



**Conditions for the tender and procurement  
procedures for the purchase of fuel gas  
by GRTgaz Deutschland GmbH  
("Conditions of Tender")**

**As of 13<sup>th</sup> August 2013**



GRTgaz Deutschland GmbH ("**GRTgaz D**") is a market area overarching transmission system operator in the market area of NetConnect Germany ("**NCG**"). Our network connects the Czech Republic, Germany, Austria and France.

For the purchase of fuel gas which is needed for the operation of the compressor of the MEGAL pipeline system, GRTgaz D is holding a tender, from **13.08.2013 to 29.08.2013** under these conditions for the tender and procurement procedures ("**Conditions of Tender**"). The tender will be carried out on a non-discriminatory, transparent and market-oriented basis.

The following tender conditions of GRTgaz D describe the process of the tendering and contracting procedures and establish the rules to be followed by all involved in the implementation of the procedure as binding. The tender documents consist of the Conditions of Tender of GRTgaz D, and their annexes:

- **Annex 1:** Bid Form
- **Annex 2:** Bidder Guarantee
- **Annex 3:** Contract for the supply of fuel gas (including annexes)

We are inviting you to make one or more binding bid(s) by sending the tender form by **29.08.2013, 18:00 CET**. The bid(s) must consist of the completed and signed tender documents and all documents to be submitted.

For questions regarding our tender procedure, please contact Mrs. Maryline Ehlermann at the following address:

Maryline Ehlermann  
Key Account Management  
GRTgaz Deutschland GmbH  
Zimmerstraße 56 - 10117 Berlin  
Tel. 49 (0) 30 19 726 19 04 04-932  
Fax 49 (0) 30 19 726 19 04 04-999  
maryline.ehlermann@grtgaz-deutschland.de  
[www.grtgaz-deutschland.de](http://www.grtgaz-deutschland.de)

## § 1 General information on tendering and procurement procedures

- 1.1 GRTgaz D is conducting this tendering process to procure the fuel gas for the operation of the MEGAL pipeline system in the NCG market area.
- 1.2 The tender is for two contract types (see paragraphs 2.2 and 2.3).
- 1.3 Interested bidders may submit their bids in accordance with these Conditions of Tender.
- 1.4 The procedure will be carried out in English and German, with the German version of the Conditions of Tender prevailing in the event of uncertainty.
- 1.5 The bidder is responsible for the accuracy and completeness of all information, documents and evidence. Documents and/or evidence whose original language is not English or German must be submitted to GRTgaz D translated into German or English. The costs and the translation risk must be borne by the bidder.

## § 2 Subject of the call for tender

- 2.1. The subject of the tender and procurement procedures is the provision of gas by the bidder at the agreed delivery point (see § 2.5). The advertised products (Tranche A and Tranche B) are specified as follows:
- 2.2. **Tranche A**

For the period **01.01.2014, 6:00 CET to 01.01.2015, 6:00 CET**, GRTgaz D is tendering **two lots**, each of which has the following specifications:

- Minimum monthly amount: the minimum monthly total amount to be supplied to GRTgaz D will not be less than 3 GWh for the entire delivery period.
- Maximum monthly volume: The maximum monthly total amount to be supplied to GRTgaz D will not exceed 20 GWh for the entire delivery period.
- Maximum hourly Quantity: The maximum hourly amount to be supplied to GRTgaz D will not exceed 50,000 kWh/h for the entire delivery period.
- For further details, please refer to the contract for the supply of fuel gas, which is attached as **Annex 3**.

### 2.3. **Tranche B**

For the period **01.01.2014, 6:00 CET to 01.01.2015, 6:00 CET**, GRTgaz D is tendering **one lot**, which has the following specifications:

- Minimum annual amount: The minimum total annual amount to be supplied to GRTgaz D is 0 GWh for the entire delivery period.
- Maximum annual amount: The maximum total annual amount to be supplied to GRTgaz D will not exceed 100 GWh for the entire delivery period.
- Maximum hourly Quantity: The maximum hourly amount to be supplied to GRTgaz D will not exceed 55,555 kWh/h for the entire delivery period.
- For further details, please refer to the contract for the supply of fuel gas, which is attached as **Annex 3**.

