 13.3 Payment Netting:**

§ 13.3 shall apply.

**§ 13.5 Interest Rate:**

The Interest Rate shall be the one month EURIBOR interest rate for 11:00 a.m. on the Due Date, plus three percent points (3) per annum, provided that if the interest rate would otherwise be less than zero, the interest rate shall be floored at zero and any margin applied thereto.

**§ 13.6 Disputed Amounts:**

§ 13.6 (a) shall apply and the following is added: in the first line the sentence "subject to obvious errors," is inserted before the sentence "the full invoice amount by".

§ 13.6 Invoices Based on Contract Quantities: At the end of § 13.7 the following wording shall be added: “For the avoidance of doubt the allocation on a pro rata basis shall refer to the energy volumes to be delivered under the Individual Contracts.”

###### §14

**VAT and Taxes**

**§ 14.8 Termination for New Tax:**

 Unless otherwise specified in the terms of an Individual Contract, the provisions of § 14.8 shall apply to such Individual Contract only in the circumstances specified in the first paragraph of § 14.8.

**§ 14.9 Withholding Tax:**

§ 14.9 shall apply.

§ 14.10 VAT Representation:

The following new § 14.10 be added at the end of § 14.9:
For the purpose of the Directive each Party covenants that it is a “taxable dealer” as defined in the Directive; Each Party further covenants that, as at the Effective Date, and unless otherwise informed in writing by a Party, the place of establishment for VAT purposes, is as set out below. Each Party undertakes to inform the other Party as soon as reasonably practicable if the covenants given under this subsection have failed or ceased to be true and accurate at any time after the Effective Date and provide accurate information. In the event that a Party fails to inform the other pursuant to this paragraph, that Party shall, as being the other Party’s sole remedy, indemnify, defend and hold the other Party harmless and indemnified in respect of any VAT and any associated charges, penalties imposed on that Party by any relevant tax authority, including interest, as a result of that Party's failure to comply with the above undertaking.

Party A:

For VAT purposes for trades Scheduled, confirmed and invoiced via a XX office:

Place of establishment:

VAT Registration Number:

Party B:

For VAT purposes for trades Scheduled, confirmed and invoiced via XX office:

Place of establishment:

VAT Registration Number:

###### §15

**Settlement of Floating Prices and Fallback Procedures For Market Disruption**

**§ 15.5 Calculation Agent:**

The Calculation Agent is the Seller. In the event of extraordinary termination for Material Reason, the terminating Party shall in any case be the Calculation Agent.

###### § 16

**Guarantees and Credit Support**

 **§ 16.1 Credit Support Documents:**

Party A shall provide Party B with the following Credit Support Documents:

Initially and upon conclusion of an Individual Contract: none.

Party B shall provide Party A with the following Credit Support Documents:

Initially: none

If Party B is the Seller under an Individual Contract: none in relation to and upon conclusion of such Individual Contract.

If Party B is the Buyer under an Individual Contract: In relation to and within five Business days upon conclusion of such Individual Contract, unless Party B has a minimum credit rating of A- (Standard & Poor’s), A3 (Moody’s), A- (Fitch), a risk rating of 1 and 2 (Dun & Bradstreet), a creditworthiness index between 100 and 225 (Creditreform) or comparable, a Credit Support Document as further specified under §16.2 to §16.5, and the amount of credit support shall be:

100% of the Value of the Individual Contract, if Party B does not fulfill the aforementioned requirements,

whereas the “**Value of the Individual Contract**” shall at any time be the unpaid amount which will in total need to be paid by Party B to Party A under the respective Individual Contract based on the Contract Price and the Contract Quantity; where such amount decreases, in particular due to (partial) amounts already paid by Party B to Party A in relation to an Individual Contract, the amount of credit support to be provided under this § 16.1 in relation to such Individual Contract decreases accordingly.

If Party B provided a General Security according to section § 16.7, Party A shall have no right to claim further Credit Support, as long as the General Security covers the applicable amount of Credit Support under this section.

If Party B has more than one rating, the lowest rating applies for the purpose of deciding if Party B has to provide credit support under this § 16.1 and to determine the applicable amount of credit support to be provided.

  **§ 16.2 Types of Credit Support Documents and Credit Support Providers**

The types of Credit Support Documents that may be provided by Party B in accordance with § 16.1 include (i) bank indemnity letters or bank guarantees to be provided by a Credit Support Provider that is a Bank as further specified under § 16.3 and (ii) corporate securities as further specified under § 16.4; whereas Party B shall have the right to decide which of these types of Credit Support Documents shall be provided.

