

Terms and conditions for the initiation, execution and invoicing of load flow commitments at entry and exit points of Gastransport Nord GmbH ('GBLFZ')

As of: 1 July 2015

Important Legal Notice for English Version

This text shall be governed by and construed in accordance with the laws of Germany. The English version of this text serves only for information and is not part of this legal transaction. Therefore, in the event of any inconsistency between the German and the English version, only the German version shall apply.

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1. Preamble

GTG tenders load flow commitments (LFC) under the terms of decision BK9-14/606 of the national regulatory authority 'Bundesnetzagentur'.

- 1.1. Positive LFC are capacity increasing measures to safeguard firm freely allocable exit capacities within the transmission system of GTG in the market area GASPOOL.
- 1.2. Negative LFC are capacity increasing measures to safeguard firm freely allocable entry capacities within the transmission system of GTG in the market area GASPOOL.
- 1.3. GTG tenders LFC in a non-discriminatory and market based manner in accordance with these 'GBLFZ'.

2. Scope

- 2.1. These GBLFZ lay down the terms and conditions for the initiation, execution and invoicing of LFC at defined entry and exit points within the transmission system of GTG.
- 2.2. The tenderer's general terms and conditions will not be considered. Further services besides the LFC need a separate agreement in a written form signed by the tenderer and GTG.
- 2.3. The definitions of terms in Appendix 1 to these GBLFZ and any alternative definitions contained herein shall be binding. A singular form of a term shall also apply to the plural form and vice-versa unless otherwise stated within these GBLFZ. For terms not defined within these GBLFZ, the definitions of the German Energy Economy Law ('EnWG'), the German Gas Network Access Ordinance ('GasNZV'), in its currently valid version, as well as the definitions of the German Cooperation Agreement ('KoV'), in its currently valid version, shall apply.

3. Prequalification of LFC tenderer

- 3.1. The prequalification as a LFC tenderer is based on the prequalification form published at www.gtg-nord.de. This form needs to be signed and submitted to GTG.
- 3.2. The first condition to get prequalified is a valid balancing group for the market area GASPOOL.
- 3.3. The second condition to get prequalified is a proof of a reasonable financial and technical capability. In terms of the financial capability, one of the following credit ratings needs to be submitted to GTG:
 - a long-term Moodys rating of Baa3
 - a long-term Standard & Poors rating of BBB-
 - a long-term Fitch rating of BBB-
 - a Creditreform rating (Bonitätsindex 2.0) Risikoklasse II (according to Creditreform RatingMap, as of December 2011)
- 3.4. Furthermore, a tenderer is deemed financial capable as long as he is approved as a qualified transport customer by GTG.
- 3.5. As a proof of the technical capability, GTG is entitled to perform a communication test. Doing so, GTG verifies whether the tenderer is able receive messages from GTG, process these messages and send messages to GTG. Additionally, GTG verifies whether the communication requirements (i. a. 24 hour availability) can be fulfilled by the tenderer. These communication requirements are published on the GTG website.
- 3.6. The approval of parties interested in taking part in the tender is at the sole discretion of GTG. Successful prequalified parties will be notified by GTG by email sent to the email address stated in the prequalification form.
- 3.7. The prequalification is usually valid without any expiry date. However, GTG may ask for a new demonstration of fulfilling the conditions under paragraph 3.2 – 3.5.
- 3.8. The prequalification may be withdrawn without notice at any time, due to important reasons such as i.a.
 - a non-fulfillment of the conditions mentioned in paragraph 3.2

- a missing proof of the financial and technical capability as foreseen by paragraph 3.3, 3.4 or 3.5.
- a non-fulfillment of a contractual obligation