2.4. Bidders may submit bids for one or more of the lots offered.

2.5. The gas volumes must be supplied to GRTgaz D alternatively at the points Oberkappel (Austria), Waidhaus/Roszvadov (Czech Republic) or at the NCG VTP.

2.6. The gas specification of GRTgaz D as detailed in **Annex 1** to the contract for the supply of fuel gas will apply (**Annex 3**).

### **§ 3 Price offered**

3. The price to be indicated by the bidder in **Annex 1** is exclusive of any applicable value added tax and other taxes and charges.

### **§ 4 Participation in the tender procedure and bidding**

4.1. The submission of a binding bid is a precondition for the consideration of the bidder in the tendering procedure. In order for a bidder to submit a binding bid and to be able to be included in the list of bidders, the documents specified in **Annex 1** must be sent with the completed and signed bid form to GRTgaz D by letter, fax or e-mail.

4.2. Each bidder can bid for one or more lots or Tranches. If more than two bids of a bidder apply to the lots of Tranche A, only the last two bids which are received by GRTgaz D will be considered and, if received simultaneously, only the lower bids will be taken into account in the award process. If more than one bid of a bidder applies

to Tranche B, then only the last bid which is received by GRTgaz D will be considered and, if received simultaneously, only the lower bid will be taken into account in the award process.

#### 4.3. Exclusion criteria

GRTgaz D is entitled to exclude bidders from the award procedure for good cause. Good cause, in particular, means:

- a) Not meeting the required credit criteria,
- b) Request/or instigation of insolvency proceedings or similar procedures,
- c) False or incorrect information
- d) Non-acceptance of the tender conditions or the fuel gas supply agreement.

## **§ 5 Procurement procedures**

- 5.1. GRTgaz D will consider all bids submitted on time for the tender period for the award procedure. The date of receipt by GRTgaz D is decisive.
- 5.2. Completed applications must be received by GRTgaz D by letter, fax or e-mail in accordance with § 4.1 **by 29.08.2013, 18:00 CET at the latest**. On completion of the bid phase, GRTgaz D will select the most economically advantageous bid. If several bidders have offered the same bid price, the bid received first will be chosen. GRTgaz D will inform bidders by e-mail as to whether they have won or not by **14:00 CET at the latest on 30.08.2013**. The successful bidder will also be informed by letter. Late or incomplete applications will not be considered.
- 5.3. The tender ends with the award of the contract. There is no entitlement to an award. GRTgaz D is under no obligation to accept a bid.
- 5.4. With the award of the contract, GRTgaz D accepts the binding bid of the bidder and a contract for supply of fuel gas (see **Annex 3**) will be concluded between GRTgaz D and the successful bidder. GRTgaz D and the successful bidder will be required to sign, for documentation purposes, the contract for the supply of fuel gas in **Annex 3**, taking into account the binding bid. With the award, the terms of the contract for the supply of fuel gas in accordance with **Annex 3** will be applicable.

## § 6 Data processing and confidentiality

- 6.1. GRTgaz D is entitled to file, store and use data received from the bidder in the context of the tender and award process under the rules of the data protection laws.
- 6.2. GRTgaz D and the bidder (collectively the "**Parties**") must treat the contents of the tender documents and all the information they have received in connection with this tender confidentially ("**Confidential Information**"), except as provided in paragraph 6.3., and not disclose or make them known to any third party (and in particular the other bidders) unless the affected party has given prior written authorisation. The parties agree to use confidential information only for the purpose of execution of the tender.
- 6.3. Each party has the right to disclose confidential information which it has received from the other party without their written permission:
  - a) to an affiliated company, provided that it is equally committed to confidentiality;
  - b) to its representatives, consultants, banks and insurance companies, if and to the extent that the disclosure is necessary for the proper performance of contractual obligations and such persons or companies have committed themselves for their part to the confidential treatment of information because of their profession or are legally required to maintain secrecy;
  - c) or to the extent that the confidential information,
    - was already legitimately known to the receiving party of this information at the time at which it received it from the other party;
    - is already publicly available or becomes available to the public other than by action or omission of the receiving party or
    - must be disclosed by a party under a mandatory statutory provision or a judicial or administrative order or a request by the regulatory authority; in which case, the disclosing party must notify the other party of this immediately.
- 6.4. The obligation to maintain confidentiality ends 4 years after the end of the bidding and award process.
- 6.5. § 6a of the German Energy Industry Act (EnWG) remains unaffected.

