

Published contracts and other documents are legally binding exclusively in the German language version. Translated contracts and documents such as these General Terms and Conditions serve for informational purposes only. Therefore, the German text of the General Terms and Conditions shall take precedence over any translated version in case of a contradiction between the German and the translated text. Any translated version may not be used for interpretation of the German version.

Supplementary Terms & Conditions of XXX for Incremental Capacity Contracts effective from xx xxxx xxxx

The Supplementary Terms & Conditions set out herein (“STCs”) shall apply in addition to the General Terms & Conditions of XXX (“TSO”) dated XX XXXX XXXX (“GTCs”) and provide modifications and additions thereto for contracts relating to incremental capacity (“Incremental Capacity”) as defined in Article 3 (1) of Regulation (EU) 2017/459 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (“NC CAM”).

Section 1 General Background, Scope of Application

1. TSO has planned and consulted projects for incremental capacity acc. to Article 27 et. seq. NC CAM based on the market demand assessment and at the interconnection points mentioned therein. The German national regulatory authority Bundesnetzagentur (“Federal Network Agency”) has approved these projects pursuant to Article 28 of the NC CAM and published the corresponding decisions.
2. Except as and to the extent otherwise provided in these STCs, the provisions set out in TSO’s GTCs shall also apply to Incremental Capacity.

Section 2 Conclusion of Contract

1. An entry or exit contract for incremental capacity will be concluded between the TSO and a shipper (“Shipper”) in accordance with section 1 paragraph 2 of the GTCs once Shipper has been allocated Incremental Capacity, subject to the provision that, in accordance with sentence 3 of Article 17(21) NC CAM, Shipper will be allocated incremental capacity according to the offer level offering the largest amount of capacity that resulted in a positive economic test according to Article 22 (3) NC CAM. In deviation from section 1 paragraph 2 of the GTCs, any such entry or exit contract shall come into full effect only if and when the costs of carrying out the network development projects necessary to create the required new technical capacity are recognised by the Bundesnetzagentur (condition precedent).
2. The allocation results will be published by TSO in accordance with Article 11 (10) NC CAM. TSO shall notify Shipper without undue delay once the condition set out in sentence 3 of paragraph 1 above is satisfied.
3. In the event that the condition set out in sentence 3 of paragraph 1 above is not satisfied, Shipper shall have no claims or remedies whatsoever against TSO in respect of any loss or damage suffered by Shipper as a consequence thereof.

Section 3 Tariffs

1. The term “tariff” within the meaning of section 25 of the GTCs shall mean the future tariffs as determined in accordance with regulatory requirements or as approved by the relevant regulatory authority and shall include all other fees or charges or elements thereof specified in section 25 paragraph 1 of the GTCs, including auction premiums, minimum premiums pursuant to Article 33 of Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas, and any future levies applicable during the relevant Contract Period as published in TSO’s price sheet on TSO’s website. “Contract Period” shall mean the period of time during which TSO’s and Shipper’s rights and obligations under the relevant entry or exit contract as set out in sections 3 and 4 of TSO’s GTCs are in effect.
2. For the purposes of auctions TSO will use its current specific capacity tariff as determined in accordance with regulatory requirements and as applicable at the time of each auction. In no event, however, shall TSO’s use of its current specific capacity tariff in accordance with sentence 1 of this paragraph be construed as constituting an agreement between the Parties on the capacity tariff payable during the relevant Contract Period, and it shall not be deemed to provide any indication as to the level of the tariffs within the meaning of paragraph 1 above actually payable by and to be charged to Shipper during the relevant Contract Period. The specific capacity tariff payable during each Contract Period shall be agreed between TSO and Shipper for the period from 1 October to 31 December in any relevant year and from 1 January to 30 September in any relevant year, respectively, based on the future tariffs as determined in accordance with regulatory requirements or as approved by the relevant regulatory authority. For the avoidance of doubt, the publication of new tariffs shall not be construed as a tariff change within the scope of sentence 1 of section 25 paragraph 3 and section 25 paragraph 4 of the GTCs. Notwithstanding sentence 1 above, any auction premium payable as a result of an auction shall be deemed to have been agreed between TSO and Shipper in the framework of the auction.
3. Shipper shall have the right to terminate any entry or exit contract following publication of the tariffs applicable during the relevant Contract Period with effect for the following calendar year by giving at least 10 business days’ prior notice ahead of the start of that following calendar year, provided the specific capacity tariff determined and agreed pursuant to paragraph 1 above exceeds the maximum permitted tariff as stated for the Contract Period in question in Annex 1 to the STCs set out herein. Shipper’s exceptional termination right pursuant to sentence 1 of this paragraph shall only apply with respect to the calendar year falling within the Contract Period as defined in paragraph 1 above to which the published tariffs apply.
4. If Shipper has the right to terminate the respective entry or exit contract for any calendar year under paragraph 3 above, Shipper may terminate that entry or exit contract for that calendar year in whole or in part as measured in relation to the amount of capacity Shipper has booked thereunder. Where Shipper wishes to terminate an entry or exit contract in part as provided in sentence 1 of this paragraph, Shipper must reduce the booked amount of capacity uniformly for the calendar year in question.

Section 4 TSO’s and Shipper’s Rights and Obligations

1. TSO shall take all commercially reasonable measures necessary

- a. to ensure that the Incremental Capacity allocated to Shipper will be duly made available to Shipper by the start of the Contract Period, and
 - b. to coordinate the commissioning of the infrastructure required for the new technical capacity with adjacent network operators where and to the extent necessary.
2. In determining whether a measure can be deemed commercially reasonable within the meaning of paragraph 1 above the Parties shall in particular, without limitation, give consideration to the required public permits and/or approvals and the additional requirements, ancillary provisions and instructions (if any) imposed or given by the competent authorities as well as the applicable regulatory framework and the generally accepted principles for compensating owners and third parties holding rights of use as developed on the basis of the applicable case law.
3. If during the course of the network development project carried out under the responsibility of TSO it should become apparent that any incremental capacity allocated to Shipper cannot be made available at the agreed interconnection point by the start of the relevant Contract Period but only at a later date, then both the start and end dates of that Contract Period shall be postponed accordingly. Once TSO has obtained reliable information about any such delay, TSO shall notify Shipper thereof without undue delay in a text form specifying whether and on what date the Contract Period can be expected to start. For the avoidance of doubt, the duration of any such delay may also cover an entire Contract Period. For such time as the delay continues both TSO's obligation to make capacity available to Shipper and Shipper's obligation to pay the agreed tariffs shall be suspended. Neither Party shall have any further claims or remedies against the other Party in relation thereto.
4. In the event that any capacity to be provided at any other point upstream or downstream from a respective interconnection point operated by TSO and agreed under the respective entry or exit contract, is not available by the start of the relevant Contract Period, this shall not release Shipper from any of its contractual obligations, in particular, without limitation, Shipper shall continue to be obliged to pay the tariffs agreed under the relevant entry or exit contract, and Shipper shall not be entitled to rescind the entry or exit contract in question or to terminate it in any other way.
5. In particular, without limitation, Shipper shall have no right under paragraph 4 above to invoke sections 313 (frustration of contract) or 314 (termination for cause of contracts creating continuing obligations) of the German Civil Code.