

# General Terms and Conditions for Capacity Buybacks

(hereinafter referred to as "CBB Terms & Conditions")

## Table of Contents

<b>1</b>	<b>Object of Contract, Acknowledgement of the CBB Terms &amp; Conditions, Relationship to the Terms and Conditions of Registration for the Capacity Buyback Portal .....</b>	<b>3</b>
<b>2</b>	<b>General Rules Governing the Tendering Process .....</b>	<b>4</b>
<b>3</b>	<b>Submission of Bids .....</b>	<b>5</b>
<b>4</b>	<b>Acceptance of Bids and Contract Award .....</b>	<b>6</b>
<b>5</b>	<b>CBB Provider's Obligation to Cause a Physical Effect .....</b>	<b>7</b>
<b>6</b>	<b>Data Exchange with Third Parties and Provider's Duty to Prove Compliance with Contractual Obligations .....</b>	<b>9</b>
<b>7</b>	<b>Notification Obligations .....</b>	<b>10</b>
<b>8</b>	<b>Invoicing .....</b>	<b>10</b>
<b>9</b>	<b>Penalty .....</b>	<b>11</b>
<b>10</b>	<b>Data Protection .....</b>	<b>13</b>
<b>11</b>	<b>Confidentiality .....</b>	<b>13</b>
<b>12</b>	<b>Force Majeure .....</b>	<b>14</b>
<b>13</b>	<b>Liability .....</b>	<b>15</b>
<b>14</b>	<b>Severability .....</b>	<b>16</b>
<b>15</b>	<b>Requirement for Written Form and Authoritative Version .....</b>	<b>16</b>
<b>16</b>	<b>Jurisdiction and Governing Law .....</b>	<b>16</b>

## Preamble

Pursuant to the decision of the Federal Network Agency of 25 March 2020 and its annexes ("KAP+", ref.: BK7-19-037) approving the oversubscription and capacity buyback mechanism developed by the gas transmission system operators (TSOs) to allow additional capacities to be offered in the Germany-wide market area, the market area manager Trading Hub Europe GmbH (hereinafter referred to as "MAM") manages the capacity buyback transactions as a service provider for the transmission system operators. Capacity buybacks are not a balancing product but rather an instrument to be used as a last resort to eliminate any network capacity congestion.

### **1 Object of Contract, Acknowledgement of the CBB Terms & Conditions, Relationship to the Terms and Conditions of Registration for the Capacity Buyback Portal**

- (1) Only providers who have successfully registered for the capacity buyback mechanism in accordance with the CBB Registration Terms & Conditions (hereinafter referred to as "CBB Providers") set out in Appendix 1 supplementary to these CBB Terms & Conditions, may participate in the MAM's capacity buyback tenders. These CBB Terms & Conditions provide the contractual framework for each individual contract to be concluded between the MAM and a CBB Provider for the buyback of capacity on the basis of the bid submitted by the CBB Provider in each case (hereinafter referred to as "Capacity Buyback Contract") in order for the MAM to eliminate a specific network capacity congestion.
- (2) Before submitting a capacity buyback bid, the CBB Provider shall acknowledge and accept without reservation the CBB Terms & Conditions as amended at the time and, if applicable, any further conditions detailed in the invitation to tender. Acknowledgement shall be made by ticking a tick box next to the phrase "I confirm that I have read the terms and conditions for the capacity buyback and I agree to them." provided for this purpose in the bid entry screen of the MAM's Capacity Buyback Portal<sup>1</sup> (hereinafter referred to as "CBBP"). The CBB Terms & Conditions as amended at the time of the bid are available to the CBB Provider for inspection via a link in the bid entry mask of the CBBP and on the MAM's website<sup>2</sup>.

---

<sup>1</sup> <https://www.tradinghub.eu/en-gb/Portals/KRP>

<sup>2</sup> [www.tradinghub.eu](http://www.tradinghub.eu)

- (3) In the event of any inconsistency between the provisions of these CBB Terms & Conditions and the CBB Registration Terms & Conditions, the provisions of these CBB Terms & Conditions shall prevail.