 **§ 16.3 Credit Support Documents issued by a** **Credit Support Provider that is a Bank**

A Credit Support Document provided by a Credit Support Provider that is a Bank must be provided in the form of an unconditional, irrevocable and directly enforceable bank indemnity letter or guarantee, and the Credit Support Provider that is a Bank must (i) be a financial institution duly authorised to operate in the European Union, (ii) have a minimum rating of BBB+ (Standard & Poor’s), Baa1 (Moody’s), BBB+ (Fitch) or comparable, and (iii) be included in the list of the entities (directly or indirectly) supervised by the European Central Bank[[1]](#footnote-2).

 **§ 16.4 Credit Support Documents issued as corporate securities**

Corporate securities must be provided in the form of an unconditional, irrevocable corporate indemnity letter (e.g. unrestricted letters of comfort or parent company guarantees). The Credit Support Provider that provides such a corporate security must have a minimum rating of A- (Standard & Poor’s), A3 (Moody’s), A- (Fitch) or comparable or a Creditreform credit rating (Credit-Standing Index 2.0) of Risk Class II or better (according to Creditreform Rating Map Germany as modified from time to time).

 **§ 16.5 General requirements for Credit Support Documents**

Any indemnity or guarantee to be provided as Credit Support Document in accordance with § 16.3 or § 16.4 must include a waiver of the Credit Support Provider's defence of voidability, its right to declare a set-off against other claims, and its right to deny performance until all remedies available against the principal debtor have been exhausted, except where the relevant claim is undisputed or an enforceable judgment has been rendered in respect of that claim.

Any Credit Support Document must be valid for at least two months after the expiry of the Total Supply Period.

 **§ 16.6 Advance Payment with futures:**

For future contracts, Party B can choose to make “**Advance Payments**” in accordance with the terms of this §16.6 instead of providing credit support to Party A in accordance with § 16.1 in relation to an Individual Contract. In such case, Party B has to inform Party A immediately upon conclusion of the relevant Individual Contract that it would like to make such an Advance Payment. An Advance Payment in the amount of either 25% or the entire Value, according to the respective rating set out in § 16.1 b) and c) of the Individual Contract (as described under § 16.1) has to be made within five Business days upon conclusion of the relevant Individual Contract. If the Total Supply Period of the relevant Individual Contract exceeds one Month, for invoicing purposes the Advance Payment of the Individual Contract (as described under § 16.1) will be evenly distributed on a *pro rata* basis between the months of the Total Supply Period of the relevant Individual Contract.

Any Advance Payment made by Party B to Party A under this § 16.6 constitutes a (partial) fulfilment according to § 362 paragraph 1 German Civil Code (“Bürgerliches Gesetzbuch”) in the amount of the payment made.

For the avoidance of doubt, this does not apply in the case of spot transactions.

Where Party B choses to make Advance Payments, it is released from the obligation to provide credit support under § 16.1 to § 16.5 in relation to the relevant Individual Contract, as long as all payments due as an Advance Payment under this § 16.6 in relation to the relevant Individual Contract have been paid on time.

 **§ 16.7 General Securities:**

Party B can also choose to provide “**General Securities**” in an amount freely chosen to Party A upon conclusion of this General Agreement. General Securities are Credit Support Documents independent of individual contracts. The types of General Securities that may be provided by Party B in accordance with this section include (i) bank indemnity letters or bank guarantees to be provided by a Credit Support Provider that is a Bank as further specified under § 16.3 and (ii) corporate securities as further specified under § 16.4; whereas Party B shall have the right to decide which of these types of Credit Support Documents shall be provided. If Party B provides General Securities under this section, Party A shall have no right to claim further Credit Support if the General Security covers at least one hundred percent of the respective Value of the Individual Contracts.

######  § 17

**Performance Assurance**

The following is inserted prior to § 17.1:

Party B acknowledges that Party A does not have a credit rating from any of the big rating agencies, but that Party A received a loan from the state-owned KfW bank and has a statutory right to recover all costs related to the tasks resulting from the German Gas Storage Act (“Gasspeichergesetz”). This is set out in section 35e of the German Energy Industry Act (“Energiewirtschaftsgesetz”). On that basis, Party B agrees and accepts that there shall be no reason to claim Performance Assurance from Party A, as long as the aforementioned circumstances continue to exist. Party A will notify Party B without delay if either the loan is withdrawn or if there are changes in the law that result in a deterioration of Party A’s position with regard to cost recovery. Party A will, upon request, provide a signed document assuring the existence of the KfW loan.