3.9. A prequalification itself does not constitute a contractual relationship between GTG and the tenderer.

4. Tendering procedure

- 4.1. A prequalification is a prerequisite for a participation in a LFC tendering procedure. A prequalification may be initiated independently from a specific tendering procedure.
- 4.2. Every tender is publicly available being published on the GTG website.
- 4.3. GTG announces a tender at latest four weeks prior to the start of the tendering procedure on the GTG website. In case of a tender for shorter periods, e.g. monthly or daily, the tender period will be shortened appropriately.
- 4.4. To participate in a tender, the respective bid form, available at www.gtg-nord.de, needs to be submitted to GTG completely filled and signed within the published tender period via fax or as a pdf-document via email. The contact details for the submission are published at www.gtg-nord.de.
- 4.5. The tenderer is solely responsible for the completeness and accuracy of his offer. Offers being incomplete, incorrect or unclear are deemed as not submitted. The same applies to offers being submitted outside of the published tender period.
- 4.6. The submission of a binding offer constitutes a binding declaration of the tenderer and needs to be complete and without any reservations. A binding offer constitutes a tenderer commitment that is valid until the end of period for acceptance of LFC contracts.
- 4.7. Submitting a binding offer, the tenderer accepts the GBLFZ in its currently valid version.
- 4.8. The tenderer bears the costs that are related to the submission of the binding offer. Such costs will not be reimbursed by GTG.
- 4.9. Collective binding offers are permitted. However, a responsible person needs to be nominated.

5. Subject matter of the tender

- 5.1. Subject matter of the tender are LFC as mentioned in section 7 of these GBLFZ.
- 5.2. The subject matter is further specified via the published bid form.
- 5.3. The conditions defined in the bid form need to be considered.

6. Acceptance and conclusion of contract

- 6.1. The period of acceptance is up to two week as from the day following the end of the tender period.
- 6.2. All correct and timely received binding offers will be ranked in accordance with the weighting criteria published within the tender documents. The resulting merit-order-list (MOL) is relevant for the acceptance and conclusion of contracts as well the later LFC request. GTG may not consider offers that are deemed uneconomic and may lead to a disproportionate burden for network users or GTG.
- 6.3. Commodity and capacity prices will be rated weighted. For the acceptance, all binding offers will be ranked into the MOL by the weighted price in ascending order. The acceptance is based on the MOL, starting with the offer with the lowest weighted price.
- 6.4. In case of equivalent prices, the timestamp of the receipt is decisive for the rank within the MOL. The binding offer received first shall be ranked superior.
- 6.5. GTG will inform all tenderers who participated in the respective tender directly after the period for acceptance whether and to what extend their offer is accepted.

- 6.6. All successful offers of the yearly tender will be published on 15 August each year on the GTG website in an anonymized form. In case of a tender for shorter periods, the information is published directly after the period for acceptance.
- 6.7. A contract is concluded by the receipt of the electronic confirmation of the acceptance sent by GTG. This confirmation is sent to the email address of the tenderer specified within the bid form
- 6.8. A conclusion of a contract does not oblige GTG to utilize the contracted service.

7. Product definition

- 7.1. LFC entitle GTG to demand an increase or decrease of entry or exit flows in or out of the transmission network of GTG or in a downstream network connected to GTG at defined network points from the tenderer.
- 7.2. The tenderer is obliged to fulfil the increase or decrease of entry or exit flows at defined network points demanded by GTG.
- 7.3. The tenderer fulfils the obligation by a respective entry or exit nomination at the defined network point in accordance with demand of GTG.
- 7.4. In order to keep the balancing group in balance, the tenderer is obliged to perform adequate measures at other entry or exit points in the GASPOOL market area. These measures must not take place within the transmission system of GTG in case the LFC is requested.
- 7.5. Transport capacities will be provided in a sufficient amount and free of charge by GTG in case the execution of the LFC is demanded and to the extent the tenderer does have enough capacities at the time of the request.