## **2 General Rules Governing the Tendering Process**

- (1) In the event of an H-gas network capacity congestion in the THE market area, which cannot be eliminated despite the use of all available market-based instruments pursuant to section 11 of Annex 1 to the Balancing Group Contract Terms & Conditions, the MAM shall conduct tenders for the entry points of the transmission system operators in the oversupplied balancing area. An overview showing the allocation of the physical entry and exit points in the market area to the gas qualities and balancing areas is available on the MAM's website. When the capacity buyback demand is published in accordance with section 27 (1) (b) (bb) of the Balancing Group Contract Terms & Conditions as amended on the MAM's website, the oversupplied balancing area is designated a "congestion zone", with the other balancing area in each case being the undersupplied balancing area.
- (2) If a capacity buyback demand is identified, the MAM will launch a tender on the CBBP at short notice but with a lead time of at least three and a half (3.5) hours before the start of the contract period, which is the period in which the CBB Provider must fulfil its contractual obligations. The contract period always commences with the first delivery hour specified in the tender and ends at the end of the relevant gas day. All registered CBB Providers are automatically informed by e-mail about the launch of the tender along with more detailed information on the capacity buyback demand (demand range). In addition, the MAM will publish the capacity buyback demand on its website. Bids can be submitted throughout the bidding period defined in the invitation to tender.
- (3) Participation in the tender procedure requires that, at the time of publication of the capacity buyback requirement on the CBBP, the CBB Provider has nominated physical inputs ("Entryso" data series type) at a minimum of one entry point of a transmission system operator in the balancing area put out to tender using firm entry capacity or that such physical inputs have been nominated on the CBB Provider's behalf. CBB Providers can only participate in a capacity buyback tender up to the quantity of the existing entry nomination. Firm freely allocable capacities and conditionally firm freely allocable capacities will be deemed to be firm entry capacity within the meaning of sentence 1 above insofar as they can be used on a firm basis (according to the firm share which is determined by the responsible Transmission System Operator for the relevant gas day).

For the avoidance of doubt, it is pointed out that entry nominations at a virtual interconnection point (hereinafter referred to as "VIP") within the meaning of Article 19 (9) of Regulation (EU) 2017/459 of 16 March 2017 (hereinafter referred to as "Capacity Allocation Mechanisms Network Code"), where the entry and exit points combined in the VIP are allocated to more than one balancing area (hereinafter referred to as "multi-area VIP"), cannot be used for participating in a capacity buyback tender.

### 3 Submission of Bids

- (1) Capacity buyback bids must always be submitted via the CBBP.
- (2) Any capacity buyback bid must be submitted in accordance with the terms of the tender published by the MAM and must contain the following information:
  - Name of the CBB Provider
  - Transmission system operator and entry point at which the offered capacity has been booked and nominated as firm entry capacity
  - Reference number (contract ID) of capacity booking with the relevant transmission system operator
  - Capacity offered at the relevant entry point, which must be at least ten (10) MW (from this minimum lot size onwards, the lot size may be specified in increments of ten (10) MW)
  - Capacity buyback price offered in EUR/MW
  - Number of the balancing group contract or balancing subgroup in which the firm entry capacity booked with the transmission system operator has been included
- (3) The CBB Provider is entitled to submit several capacity buyback bids as part of a tender process.
- (4) Bids must be unconditional and complete. A bid will be deemed complete if it contains the information required under the relevant invitation to tender and these CBB Terms & Conditions. The CBB Provider will be solely responsible for the accuracy and completeness of its information. Bids that do not comply with the requirements of the invitation to tender or these CBB Terms & Conditions or that are subject to reservations or are incomplete or unclear will not be taken into account by the MAM.