**§ 17.1 Right to Require Performance Assurance:**

The following sentences are inserted at the end of § 17.1: Where Party A is entitled to require Performance Assurance from Party B, then in relation to all Individual Contracts where Party B is the Buyer, the (partial) amount of the Performance Assurance to be provided in relation to such Individual Contracts shall mirror 100 % of the unpaid amount which will in total need to be paid by Party B to Party A under the respective Individual Contract based on the Contract Price and the Contract Quantity, and the Performance Assurance shall be provided in accordance with the requirements for Credit Support Documents as described in § 16.2 to § 16.5, which shall apply *mutatis mutandis*. In deviation from the above, the amount of Performance Assurance to be provided in relation to an Individual Contracts where Party B is the Buyer shall mirror only 25 % of the unpaid amount which will in total need to be paid by Party B to Party A under the respective Individual Contract based on the Contract Price and the Contract Quantity, where Performance Assurance is to be provided by Party B due to a Material Adverse Chance in accordance with 17.2 (a), but Party B still has a minimum rating of BBB- (Standard & Poor’s), Baa3 (Moody’s), BBB- (Fitch) or comparable.

**§ 17.2 Material Adverse Change:**

The following categories of Material Adverse Change shall apply to *Party A* unless otherwise stipulated:

**§17.2(j) (Change of Control)** Whereby at least 25%+1 of the shares of Party A are transferred to another shareholder.

**§17.2 (k) (Loss of KfW loan)** Party A has the KfW Loan removed, is in default of loan repayment or breach of financial covenants. THE to inform Party B of any of the above within 7 business days.

**§ 17.2 (l)** (**loss of the statutory right to recover costs of the German Gas storage act**) If Party A loses loses the statutory right to recover all costs related to the tasks resulting from the German Gas Storage Act (set out in section 35e of the German Energy Industry Act)

The following categories of Material Adverse Change shall apply to *Party B* unless otherwise stipulated:

§ 17.2 (a) (**Credit Rating**) and the minimum rating shall be A- (Standard & Poor’s), A3 (Moody’s), A- (Fitch) or comparable ; if ratings exist from more than one credit rating agency, the downgrading below the relevant minimum rating or withdrawal of a rating by only one agency shall constitute a Material Adverse Change;

§17.2 (b) (**Credit Rating of Credit Support Provider that is a Bank**); and the minimum rating is BBB+ (Standard & Poor’s), Baa1 (Moody’s), BBB+ (Fitch) or comparable; if ratings exist from more than one credit rating agency, the downgrading below the relevant minimum rating or withdrawal of a rating by only one agency shall constitute a Material Adverse Change ;

§17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and no time period shall apply;

§17.2 (f) **(Failure of Performance Assurance or Credit Support)**;

§17.2 (h) **(Impaired Ability to Perform)**; and

§17.2 (i) **(Amalgamation/Merger)**

###### §18

**Provision of Financial Statements and Tangible Net Worth**

**§ 18.1 (a) Annual Reports:**

* *Party A* shall deliver annual reports (via email) within 270 days if they are not available on its website.
* *Party B* shall deliver annual reports (via email) within 270 days if they are not available on its website.

**§ 18.1(b) Quarterly Reports:**

* *Party A* does not need to deliver quarterly reports.
* *Party B* does not need to deliver quarterly reports.

###### §19

**Assignment**

**§ 19.2 Assignment to Affiliates:**

§ 19.2 shall apply.

###### §20

**Confidentiality**

**§ 20.1 Confidentiality Obligation:**

§ 20 shall apply. § 20.1 is amended as follows: the words “or this General Agreement including the Election Sheet” shall be inserted in the third line before the words “(“Confidential Information”).