## **§ 7 Early termination of the process**

7. GRTgaz D is at any time entitled to terminate the tendering and contracting process prematurely and to refrain from carrying out the assignment. In this case, all documents of the bidder will be immediately destroyed by GRTgaz D.

## **§ 8 Costs**

- 8.1. GRTgaz D will not charge for participation in the tender.
- 8.2. The bidder will himself bear all costs incurred in connection with his participation in the tender and procurement procedures of GRTgaz D. This also applies in the case of early termination of the tender by GRTgaz D in accordance with § 7 of these Conditions of Tender.

## **§ 9 Deposit**

- 9.1. The bidder must prove that he has sufficient creditworthiness in the long-term range by a credit rating of at least A- according to Standard & Poor's, of A3 according to Moody's and/or of less than 220 points according to Creditreform or a comparable rating of another rating agency. GRTgaz D will review publicly available information about the financial situation of the bidder.
- 9.2. If a sufficient rating cannot be proven, the bidder must submit a written bidder guarantee to GRTgaz D. It must be supplied in the format shown in the form in **Annex 2**. The guarantor must be either a German bank certified as a customs and tax guarantor or a bank with headquarters in the Member States of the European Union and a long-term rating from Standard & Poor's in the range of A- or from Moody's of A3. The guarantee certificate will be returned
  - to a bidder who has not received any award under the procedure immediately after completion of the award process;
  - to a bidder who is successful in the award process once the requirements of Section 9.1. have been met and demonstrated to GRTgaz D.

- 9.3. Should the successful bidder or his agents not meet the obligations under the contract for the supply of fuel gas, GRTgaz D is entitled to redeem the guarantee.

## **§ 10 Force Majeure**

- 10.1. If GRTgaz D is prevented by force majeure from the implementation of the tendering and procurement process, the particular proceedings will be suspended until these circumstances and their consequences have been eliminated. GRTgaz D will do its utmost in such cases to ensure that the relevant procedures can be resumed as soon as possible.
- 10.2. Force majeure is an external, unforeseeable event that cannot be prevented or cannot be prevented in due time even by applying due diligence and technically and financially reasonable means. In particular, it includes natural disasters, terrorist attacks, power failure, failure of telecommunications links, strikes and lockouts, to the extent that the lockout is legal, or statutory provisions or measures of the government, courts or authorities (regardless of their legality).

## **§ 11 Liability**

- 11.1. For damages resulting from injury to life, limb or health, GRTgaz D will be liable under the statutory provisions. GRTgaz D will only be liable for other damages if they have been caused intentionally or through gross negligence by GRTgaz D, a legal representative or vicarious agent or assistant.
- 11.2. GRTgaz D is not liable for damages due to technical problems and/or errors in software, data processing equipment and data transmission equipment.

## **§ 12 Applicable Law**

12. These tender conditions are solely subject to the law of the Federal Republic of Germany, except for the provisions on private international law.



### § 13 Severability

13. If any provision of these Conditions of Tender or its annexes is or becomes invalid or unenforceable, this shall not affect the remaining provisions of the agreement and the annexes.