- (5) When a bid is uploaded on the CBBP, it will receive a time stamp to record the time of receipt which will be taken into account for bid acceptance pursuant to section 4 (2) hereinbelow.
- (6) The CBB Provider may amend or withdraw capacity buyback bids already submitted via the CBBP until the end of the relevant bidding period. From the end of the bidding period, the bid will be binding.
- (7) If the CBBP is unavailable, the CBB Provider may submit bids by completing and signing the form provided for this purpose on the MAM's website and submitting it by e-mail to the MAM's dispatching centre, and any bids already submitted may also be amended or withdrawn as provided under section 3 (6) above. Both the e-mail address and the 24/7 hotline of the dispatching centre are published on the MAM's website.
- (8) All costs incurred by the CBB Provider in connection with the submission of bids shall be borne by the CBB Provider.

#### **4 Acceptance of Bids and Contract Award**

- (1) For the purpose of bid acceptance, the MAM will rank the bids received according to the quoted capacity buyback price in EUR/MW starting with the lowest price up to the highest price.
- (2) Where prices are the same, bids submitted earlier will be considered before bids submitted later in time.
- (3) The MAM will then accept the lowest-priced bids until the tendered capacity buyback demand has been met in full. If the lot sizes offered exceed the capacity buyback demand, the MAM shall be entitled to only partially accept the last bid to be accepted.
- (4) The MAM may deviate from the principles set out herein if the development of the network situation since its publication of the capacity buyback demand makes this absolutely necessary.
- (5) Acceptance by the MAM of a bid submitted by the CBB Provider shall establish a Capacity Buyback Contract between the CBB Provider and the MAM for the relevant contract period. The MAM will confirm acceptance separately for each bid by e-mail to the e-mail address provided by the CBB Provider in accordance with section 3 (1) of the CBB Registration

Terms & Conditions. Said e-mail will contain the exact reference number of the CBB Provider's bid accepted by the MAM. The CBB Provider shall acknowledge receipt of each such e-mail immediately by sending a confirmation e-mail to the MAM's sender address. This confirmation is required for verification purposes only and does not affect the validity of the Capacity Buyback Contract concerned. CBB Providers whose bids have not been accepted by the MAM will also receive an e-mail informing them about the bids that have not been accepted. CBB Providers will not be required to confirm receipt of any such e-mail by the MAM. If a Capacity Buyback Contract has been concluded between the MAM and the CBB Provider in accordance with the above provisions, the CBB Provider shall be obliged to execute such contract in accordance with section 5. If a bid has only been acceptance in part as provided in section 4 (3) sentence 2 above, both the declaration of acceptance and the conclusion of the contract between the MAM and the CBB Provider will only apply to the part of the capacity accepted by the MAM.

- (6) The CBB Provider shall not be entitled to having one or all bids accepted by the MAM.

## **5 CBB Provider's Obligation to Cause a Physical Effect**

- (1) Upon conclusion of a Capacity Buyback Contract pursuant to section 4 (5) above, the CBB Provider shall be obliged to cause a physical effect by reducing its physical inputs at the contracted entry point in the amount of the capacity agreed with the MAM. The renominations required to cause such physical effect shall be made together for all hours of the contract period at a constant hourly rate. For Capacity Buyback Contracts, the MAM will not make any nominations at the virtual trading point (VTP) of the market area into the balancing group or balancing subgroup of the CBB Provider. The CBB Provider will continue to be under a balancing obligation pursuant to section 5 of the Balancing Group Contract Terms & Conditions. In order to ensure the effectiveness of the physical effect caused by the CBB Provider, the balancing group may only be balanced by trading transactions if the CBB Provider can ensure that the third party from which it has taken over gas quantities at the VTP (cf. section 9 of the Balancing Group Contract Terms & Conditions) does not neutralise the physical effect caused by the CBB Provider. In any case the CBB Provider shall be liable towards the MAM.
- (2) The physical effect shall only be deemed to have been duly caused if, on balance, the CBB Provider's physical inputs and offtakes in the contracted balancing area result in a negative change (hereinafter referred to as "direction of fulfilment"). The balance in this case shall be the sum of the physical inputs of the "Entryso" data series type minus the

sum of the physical offtakes of the "Exitso" data series type of the CBB Provider at all entry and exit points assigned to the relevant balancing area in a congestion situation. In each case the most recent nomination status for the contract period – as confirmed by the responsible network operator – at the time of the conclusion of the Capacity Buyback Contract shall apply. The physical inputs and offtakes are always considered across all of the CBB Provider's balancing groups. Existing links with other balancing groups pursuant to section 17 of the Balancing Group Contract Terms & Conditions as amended from time to time will not be taken into consideration.