###### §21

**Representation and Warranties**

The Following Representations and Warranties are made:

|  |  |  |
| --- | --- | --- |
| §21(a) | [ X ] yes [ ] no | [ X ] yes [ ] no |
| §21(b) | [ X ] yes [ ] no | [ X ] yes [ ] no |
| §21(c) | [ X ] yes [ ] no | [ X ] yes [ ] no |
| §21(d) | [ X ] yes [ ] no | [ X ] yes [ ] no |
| §21(e) | [ X ] yes [ ] no | [ X ] yes [ ] no |
| §21(f) | [ X ] yes [ ] no | [ X ] yes [ ] no |
| §21(g) | [ X ] yes [ ] no | [ X ] yes [ ] no |
| §21(h) | [ X ] yes [ ] no | [ X ] yes [ ] no |
| §21(i) | [ X ] yes [ ] no | [ X ] yes [ ] no |
| §21(j) | [ X ] yes [ ] no | [ X ] yes [ ] no |
| §21(k)  | [ X ] yes [ ] no | [ X ] yes [ ] no |
|  §21(l) | [ X ] yes [ ] no | [ X ] yes [ ] no |

###### §22

**Governing Law and Arbitration**

**§ 22.1 Governing Law and Arbitration:**

Option B shall apply. The language of the arbitration shall be German , provided that evidence in English shall be admissable. The place of arbitration shall be Duesseldorf, Germany.

###### §23

**Miscellaneous**

**§ 23.1 Recording of telephone conversations**

§ 23. 1 is excluded.

**§ 23.2 Notices, Invoices and Payments:**

|  |  |  |
| --- | --- | --- |
| (a) | **TO PARTY A:** |  |
|  | **Notices & Correspondence** |
|  | Address: |
|  | Telephone No: |
|  | Fax No: Attention: | [Job Title] |
|  | **Invoices** |  |
|  | Fax No: |  |
|  | Attention: | [Job Title] |
|  | **Payments** |  |
|  | Bank account details |  |
| (b) | **TO PARTY B:** |  |
|  | **Notices & Correspondence** |  |
|  | Address: |  |
|  | Telephone No: |  |
|  | Fax No: |  |
|  | Attention: | [Job Title] |
|  | **Invoices** |  |
|  | Fax No: |  |
|  | Attention: | [Job Title] |
|  | **Payments** |  |
|  | Bank account details |  |

**§ 23.2**

The following sentence 2 is added: "This also applies to the written form requirement from this contract".

**§ 23.6 Data Protection**

**A new § 23.6 shall be added as follows: Each Party is obliged in case it is processing personal data relating to staff, employees or representatives of the other Party under or in connection with this agreement to comply with applicable data protection legislation, including Regulation (EU) 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (“GDPR”) and the national personal data protection laws implementing the GDPR, each as applicable, and as amended, restated or replaced from time to time (the “Applicable Data Protection Laws”).

 § 23.6 Counterparts**

**A new § 23.7 shall be added as follows: This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed to be an original.”**

**Annex 1 – Defined Terms**

"Commodity" shall have the meaning specified in Annex 1.

“Credit Rating” shall have the meaning specified in Annex 1 and shall be amended as follows: under (iii) the wording “by Standard & Poor’s Rating Group (a division of McGraw-Hill Inc.) or Moody’s Investor Services Inc.” shall be deleted and replaced with: “Standard & Poor’s Global Ratings (a division of S&P Global Inc.), Moody’s Investor Services Inc., Fitch Ratings Inc. or any successor of the afore mentioned credit rating agencies”

"Kontrakt" describes the delivery structure of the product (e.g. base, peak, off-peak, profile) agreed upon on the enmacc platform.

“GBP”: means pound sterling;

“HUF”: means Hungarian forint;

“PLN”: means Polish zloty;

“USD”: means US Dollar;

###### PART II:

###### ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

**§ 3 Agreement of additional contractual terms in relation to individual contracts:**

The following additional contractual terms shall be deemed to have been agreed in respect of each individual contract unless the parties agree individual terms.

* Delivery Point:
* [ ] Intra System
* Relevant System:
* [ ] Inter System
* Seller's system:
* Buyer's system:
* Planned Maintenance periods to be excluded from total Supply Period: Yes
* Long Term Force Majeure Limit: as per formula in definition in Annex 1.
* Prevailing Meter Readings and Allocation Statements: Not applicable
* Tolerance: 0
* Other Arrangements: None

***§ 7(a)***

**Non-Performance Due to Trade Restriction**

**1.** **Definition of Trade Restriction:** For purposes of the Agreement, "**Trade Restriction**" means any law, regulation, decree, ordinance or legally binding order, rule or requirement of the United Nations or under the laws of the European Union, any EU Member State,

(i) the United States of America,

(ii) the United Kingdom,

(iii) Kingdom of Norway, or

(iv) Switzerland,

relating to trade sanctions, trade embargoes and other foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws.