### § 14 Arbitration

- 14.1. All disputes will be settled exclusively and finally by an arbitral tribunal.
- 14.2. The arbitral tribunal will consist of three arbitrators, one of whom will chair. The chair must be qualified to hold the office of judge. The arbitral tribunal is formed by the party that has instigated the arbitration with a description of the matter in dispute appointing one arbitrator and inviting the other party to appoint a second arbitrator, whereupon the two appointed arbitrators select a chair. If a party fails to appoint an arbitrator within a period of 4 weeks, the party that initiated the arbitration will request the president of the competent court to propose a second arbitrator. The proposal is binding on both parties. If the arbitrators have not selected a chair within 4 weeks, a party may request the president of the competent court to propose a chair. The proposal is binding on both parties.
- 14.3. The place of arbitration will be Berlin. The Court with jurisdiction under § 1062 of the Code of Civil Procedure is the Court of Appeal in Berlin. In other respects, the arbitration will be subject to §§ 1025 to 1065 of the Code of Civil Procedure.
- 14.4. § 31 of the German Energy Industry Act (EnWG) remains unaffected.

### § 15 Consent of the Bidder

- 15.1. The above tender conditions together with **Annexes 1 to 3** are accepted and recognised as binding.
- 15.2. The bidder mentioned in **Annex 1** hereby declares, that
- 1) the information given in the Annexes and the documents submitted are true and accurate and reflect the current situation of his company and comply with standard practice;



- 2) no insolvency proceedings have been instigated against him, applied for or rejected for lack of estate;
- 3) he can provide a safe and reliable supply of natural gas. The bidder/supplier also declares that he will have and operate the necessary information technology in time and with adequate availability.

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Place, Date, Signature, Seal



## Annex 1 to the conditions of tender: Bid sheet for fuel gas

**Deadline: 29.08.2013, 18:00**

Letter, Fax or Email to:

Maryline Ehlermann  
Key Account Management  
GRTgaz Deutschland GmbH  
Zimmerstraße 56 - 10117 Berlin  
Tel. 49 (0) 30 19 726 19 04 04-932  
Fax 49 (0) 30 19 726 19 04 04-999  
maryline.ehlermann@grtgaz-deutschland.de  
[www.grtgaz-deutschland.de](http://www.grtgaz-deutschland.de)

### A. Master data of the bidder:

Company name (including legal form):	
Company address:	
Country:	
Contact:	
Function and department:	
Tel:	
Fax:	
Mobile:	
E-mail address:	

#### The bid must be accompanied by the following documents:

##### a) Commercial register extract

A recent extract from the professional register (in the Federal Republic of Germany, Commercial Register or Register of Craftsmen; for foreign suppliers from a Member State of the European Union, documents in accordance with Article 46 of Directive 2004/18/EC or of the State in which the supplier is established).

##### b) Annual report for the last financial year

Annual report for the last financial year, including a German or English



translation for a company not established in Germany. If the annual report is available on the Internet, it is sufficient to refer to the website.

**c) Creditworthiness**

Adequate evidence of creditworthiness under § 9 of the tender conditions.

d) A signed copy of the **conditions of tender and procurement procedures**.



## **B. Bid Form**

We hereby provide the following legally binding bid/s in accordance with the specific conditions of GRTgaz D:

**[Important note: Depending on whether the successful bidder has been awarded the contract for Tranche A and/or B, the respective relevant paragraph (s) (1. Tranche A and/or 2. Tranche B) will become part of the contract for the supply of fuel gas (as Annex 2 of the contract for the supply of fuel gas).]**

## 1. Tranche A

### Contractual quantity

In the context of the following specifications and § 3 of the contract, the contractual volume to be supplied is

- Minimum monthly volume: The minimum monthly volume to be supplied to GRTgaz D must not be less than 3 GWh for the entire delivery period.
- Maximum monthly volume: The maximum monthly volume to be supplied to GRTgaz D must not exceed 20 GWh for the entire delivery period.
- Maximum hourly volume: The maximum hourly volume to be supplied to GRTgaz D must not exceed 50,000 kWh/h for the entire delivery period.