- (3) For the hours of the contract period the CBB Provider undertakes not to make any H-gas nominations or renominations that are detrimental to the network. A nomination or renomination shall be deemed to be detrimental to the network,
  - (a) if such a nomination or renomination in the relevant oversupplied balancing area leads to a net increase in the CBB Provider's physical inputs and/or a reduction in the CBB Provider's physical offtakes as defined in section 5 (2), or
  - (b) if such a nomination or renomination in the relevant undersupplied balancing area leads to a net reduction in the CBB Provider's physical inputs and/or an increase in the CBB Provider's physical offtakes, as defined in section 5 (2).
  
- (4) A nomination or renomination shall not be deemed detrimental to the network,
  - (a) if flow adjustments pursuant to section 5 (3) are made in fulfilment of a bilateral trade at the VTP (cf. section 9 of the Balancing Group Contract Terms & Conditions) and the CBB Provider has commissioned the third party from whom it has taken over or to whom it has transferred gas quantities at the VTP to cause a corresponding physical effect. The CBB Provider shall in any case be liable towards MAM;
  - (b) if flow adjustments pursuant to section 5 (3) are made for balancing purposes in order to compensate for a change in demand by a consumption-metered (RLM) end user allocated to a balancing group or balancing subgroup of the CBB Provider after bid acceptance by the MAM. In such cases, the CBB Provider shall be obliged to provide meaningful evidence documenting the CBB Provider's level of knowledge and the chronological processes in a manner that is comprehensible to the MAM;
  - (c) insofar as flow adjustments pursuant to section 5 (3) result from the fulfilment of a load flow commitment which the CBB Provider had contracted at an entry or exit point



of the balancing area concerned and which was called by the respective transmission system operator during the contract period.

- (5) When the MAM reports a capacity buyback demand pursuant to section 27 (1) (b) (bb) of the Balancing Group Contract Terms & Conditions, the CBB Provider should refrain from making any further nominations or renominations detrimental to the network within the meaning of section 5 (3) (a) above in the respective oversupplied balancing area prior to bid acceptance by the MAM. If the CBB Provider makes nominations or renominations detrimental to the network within the meaning of section 5 (3) (a) above in the period between the report of the capacity buyback demand and the conclusion of the Capacity Buyback Contract, it shall, in addition to causing the physical effect in accordance with section 5 (1) and (2), renominate the delivery hours until the end of the contract period in such a way that the effect of the nominations or renominations detrimental to the network is cancelled out overall. Nominations and renominations made by the MAM after a reported capacity buyback demand in what becomes the direction of fulfilment shall not be taken into account when considering the effect of the physical effect within the meaning of section 5 (1) and (2) above.
- (6) If the CBB Provider is not itself the balancing group manager, the previous provisions shall apply mutatis mutandis with regard to the physical inputs and offtakes recorded for balancing purposes in balancing groups of third parties, insofar as such physical inputs and offtakes are attributable to the CBB Provider. If in this case the CBB Provider is unable to cause the physical effect itself, it shall instruct the relevant third parties in each case to cause a physical effect within the meaning of this clause and draw their attention to the CBB Provider's obligations under the Capacity Buyback Contract. The CBB Provider shall always be liable towards the MAM for the proper fulfilment of the Capacity Buyback Contract. In all other respects, the physical effect shall not be caused by third parties.

## **6 Data Exchange with Third Parties and Provider's Duty to Prove Compliance with Contractual Obligations**

- (1) For the purpose of verifying the fulfilment of the prerequisites pursuant to section 2 (3) on the part of the CBB Provider or the physical effect pursuant to section 5, the MAM shall be entitled to exchange information with the responsible network operators. The aforementioned information also includes, without limitation, details of the Capacity Buyback Contracts that have been concluded and any data on the CBB Provider's physical inputs and offtakes and/or associated (re-)nominations.