**2. Release from Delivery, Acceptance and Payment Obligations:** If a Trade Restriction: (i) is applicable to a Party; and (ii) fully or partially prevents this Party (the "**Trade Affected Party**") from performing or procuring the performance of any obligation otherwise required by this Agreement including, without limitation, its obligations to: (a) deliver, accept, sell or purchase Natural Gas or pay or receive monies under one or more Individual Contracts to, from, or through an Entity; or (b) engage in any other acts under the Agreement (each an "**Affected Obligation**"), because this would constitute a violation of, be inconsistent with, or expose the Trade Affected Party to a punitive measure under such Trade Restriction, (such Trade Restriction being an "**Applicable Trade Restriction**"), then, without prejudice to § 7(a).6 (***Long Term Trade Restriction Limit***), no breach or default of this Agreement on the part of the Trade Affected Party as a result of the Applicable Trade Restriction shall be deemed to have occurred and, subject to § 7(a).5 (***Accrued Amounts***), it shall be released (and not merely suspended) from those Affected Obligations but only for the period of time and to the extent that such Applicable Trade Restriction prevents its performance. Without prejudice to § 7(a).6 (***Long Term Trade Restriction Limit***), the Trade Affected Party and the other Party (the "**Trade Restricted Party**") shall have no obligation to pay damages pursuant to § 8 (***Remedies for Failure to Deliver or Accept the Contract Quantity***) with respect to Default Quantities arising under any Individual Contracts concluded under the Agreement as a result of any Applicable Trade Restriction affecting the Trade Affected Party's obligations under this Agreement nor shall any right to terminate the Agreement pursuant to § 10.5 (a) (***Non-Performance***) or § 10.5 (d) (***Failure to Deliver or Accept***) arise for the Trade Restricted Party or the Trade Affected Party as a result of any failure to perform or procure the performance of any Affected Obligation due to any Applicable Trade Restriction.

**3.** **Notification and Mitigation of Applicable Trade Restriction:** The Trade Affected Party shall to the extent permissible and as soon as practicable after learning of the Applicable Trade Restriction notify the Trade Restricted Party of the commencement of an Applicable Trade Restriction and of the Individual Contract(s) affected thereby and, to the extent then available, provide to the Trade Restricted Party a bona fide non-binding estimate of the extent and expected duration of its inability to perform. The Trade Restricted Party and the Trade Affected Party shall, to the extent permissible under any Applicable Trade Restriction: (i) use all commercially reasonable efforts to mitigate and overcome the effects of the applicable Trade Restriction, which shall however not include an obligation to procure a licence to perform; and (ii) during the continuation of the Applicable Trade Restriction, provide the other Party with reasonable bona fide updates, when, and if available, of the extent and expected duration of its inability to perform such Individual Contract(s).

**4.** **Effects of Applicable Trade Restriction on Trade Restricted Party:** In the event, and to the extent, that a Trade Affected Party's delivery obligations have been released due to an Applicable Trade Restriction (and if delivery and acceptance have not yet been performed), subject to § 7(a).5 (***Accrued Amounts***), the Trade Restricted Party's corresponding acceptance and payment obligations shall also be released. In the event, and to the extent that the Trade Affected Party's acceptance or payment obligations are released due to an Applicable Trade Restriction, the Trade Restricted Party's corresponding delivery obligations shall also be released.

**5.** **Accrued Amounts:** If, at the time any Applicable Trade Restriction comes into force preventing the payment or receipt of any monies by either Party, any monies have already accrued between the Parties for deliveries of Natural Gas or otherwise in respect of the period before such Applicable Trade Restriction came into force ("**Accrued Amounts**"), then the obligation to pay any such Accrued Amounts shall be suspended until such time as payments of monies may lawfully be made under any Applicable Trade Restriction or after the Applicable Trade Restriction ceases to apply.

**6.** **Long Term Trade Restriction Limit:** Where in respect of an Individual Contract the obligations of the Trade Affected Party have been released due to an Applicable Trade Restriction on each Day for a consecutive period of ten (10) Days, then the Trade Affected Party and the Trade Restricted Party shall have the right to terminate such Individual Contract forthwith. In case of such termination, the terminating Party shall only be required to send notice of termination of such an Individual Contract to the other Party to the extent permissible. Such termination shall be without prejudice to the accrued rights and obligations of the Parties under such Individual Contract up to the date of termination (including, without limitation, the obligation to pay any Accrued Amounts once so permitted) but neither Party shall have any liability whatsoever to the other in respect of the unexpired portion of the Total Supply Period under such Individual Contract after the date of termination.