#### Tranche A

Delivery period 1 January 2014, 6:00 CET to 1 January 2015, 6:00 CET

Delivery points are optional: Waidhaus Entry, Oberkappel Entry or VTP NCG

Lot 1	
Fixed Price (€/MWh)	Delivery point <sup>1</sup>

Lot 2	
Fixed Price (€/MWh)	Delivery point <sup>1</sup>

<sup>1</sup> Important note: Only one delivery point can be chosen.

## 2. Tranche B

### Contractual quantity

The total annual volume to be supplied to GRTgaz D is in the context of the following specifications and § 3 of the contract entirely at the discretion of GRTgaz D:

- Minimum annual volume: The minimum total annual volume to be supplied to GRTgaz D is 0 GWh for the entire delivery period.
- Maximum annual volume: The maximum total annual volume to be supplied to GRTgaz D must not exceed 100 GWh for the entire delivery period.
- Maximum hourly volume: The maximum hourly volume to be supplied to GRTgaz D must not exceed 55,555 kWh/h for the entire delivery period.

### Tranche B

Delivery period 1 January 2014, 6:00 CET to 1 January 2015, 6:00 CET

Delivery points are optional: Waidhaus Entry, Oberkappel Entry or VTP NCG

Lot 1	
Price (€/MWh)	Delivery point <sup>1</sup>
<p><b>Price indexed</b></p> <p>The contractual price is:  <math>P(\text{€/MWh}) = x * \text{Daily reference price natural gas NCG}</math></p> <p>Whereas x is a factor to be defined by the bidder</p> <p>X =</p>	

<sup>1</sup> Important note: Only one delivery point can be chosen.



We agree to this and confirm that the above bid(s) represent(s) a binding bid to conclude a contract for the supply of fuel gas (see **Annex 3**) with GRTgaz Deutschland GmbH. The acceptance of the above bid by GRTgaz Deutschland GmbH will automatically lead to the conclusion of such a contract. GRTgaz Deutschland GmbH and the bidder will sign the contract for the supply of fuel gas in a timely manner for documentation purposes.

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Place, Date, Signature, Seal





## Annex 2 to the Conditions of Tender: Bidder guarantee

On behalf of

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- Client -

we

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issue the following

Bidder Guarantee

in favour of

GRTgaz Deutschland GmbH,  
Zimmerstraße 56,  
D - 10117 Berlin  
- Beneficiary -

We undertake unconditionally and irrevocably to pay the beneficiary an amount of

€2,500,000.00 (in words two million five hundred thousand)

on first request within 10 (ten) banking days after receipt of the request of the beneficiary to pay. The right to file a deposit is excluded.



After the expiry of the guarantee in accordance with § 9 of the Conditions of Tender, the beneficiary is required to return the original certificate of guarantee to us immediately.

This guarantee is subject to German law. It is drawn up in both German and English. For any disputes concerning the interpretation of this guarantee, the German version alone will be applicable.

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Place, Date, Signatur, Seal

### **Annex 3 to the Conditions of Tender: Contract for the supply of fuel gas**

**[Important note: Depending on whether the successful bidder has been awarded the contract for Tranche A and/or B, the Bid sheet for fuel gas (Annex 1 of the Conditions of Tender) will become part of this contract for the supply of fuel gas (as Annex 2 of the Contract for the supply of fuel gas).]**

**Contract Number:  
TRANCHE A AND/OR B**

**Contract to supply  
fuel gas  
- hereinafter the "Contract" -**

**between**

**GRTgaz Deutschland GmbH  
Zimmerstraße 56  
10117 Berlin**



- hereinafter "GRTgaz D" -

and

[Supplier

Address]

- hereinafter the "Supplier" -

- both below also jointly designated as the "**Parties**" and individually as a "**Party**" -



## **Preamble**

GRTgaz D, as a market area overarching network operator in the market area of NetConnect Germany ("**NCG**") and the transmission system operator of a gas pipeline system between the German-Czech border near Waidhaus, the Franco-German border near Medelsheim and the German-Austrian border near Wildenranna and Schwandorf/Rothenstadt (the "**MEGAL pipeline system**"), has invited interested parties to bid for supply of gas to cover its operating needs.