8. Pricing

- 8.1. LFC are tendered on the basis of a combination of commodity and capacity prices. Commodity and or capacity prices may account for 0.00 €.
- 8.2. The commodity and capacity prices are the prices of the tenderer's binding offer.
- 8.3. The commodity price needs to be stated in €/ct/kWh.
- 8.4. The capacity price are charged as €/kWh/month for monthly products and as €/kWh/day for daily products, in accordance with the standards given by GTG.

9. Performance obligation

- 9.1. With the conclusion of a contract regarding LFC, GTG is entitled to request these LFC at any time and any number of times without any conditions and restrictions. The tenderer is unconditionally obliged to fulfill the LFC on a firm basis.
- 9.2. The right of GTG as well as the tenderer's obligation is limited by
 - a. the time period of the contract,
 - b. the total contracted services (in kWh/h or in kWh) and
 - c. the possible parameters of the specific product definition of the LFC.

10. Abusive behaviour

The tenderer is obliged to abstain from abusive behaviour in terms of the LFC. A behaviour is deemed abusive if the tenderer, alone or in collaboration with third parties, influences the situation in the transmission system of GTG for the purpose of creating a need for the request of the LFC.

11. Request of LFC

- 11.1. A requested LFC is deemed fulfilled if the tenderer updates his entry or exit nomination at defined network points in accordance with the demands of GTG
- 11.2. The demand of LFC is based on nomination using the agreed Edig@s-format. The nomination procedure is performed step by step:

- a. GTG sends a REQUEST-message to the tenderer. The REQUEST-message must include as a minimum:
 - period of LFC
 - demanded capacity in kWh/h taking into account the quantity of 10,000 kWh/h or 10,000 kWh per tranche
 - contract number
 - network point
- b. The tenderer confirms the REQUEST-message by a REQRES-message using the agreed EDIG@S-format. This confirmation needs to be sent to GTG with a lead time that is not less than 3 hours till the end of a full hour.
- c. The tenderer renominates his respective physical entry or exit points in accordance with the LFC requested by GTG.
- d. The tenderer ensures that the sum of his entry and exit flows in the market area GASPOOL resulting from the renomination are in balance and remain unchanged.
- e. The tenderer ensures also that potential imbalances caused by the LFC are not balanced by renominations at other network points within the transmission system of GTG.
- f. The contractual parties may decide unanimously to use message-formats or alternative communications other than REQUEST/REQRES.

12. Quantity settlement and invoicing

- 12.1. The invoicing is based on LFC within the contracted period requested by GTG and confirmed as laid down in section 11.
- 12.2. The quantity is settled based on the LFC requests sent by GTG and confirmed by the tenderer as laid down in section 11.
- 12.3. The monthly payment results from the quantity charged with the agreed capacity price in case this is foreseen by the LFC contract.
- 12.4. Invoicing is based on the price and quantities laid down in paragraphs 12.1 – 12.3 being allocated to the LFC contract.

13. Invoicing and payment

- 13.1. The tenderer provides GTG an invoice for the requested LFC within a month. This invoice contains the commodity and capacity prices including taxes and is commercially rounded in Euro to two decimal places.
- 13.2. GTG effects the payment on the tenderer's bank account until the 20th business day as of the receipt of the invoice laid down in paragraph 13.1.

14. Taxes

All amounts of the LFC contract are without value added tax. This will be invoiced in the legally prescribed form.

15. Force majeure

- 15.1. To the extent a contractual party is prevented from fulfilling its obligations due to force majeure as laid down in paragraph 2, it will be released from such obligations. The other contractual party is released from its counter obligations to the extent and for the duration of the party is prevented from fulfilling its obligations due to force majeure.
- 15.2. Force majeure is an external, unforeseeable event that cannot be prevented or cannot be prevented in due time even through the use of due diligence and technically and financially reasonable means. In particular, this includes natural disasters, terrorist attacks, power failure, failure of telecommunication connections, strike and lockout, provided the lockout is lawful, or legal

regulations or measures by the government or by courts or authorities (regardless of their legality).