**7. Consequential Amendments:** References to "Force Majeure in accordance with § 7 (***Non-Performance Due to Force Majeure***)" in §§ 8.5(a) and (b) of § 8.5 (***Definitions and Interpretation***) and § 8a.4 (***Underdelivery due to Off-Spec Gas***) shall be understood as references to "Force Majeure in accordance with § 7 (***Non-Performance Due to Force Majeure***) or any Applicable Trade Restriction in accordance with § 7(a) (***Non-Performance Due to Trade Restriction)***" and references to "§ 7 (***Non-Performance Due to Force Majeure***)" in § 10.5(a) (***Non-Performance***) and § 10.5(d) (***Failure to Deliver or Accept***) shall be understood as references to "§ 7 (***Non-Performance Due to Force Majeure***) and § 7(a) (***Non-Performance Due to Trade Restriction)***".

**§ 10.3 Termination for Cause:**

A new § 10.3.(g) is added at the end of § 10.3.(f) :

(g) If the Termination Amount is payable by the Terminating Party to the other Party (Terminated Party) then,

(i) at the discretion of such Terminating Party the Termination Amount may be reduced by its set-off against any amounts due and payable by the Terminated Party to the Terminating Party under any agreement or contract between the Terminated Party and the Terminating Party or deriving in relation to such agreements or contracts from any other applicable source of law (the “Other Agreement Amount”). The Other Agreement Amount will be discharged promptly and in all respects to the extent of its set-off. If the Terminating Party elects to exercise its right to set-off under this § 10.3 (g) it shall give notice to the Terminated Party. The right of set-off shall be without prejudice and in addition to any right of set-off, combination of accounts, lien, charge or other right to which any party is at any time otherwise entitled (whether by operation of law, by contract or otherwise).

(ii) For purposes of the foregoing, the Terminating Party shall be entitled to convert, as the case may be, any amount it intends to set off into Euro at such rates as published by the leading currency exchange for the place of payment of such amounts on the Early Termination Date. If such amount cannot be determined precisely, the Terminating Party may in good faith estimate that amount and set off in respect of that estimate, subject to accounting to the other Party when the amount is able to be determined precisely. All obligations of the Terminating Party under the Agreement, or under any other agreement or contract with the Terminated Party, are subject to the condition precedent that the Terminated Party shall have performed all of its obligations to the Terminating Party under the Agreement, respectively, under such other agreements.

**§ 13.1 Invoice:**

In the first sentence, the expression "in the month following a gas delivery" is replaced by "on or before the tenth (10th) calendar day of the month following a gas delivery".

**§ 13.5 EURIBOR**

With regard to EURIBOR as a reference value, the Parties agree that the definitions adapted in the document *EFET Change Letter - IBOR Transition - German Law* published by EFET on its website on 04.11.2021 shall apply:

The Following specifications are made with regards to EURIBOR:

* “**EURIBOR**” means that the rate for a Reset Date will be EURIBOR (the Euro wholesale funding rate known as the Euro Interbank Offered Rate provided by the European Money Markets Institute, as the administrator of the benchmark (or a successor administrator)) for the period agreed between the Parties (the “**Designated Maturity**”) which appears on the Reuters Screen EURIBOR01 Page as of 11:00 a.m., CET (or any amended publication time as specified the benchmark administrator in the EURIBOR benchmark determination methodology), on the day that is two TARGET Settlement Days preceding that Reset Date.
* “**Reset Date**” means the date payment becomes overdue, and the same date each period of the Designated Maturity thereafter until the date on which the other Party receives payment of the overdue amount and all interest that has accrued, provided that if a relevant month does not contain such number of days, the Reset Date for such month shall be the last day of such month.
* “**TARGET Settlement Day**” means any day on which TARGET2 (the Trans-European Automated Real-time Gross settlement Express Transfer system) is open for the settlement of payments in Euro.