- (2) Upon the MAM's request, the CBB Provider shall prove to the MAM without undue delay and by appropriate means that the physical effect has been duly caused in accordance with section 5.
- (3) Upon the MAM's request, the CBB Provider shall inform the MAM of all balancing groups or balancing subgroups in which gas quantities are recorded for balancing purposes for the CBB Provider.
- (4) If the CBB Provider's physical inputs and offtakes are recorded for balancing purposes in the balancing group/balancing subgroup of a third party, the information and proof to be provided may also relate to balancing groups/balancing subgroups of third parties. In this case, the CBB Provider shall ensure that data within the meaning of this section 6 can be exchanged between the MAM and the relevant network operator or between the MAM and the CBB Provider. Upon request, the CBB Provider shall provide the MAM with appropriate evidence to demonstrate that the third party has given its consent.

## **7 Notification Obligations**

If the CBB Provider is unable to perform any of its obligations arising out of or in connection with any Capacity Buyback Contract for whatever reason, or if it is restricted in its ability to do so, it shall notify the MAM thereof without undue delay regardless of the causes underlying such inability or restriction. The CBB Provider shall first notify the MAM by telephone on the 24/7 hotline of the MAM's dispatching centre and subsequently also by e-mail to the MAM's dispatching centre. Such notification shall not release the CBB Provider from its contractual obligations.

## **8 Invoicing**

- (1) Upon acceptance of a bid submitted by the CBB Provider, the MAM shall pay the CBB Provider the relevant fee in EUR. Said fee shall be determined by multiplying the capacity buyback price in EUR/MW agreed between the MAM and the CBB Provider for the relevant Capacity Buyback Contract by the capacity in MW accepted by the MAM in accordance with section 4 (5) (hereinafter referred to as "Capacity Buyback Fee"). In the event that a bid is accepted only in part as provided in section 4 (3), the amount of the Capacity Buyback Price in EUR/MW shall remain unaffected. Should the MAM determine that the CBB Provider has not fulfilled its obligations under section 5 (1), (2) and (3) (a) either in

whole or in part, the MAM will reduce the Capacity Buyback Fee determined according to sentence 2 on a pro rata basis and invoice the reduced amount. In this case the amount will be shown on a quantity-related basis in MWh on the basis of the specific capacity buyback price (hereinafter referred to as "SCP") determined for the relevant Capacity Buyback Contract as defined in section 9 (2).

Any reduction pursuant to sentence 4 of this section 8 (1) shall be without prejudice to the penalty mechanism described in section 9 below.

- (2) If several Capacity Buyback Contracts have been concluded between the MAM and a CBB Provider on a gas day, the MAM may show the Capacity Buyback Fees pursuant to section 8 (1) as one single item.
- (3) The invoice for the Capacity Buyback Fees described above will be drawn up by the MAM up until the point in time described as "M+2M" for all gas days of the month to be settled and will be sent to the CBB Provider by e-mail, with "M+2M" describing to a point in time two (2) calendar months after the end of the month of service provision. The payments to be made by the MAM to the CBB Provider will be due within ten (10) working days after receipt of the invoice.
- (4) Any penalties levied by the MAM under a Capacity Buyback Contract in accordance with section 9 shall in each case be due within ten (10) working days after receipt of the invoice.
- (5) Any and all applicable duties and taxes shall be calculated and shown separately in the invoices to be issued by MAM.
- (6) All payments shall be made with a fixed value date within the periods provided for this purpose. Payments shall only be deemed to have been made on time if the amounts concerned have been credited to the designated account of the payee within the specified period.

## **9 Penalty**

- (1) If the CBB Provider fails to comply with any of its obligations under a Capacity Buyback Contract either in whole or in part, it shall pay a penalty to the MAM. The foregoing shall not apply where the CBB Provider submits evidence to the MAM that it cannot be held responsible for the breach in question.