The procedure for selection of the most economically advantageous bid has been conducted under the terms of the tender and procurement procedures for the purchase of fuel gas of GRTgaz Deutschland GmbH ("**Conditions of Tender**") on a transparent, non-discriminatory and market-oriented basis.

The supplier has been awarded the contract to supply GRTgaz D with fuel gas as per the conditions specified in this contract, as he has submitted the economically most advantageous bid. For documentation purposes, the Parties conclude the following contract:

## **§ 1 Definitions**

The terms and expressions that are used with initial capital letters in this Contract have the following meanings or, where appropriate, the meaning given to those terms and expressions in other sections of this contract, except when the context indicates otherwise:

**Working day:** means a day on which banks are open for general business in Germany.

**Supplier:** means all persons who have been committed by the supplier or GRTgaz D within the meaning of § 278 of the German Civil Code.

**Natural gas or gas:** means the natural gas supplied in accordance with the terms and conditions of this contract.

**EURIBOR:** means the percentage reference rate per year for each period of one month, which is set by the European Central



Bank for interbank transactions in euros and published for that day.

- Euro (€):** means the single currency of the Member States of the European Union that have adopted the single currency already or will adopt in the future in accordance with the Treaty establishing the European Community. In the event that the Federal Republic of Germany should adopt another currency instead of the euro single currency, the invoice amounts will be settled in the currency then applicable in the Federal Republic of Germany.
- Holiday:** means Saturdays, Sundays, national holidays in Germany and any other day on which banks are closed in Germany.
- TSO or FNB:** means the transmission system operator at the delivery point, namely GRTgaz D.
- Gross negligence:** means the deliberate disregard of the care required for handling traffic which is required of a reasonable and prudently planning operator ("Reasonable and Prudent Market Participant") with respect to any obligations under this Contract by any party or any of its respective officers or key personnel or their assistants and contractors who have acted to perform their function.
- Delivery point:** is the entry point agreed in **Annex 2**; either Oberkappel Entry, Waidhaus Entry of the MEGAL pipeline system or the Virtual Trading Point NCG.
- Delivery period:** The delivery period is the period agreed in **Annex 2**.
- Normal cubic metre (Nm<sup>3</sup>)** means a volume of gas at 0 °C and at an absolute pressure of 1.01325 bar.

- Calorific value (GCV):** means the amount of heat in terms of kWh/m<sup>3</sup> which is released at a constant pressure during the combustion of a standard cubic metre of dry gas in the air, when the combustion products are cooled down to the initial temperature of the gas and the oxygen (25 °C) and are returned to the source pressure of the gas and oxygen (1.01325 bar) and the free and/or bound water which has become available during the combustion is present in the liquid state.
- Hour:** represents a unit of time with the duration of 60 minutes at the start of every full hour.
- Day:** means the period beginning at 6.00 (CET) on the one day and ending at 6.00 (CET) on the next following day.
- Affiliated company:** is any company that is connected with the supplier or GRTgaz D within the meaning of § 15 of the German Stock Companies Act.
- Reasonable and prudently planning operator:** means the standard of care which must be applied by a party in performing their obligations under this contract and the degree of care, prudence and foresight reasonably and normally applied by an experienced market participant which operates under the same or similar circumstances and conditions in the same commercial area taking due account of the interests of the other party.
- Vicarious agent:** means persons who are committed by the supplier or GRTgaz D within the meaning of § 831 of the German Civil Code.
- Contract:** means this contract in its current version, including all associated paragraphs, annexes and folders.

- Contractual price:** means the price of gas at the delivery point during the delivery period under § 4.
- Virtual Trading Point NCG** Abbreviated to VTP NCG.
- Week:** means a period beginning at 6.00 (CET) on a Monday and ending at 6:00 (CET) on the following Monday.