*No Index Cessation Effective Date with respect to EURIBOR*

If, by 11:00 a.m. CET (or the amended publication time for EURIBOR, if any, as specified by the EURIBOR benchmark administrator in the EURIBOR benchmark methodology) on that Reset Date, EURIBOR for a period of the Designated Maturity in respect of the Reset Date has not been published on the Reuters Screen EURIBOR01 Page and an Index Cessation Effective Date with respect to EURIBOR has not occurred, then, references to EURIBOR will be deemed to be references to the last provided or published EURIBOR. If by 3:00 p.m., CET (or four hours after the amended publication time for EURIBOR), on that Reset Date, neither the administrator of EURIBOR nor an authorized distributor has provided or published EURIBOR for a period of the Designated Maturity in respect of the Reset Date and an Index Cessation Effective Date has not occurred, then, unless otherwise agreed by the Parties, the rate for that Reset Date will be:

(A) a rate formally recommended for use by the administrator of EURIBOR; or

(B) a rate formally recommended for use by the supervisor which is responsible for supervising EURIBOR or the administrator of EURIBOR,

in each case, during the period of non-publication of EURIBOR and for so long as an Index Cessation Effective Date has not occurred. If a rate described in sub-paragraph (A) is available, that rate shall apply. If no such rate is available but a rate described in sub-paragraph (B) is available, that rate shall apply. If neither a rate described in sub-paragraph (A) nor a rate described in sub-paragraph (B) is available, then the Calculation Agent shall determine a commercially reasonable alternative for EURIBOR, taking into account any rate implemented by central counterparties and/or futures exchanges, in each case with trading volumes in derivatives or futures referencing EURIBOR that the Calculation Agent considers sufficient for that rate to be a representative alternative rate.

*Index Cessation Effective Date with respect to EURIBOR*

If an Index Cessation Effective Date occurs with respect to EURIBOR, then the rate for a Reset Date occurring two or more TARGET Settlement Days after the Index Cessation Effective Date will be such rate as replaces EURIBOR pursuant to the prevailing fallbacks mechanics ISDA (the International Swaps and Derivatives Association), or any successor to ISDA, has in place (the “Applicable Fallback Rate”), as at the Index Cessation Effective Date, after the Calculation Agent has made such adjustments as are necessary to account for any difference in term structure or tenor of the Applicable Fallback Rate and all provisions in this section shall be read as though references to EURIBOR are instead references to the Applicable Fallback Rate.

* **“Index Cessation Effective Date”** means, in respect of an Index Cessation Event, the first date in respect of which EURIBOR, or (if an Applicable Fallback Rate is being used) such Applicable Fallback Rate, is no longer provided. If EURIBOR, or, as the case may be, such Applicable Fallback Rate, ceases to be provided on the same day that it is required to determine the rate for a Reset Date pursuant to the terms of the contract but it was provided at the time at which it is to be observed pursuant to the terms of the contract (or, if no such time is specified in the contract, at the time at which it is ordinarily published), then the Index Cessation Effective Date will be the next day on which the rate would ordinarily have been published.
* **“Index Cessation Event”** means, in respect of EURIBOR or, in the event an Applicable Fallback Rate is being used, such Applicable Fallback Rate:

(a) a public statement or publication of information by or on behalf of the administrator of the index announcing that it has ceased or will cease to provide the index permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the index; or

(b) a public statement or publication of information by the regulatory supervisor for the administrator of the index, the central bank for the currency of the index, an insolvency official with jurisdiction over the administrator for the index, a resolution authority with jurisdiction over the administrator for the index or a court or an entity with similar insolvency or resolution authority over the administrator will cease to provide the index permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the index.

*In relation to any credit support annex:*

1. all references in paragraph 2 to the Calculation Agent shall be read as referring to the Valuation Agent;
2. the definition of **“Reset Date”** shall mean each day in an Interest Period;
3. in order to ensure that no amount payable under a credit support annex by reference to EURIBOR would be less than zero, the relevant interest payment provision shall be amended by the addition of the wording:

“, provided that if the interest rate plus any margin would otherwise be less than zero, the sum of the interest rate plus any margin shall be floored at zero.”

Executed by the duly authorised representative of each Party effective as of the Effective Date.

"Party A" "Party B"

###### [Name of Party] [Name of Party]

**[Name of Signatory/ies] [Name of Signatory/ies]**

**[Title of Signatory/ies] [Title of Signatory/ies]**

1. available at: [List of supervised banks (europa.eu)](https://www.bankingsupervision.europa.eu/banking/list/html/index.en.html) [↑](#footnote-ref-2)