- 15.3. The affected contractual party shall notify the other contractual party immediately and inform about the reasons for and probable duration of the force majeure. It shall seek to restore its ability to fulfil its obligations as quickly as possible by executing any and all technical possible and commercially reasonable means.

16. Termination

- 16.1. Each contractual party is entitled to terminate the respective contact with immediate effect if and when a request for initiation of insolvency proceeding for the assets of a contractual party is filed and despite request, the insolvency administrator has not declared the continuation with the meaning of section 103 Germany Bankruptcy Act ('InsO') and in case of requesting initiation of insolvency proceedings by a third party, the party or the insolvency administrator do not prove the absence of a reason to open the insolvency proceedings with meaning of sections 17 (2) and 19 (2) InsO within five business days.
- 16.2. The right of termination for good cause without notice remains unaffected. Good causes shall be in particular if and insofar as the national regulatory authority 'Bundesnetzagentur' does not approve or not in total approve the costs for the provision and/or demand of LFC or if there is an abusive behaviour of the tenderer.

17. Disclosure and processing of data

- 17.1. The tenderer agrees to automatic data processing by GTG or by a company mandated by GTG complying to applicable legal and governmental provision of data protection, especially the German Data Protection Act ('Bundesdatenschutzgesetz').
- 17.2. The tenderer agrees that GTG publishes all successful offers on the GTG website in an anonymized form.

18. Revision clause

- 18.1. In the event that unforeseen circumstances with a substantial commercial, technical, or legal impact on the contract, but for which no regulations have been agreed in the contract and these GBLFZ, or which were not considered at the time of the conclusion of the contract, arise during the term of a contract, causing any of the contractual provisions to become unreasonable for one contractual party, the affected party may request from the other contractual party a corresponding adjustment of the contractual provisions as appropriate to the changed circumstances, taking into account any and all commercial, technical, and legal effects on the other party.
- 18.2. The contractual party claiming such a change in circumstances must describe and prove the relevant facts.
- 18.3. The claim for adjustment of the contractual provisions arises from the point in time at which the requesting party initially requests adjustment of the contractual provisions due to changes in circumstances, unless the requesting party could not reasonably have been expected to assert the claim at an earlier time.

19. Confidentiality

- 19.1. Subject to the provisions in paragraph 2, the contractual parties shall maintain confidentiality with respect to a contract and any and all information which they receive in the context of a contract (hereinafter referred to as "confidential information") and shall neither disclose nor make accessible to third parties any such information without the prior written consent of the affected party. The contractual parties undertake to utilize the confidential information solely and exclusively for the performance of the respective contract.

- 19.2. Every contractual party has the right to disclose without the other party's consent confidential information it has received from the other contractual party
- i. to an affiliated company within the sense of section 15 German Stock Companies Act ('Aktiengesetz'), provided that the latter is obligated to confidentiality of equivalent nature,
 - ii. to its representatives, advisors, banks, and insurance companies, if and when, and to the extent that, the disclosure is required for the proper fulfilment of the contractual obligations and such persons or companies have, on their part, covenanted to treat the information as confidential or are obligated to confidentiality on the basis of professional ethics or
 - iii. in the scope that the confidential information was legitimately known to the contractual party receiving the information at the point in time at which it received the information from the other contractual party, was previously in the public domain or was already accessible to the public by means other than the action or omission of the party receiving the information, or had to be disclosed by a party pursuant to legal statutes or a court or official order or an inquiry from regulatory authorities; in these cases, the disclosing party shall notify the other party immediately.
- 19.3. The obligation to maintain confidentiality shall end 4 years after the end of the respective contract.
- 19.4. The above provisions are without prejudice for section 6a German Energy Economy Law ('Energiewirtschaftsgesetz').