(2) The penalty according to section 9 (1) above shall be determined in accordance with the following formula:

$$P_{CP} = Q * SCP * 10 \%$$

where

$P_{CP}$  = Penalty in EUR to be paid for the contract period in which a breach of duty occurred

$Q$  = Quantity in MWh affected by the breach of duty, subject to a maximum of no more than the total quantity resulting from the contracted hourly rate over the contract period

$SCP$  = Specific capacity buyback price in EUR/MWh agreed with the CBB Provider for the relevant contract period, with the specific capacity buyback price being calculated for each capacity buyback contract as follows:

$$SCP = CBBF / (CBBC * h_{CP})$$

where

$SCP$  = Specific capacity buyback price of the Capacity Buyback Contract in EUR/MWh

$CBBF$  = Capacity Buyback Fee pursuant to section 8 (1) which would have been payable by the MAM to the CBB Provider for the contract period for proper fulfilment of the contract

$CBBC$  = Capacity in MW pursuant to section 4 (5) contracted under Capacity Buyback Contract

$H_{CP}$  = Number of hours in contract period

If several Capacity Buyback Contracts have been concluded for the affected contract period and the breach cannot be clearly allocated to one single Capacity Buyback Contract, the MAM shall instead determine both the aforementioned quantity "Q" affected by the breach and the aforementioned specific Capacity Buyback Price "SCP" across all affected Capacity Buyback Contracts of the CBB Provider in the contract period. All Capacity Buyback Contracts in the contract period for which a breach can be ruled out shall be disregarded.

- (3) The MAM shall have the right to claim further damages. Any penalty payable hereunder shall be offset against any such damages payable.
- (4) If the CBB Provider has breached its contractual obligations pursuant to section 5 on more than one occasion or has been found to be in serious breach of said obligations, it may have its admission withdrawn by the MAM pursuant to section 6 (2) (c) of the CBB Registration Terms & Conditions, and the CBB Provider will be banned from accessing the CBBP. If Capacity Buyback Contracts are still in place at that time, the CBB Provider shall duly fulfil such contracts in accordance with the provisions of these CBB Terms & Conditions.

## **10 Data Protection**

The MAM's quality standards include the responsible handling of the CBB Provider's personal data. The MAM will only collect, process and use the personal data provided under these CBB Terms & Conditions to the extent permitted by law for the purposes of these CBB Terms & Conditions. The data transmitted by the CBB Provider will only be processed and used for other purposes if the CBB Provider has given its express consent or if the MAM is legally obliged to do so. Further information on data protection is provided in the MAM's Privacy Policy (available on the THE website).

## **11 Confidentiality**

- (1) The parties hereunder shall treat the content of a Capacity Buyback Contract and all types of information and data received in the course of the execution of a Capacity Buyback Contract (hereinafter referred to as "Confidential Information") as confidential and shall not disclose or make available any such Confidential Information to third parties without the affected party's prior written consent. The parties hereunder undertake to use Confidential Information exclusively for the purpose of implementing the aforementioned contracts. The foregoing shall be without prejudice to section 6 above.
- (2) Each party hereunder shall be entitled to disclose Confidential Information it has received from the other party without the latter's written consent:

- (a) to an affiliated entity pursuant to Section 15 of the German Stock Corporation Act (AktG) provided that such entity is bound by a similar obligation of confidentiality,
  - (b) to its employees, boards/committees, representatives, consultants, shareholders, banks and insurance companies, if and to the extent that disclosure is required to ensure the proper fulfilment of the relevant contractual obligations, and provided that the aforementioned persons or entities have undertaken to keep such Confidential Information confidential prior to their receipt thereof or are bound by a statutory duty of confidentiality in respect of such Confidential Information,
  - (c) to the extent that such Confidential Information
    - (aa) is legitimately known to the receiving party prior to the receipt of such Confidential Information from the other party,
    - (bb) is already in the public domain or becomes publicly available other than through an act or omission of the receiving party, or
    - (cc) must be disclosed by the disclosing party under any statutory provision or a court or official order or a request received from a regulatory authority.
- (3) The confidentiality obligation shall expire two (2) years after the end of the Capacity Buyback Contract.