## § 2 Subject of the contract and Contractual volume

- (1) GRTgaz D buys and collects and the supplier sells and delivers to GRTgaz D fuel gas under the provisions of this contract for the delivery period according to **Annex 2**.
- (2) The Supplier is obliged to reserve the contractual volume according to **Annex 2** and in the context of its specifications and to deliver it to the delivery point according to the volume notice (§ 3).
- (3) GRTgaz D undertakes to collect and pay for the volumes of natural gas purchased by it in accordance with paragraph (2) from the supplier and to be supplied to the delivery point. GRTgaz D has the right to refuse acceptance, in the event that the system stability is threatened or disturbed.

## § 3 Volume notice

- (1) The contractual volume to be supplied to GRTgaz D daily, under the provisions of § 2, is at the discretion of GRTgaz D and the supplier will be notified a month in advance. Further details of the work process should be governed separately in an operating agreement between the successful supplier and GRTgaz D.
- (2) The volume notice contains at least:
  - The contract number of the fuel gas supply contract;
  - The NCG balancing group number of GRTgaz D;
  - The delivery point;

- The validity period;
  - The hourly volume in kWh.
- (3) GRTgaz D sends the supplier by fax or e-mail by the 25<sup>th</sup> calendar day of each month prior to the month of delivery a volume notice of the contractual volume for each day of the delivery month.
- Notified volumes will be specified in kWh/h at 25 °C (hourly energy volume).
- (4) GRTgaz D can alter the monthly volume notice at any time for the entire current month in total or for individual days. In the event that the altered volume notice will take effect on the next day, the change notification must be made on the previous day by 14:00.
- (5) If by the 25th calendar day of the month preceding the delivery month no volume notice of the contractual volume for each day of the delivery month has been received, the notified volume is deemed to be the monthly volume notice of the previous month. The confirmation of each volume notice is made by the nomination at the delivery point. Paragraph (4) remains unaffected.
- (6) The initial or altered volume notice is sent to the supplier for the attention of the contact person specified in **Annex 3**.
- (7) The supplier confirms to GRTgaz D by fax or e-mail the receipt of the initial or altered volume notice without delay. This confirmation will be sent to the contact person of GRTgaz D specified in **Annex 3**.
- (8) The supplier will provide the quantities of gas through an exit nomination at the agreed delivery point (**Annex 2**). GRTgaz D takes over the agreed volume of gas by an entry nomination in accordance with the provisions of the operating agreement to be agreed with the supplier at the delivery point. GRTgaz D has the right to reduce or interrupt the entry nominations, if this is technically required by the system. In this case, no penalties will apply under § 11 paragraph (1). The required exit capacity from the upstream network must be recorded by the supplier. A failure of information technology does not release the supplier from the obligation to deliver.

#### § 4 Contractual price

The contractual price is defined in **Annex 2**. The contractual price is exclusive of any applicable value added tax and other taxes and fees.



## § 5 Supplied quality of the gas and non-compliant gas

- (1) The quality of the gas (including the specific calorific value and pressure) of the gas to be supplied under this contract shall comply with the specifications set out in **Annex 1** of this Contract. The quality and quantity as measured by the FNB.
- (2) In the event that the quality of the natural gas supplied at the delivery point or of the gas in the process of delivery at the delivery point is different from the gas quality according to paragraph (1) ("**non-compliant gas**"), the supplier will notify GRTgaz D without delay of this deviation and its expected duration, as soon as he is aware of it. The supplier undertakes to take steps that are reasonably practicable to procure natural gas which is in line with the gas quality under paragraph (1) and to supply it as soon as reasonably practicable.
- (3) In the event that the natural gas supplied to the Delivery Point or in the process of delivery is non-compliant gas under paragraph (2), GRTgaz D has the choice of accepting or rejecting the natural gas supply in whole or in part. GRTgaz D must inform the supplier of its decision without delay by telephone or in writing, after it has received the information of the supplier in accordance with paragraph (2). In the event that GRTgaz D accepts the gas and is aware of the difference in quality, it is not entitled to assert any claims against the supplier due to this difference in quality.
- (4) In the event that the natural gas supplied to the delivery point or in the process of supply is non-compliant gas under paragraph (2) and GRTgaz D has not accepted the non-compliant gas according to paragraph (3), the supplier as the defaulting party must indemnify GRTgaz D from and against any direct loss, damage and expenses including all those losses, damages and expenses for which GRTgaz D is or will be liable as a result of such default.