20. Legal succession

- 20.1. The complete or partial assignment of contractual rights and/or obligations is subject to the prior consent of the other contractual party. Consent may be refused solely for an important reason.
- 20.2. Assignment in accordance with paragraph 1 to an affiliated company within the sense of section 15 German Stock Companies Act ('Aktiengesetz') is not subject to prior consent; solely a written notification of the other party is required. The above provisions apply solely if the affiliated company which assumes the rights and/or obligations can warrant performance of the contract in equivalent manner. The assigning party shall give reasonable evidence of this capability to the other party before the assignment.

21. Amendment of GBLFZ

- 21.1. GTG is entitled to amend the GBLFZ with immediate effect, provided that the amendment is necessary to comply with relevant legislation or ordinances and/or legally binding stipulations of national or international courts and authorities, in particular determinations and related announcements of the national regulator authority and/or generally acknowledged rules of technology. In this case, GTG shall notify the tenderer immediately. If major commercial disadvantages arise for the provider with regard to his contracts due to the amendment, the tenderer is entitled to terminate his contracts at the end of the month following the commencement of effectiveness by giving prior notice of 15 business days. Compensation is excluded in this connection.
- 21.2. In deviation from paragraph 22.1, GTG is entitled to amend the GBLFZ for the future. GTG shall notify the tenderer two months prior to the effective date of the amended terms and conditions under this contract in text form and publish the amended terms and conditions under this contract on the GTG website. In justified cases, GTG may deviate from the period laid down in sentence 2. Amendments to the terms and conditions of this contract shall be deemed to have been accepted by the tenderer unless rejected by the tenderer within 30 days of the receipt of notification thereof. In the event of rejection, the previous contract terms and conditions contin-

ue to apply. The text form is sufficient for rejection purposes. GTG shall notify the tenderer of the start of the rejection notification period, and that if not rejected the amended contract terms and conditions shall be deemed accepted.

- 21.3. Besides paragraph 22.2, GTG is entitled to amend obvious spelling mistakes and errors in calculation in these GBLFZ.

22. Severability clause

- 22.1. If individual provisions of these GBLFZ or the respective contract should be or become invalid or impracticable, the validity of the GBLFZ and the respective contract shall not be affected.
- 22.2. The contractual parties undertake to replace, by means of a suitable procedure, the invalid or impracticable provisions with those valid provisions that most closely approximate the economic effect of the invalid or impracticable provisions. The above provision applies mutatis mutandis to the closure of any gaps.

23. Written form

Any and all modification or termination of a contract shall not be binding on the contractual parties unless in writing. The above provision also applies to the waiver of the requirement of written form.

24. Place of jurisdiction and applicable law

- 24.1. All disputes arising from a contract shall be decided exclusively and definitively by an ordinary court. The place of jurisdiction is Oldenburg (Oldb.).
- 24.2. All contracts concluded on the basis of these GBLFZ, these GBLFZ, and their interpretation shall be governed by German law. Application of the CISG is excluded.

not binding

Appendix 1: Definitions of terms

- 1. Bid form:** Form containing details regarding the tender.
- 2. EDIG@S:** Standard for electronic data exchange in gas business. See www.edigas.org.
- 3. GASPOOL:** Market area manager of the market area GASPOOL, GASPOOL Balancing Services GmbH, Berlin
- 5. Load flow commitment(s) (LFC):** See preamble.
- 6. LFC-tenderer:** Every balancing group manager who is prequalified to participate in a LFC tender of GTG.
- 7. LFC-contract:** A bid that has been accepted by GTG containing GBLZ and the bid form.
- 8. Service period:** Period stated in the LFC-contract during which GTG can demand the LFC.
- 9. Lot size:** The lot size defines the standard size (10.000 kWh/h or 10.000 kWh) of a lot in the tender.
- 10. Merit-Order-List:** List of all accepted bids ordered as stated in Section 6.
- 11. Network point:** Point or zone of points in the network of GTG where entry or exit capacity is offered.
- 12. Prequalification:** Access to the tender by approving the technical and financial capability of the interested party.
- 13. Contractual partner:** GTG and the LFC-tenderer whose bid form has been accepted.