## **12 Force Majeure**

- (1) Each party hereunder shall be released from its contractual obligations if and to the extent that it is prevented from performing such obligations due to an event of force majeure (“Event of Force Majeure“) as defined in section 12 (2) below. To the extent and for such time as a party is prevented from performing its obligations due to an Event of Force Majeure, the other party shall be released from its corresponding obligations.
- (2) For the purposes hereof, an Event of Force Majeure shall be defined as any unforeseeable external circumstance which the party affected could not have been expected to prevent or could not have prevented in good time even by applying reasonable care and by taking such measures as would have been technically feasible and commercially reasonable. Events of Force Majeure shall include, but not be limited to, natural disasters, terrorist

attacks, power failures, telecommunications failures, strikes, lawful lockouts, legal requirements and government, court or official orders (regardless of their lawfulness).

- (3) The party affected shall in each case notify the other party without undue delay, stating the reasons for the occurrence of the Event of Force Majeure and its expected duration. In any such case, the party affected shall make an effort to take all technically feasible and commercially reasonable steps to resume the performance of its obligations as soon as possible.
- (4) Where a party makes use of services by a third party in fulfilling its contractual obligations, an event that would constitute an Event of Force Majeure for such third party as defined in section 12 (2) above shall also constitute an Event of Force Majeure for that party.
- (5) Where possible, the MAM and the CBB Provider shall cooperate to remedy any defects or disruptions.

### **13 Liability**

- (1) The MAM shall only be liable hereunder if it fails comply with a material contractual obligation the breach of which either places at risk the achievement of the contract's purpose and/or the fulfilment of which is a prerequisite for the proper execution of the contract, and on whose fulfilment the Provider regularly relies and may rely (hereinafter referred to as "Cardinal Obligation"). Moreover, liability hereunder shall be limited to
  - (a) damage caused by intent or gross negligence,
  - (b) personal injury (injury to life, body, health) and
  - (c) the assumption of guarantees.
- (2) The MAM shall not be liable if the circumstances giving rise to a claim against the MAM
  - (a) are based on an unusual and unforeseeable event over which the MAM has no control and the consequences of which could not have been avoided despite the exercise of due care, or
  - (b) were brought about by the MAM complying with a legal obligation.
- (3) The MAM shall not be liable for any failures of or disruptions to technical infrastructure outside the MAM's sphere of responsibility (Force Majeure).
- (4) The foregoing shall be without prejudice to the MAM's liability under mandatory statutory

provisions (including without limitation the German Product Liability Act (ProdHaftG)).

#### **14 Severability**

- (1) If any provision set out in these CBB Terms & Conditions is, becomes or is held to be invalid, unenforceable or incomplete, it shall not serve to invalidate or affect the completeness of the remaining provisions.
- (2) The MAM and the CBB Provider hereby undertake to replace any such invalid, unenforceable or incomplete provision by a valid, enforceable and complete provision that comes as close as legally permissible to the economic or legal purposes intended by the provision so replaced and to the intentions of the MAM and the Provider.

#### **15 Requirement for Written Form and Authoritative Version**

1. The MAM and the Provider have not entered into any oral agreements. Except where any further restrictions as to form are imposed by statute and except as otherwise provided herein, any and all amendments or additions to, as well as the termination or revocation of, a Capacity Buyback Contract shall be invalid unless made in writing and signed by the MAM and the Provider. The foregoing shall also apply to the written form requirement itself.
2. Only the German language version of these CBB Terms & Conditions shall be legally binding.

#### **16 Jurisdiction and Governing Law**

1. The MAM and the Provider hereby agree that the Düsseldorf courts shall have exclusive jurisdiction in any type of proceeding to settle any dispute arising out of or in connection with any Capacity Buyback Contract, or the execution or validity thereof.
2. These CBB Terms & Conditions shall be governed by, construed and interpreted in accordance with the law of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods (CISG).