## § 6 Transfer of ownership and risk

The risk of loss and property rights and the ownership of the gas to be supplied under the terms of this contract passes from the supplier to GRTgaz D with immediate effect at the moment of delivery to the delivery point.

## § 7 Guarantee

Each party guarantees that it has procured all the necessary arrangements for the proper fulfilment of their respective obligations under this Contract. Each party guarantees that it has all the government-mandated, governmental and other authorisations, licences, permits and approvals that are legally required to comply with its contractual obligations and that there are no third-party rights that prevent the parties from fulfilling their contractual obligations.

## § 8 Invoicing and payment

- (1) On the tenth (10<sup>th</sup>) calendar day of each month, the supplier sends GRTgaz D or in the event of a penalty under § 11 paragraph (1) GRTgaz D sends the supplier, a monthly invoice for the previous month ("**monthly invoice**"). The invoice for each month M contains:
  - the price as under § 4 or § 11 paragraph (1),
  - the allocated volume per day and during the month.
- (2) Each monthly invoice is preceded by a monthly report that shows the allocated volumes for each day of the month and is sent by the supplier by the third working day of the month, as certified by GRTgaz D.
- (3) GRTgaz D makes the payment to the supplier in accordance with the above paragraph (1) on the account notified of the supplier to GRTgaz D under paragraph (8) by the 24<sup>th</sup> calendar day of the month for the previous month ("**Expiration Date**"). In the event that the due date falls on a holiday, the due date is the next working day.
- (4) Any payments under this contract will be made by the paying party in Euro or in the currency valid in the Federal Republic of Germany on the due date. Payments will be made by direct bank transfer or similar immediate transfer by the due date to the bank and in favour of the corresponding bank account of the supplier specified in paragraph (8).
- (5) In the event that the payment is not made on the due date ("**Late Payment**"), the supplier or GRTgaz D without prejudice to any further claims have the right to charge interest at a rate of three (3) percentage points above one (1) month EURIBOR of the due date from the due date to the date of actual payment.

- (6) In the event that a party in good faith disputes the accuracy of an invoice, it must submit on or before the due date a written statement of the reason for the dispute and pay the undisputed amount invoiced no later than the due date. The parties are required to agree amicably on the disputed amount as soon as possible. In the event that it turns out ultimately that any retained disputed amount has become due and unless otherwise agreed by the parties, the retained amount is paid without delay along with the interest payable on the amount of interest from the relevant due date until the date of actual payment, which is based on a rate of three (3) percent above one (1) month EURIOBOR on the due date.
- (7) For information regarding billing and payment please consult the contacts of GRTgaz D and the supplier specified in **Annex 3**.
- (8) Payments will be made to the bank account designated in **Annex 3**:

## § 9 Force Majeure

- (1) In the event that a party cannot meet some or all of its obligations due to an event of force majeure under paragraphs (2) this party is exempted from fulfilling its contractual obligations for the duration of this event and to the extent that this force majeure event interferes with it in the fulfilment of its obligations. The other party is exempted from their respective obligations to the extent and as long as said first party is prevented from fulfilling its obligations due to force majeure.
- (2) Force Majeure means any event or any facts which are unpredictable and outside the control of the party concerned (the "**Affected Party**"), which they could not avoid or overcome, on the basis that this party has acted or is acting as a Reasonable and Prudently Planning Operator, which have as their result or cause the incapacity or delay of the affected party to fulfil its obligations arising out of this contract. Insolvency, irrespective of its origin, will not count as a force majeure event. Without limiting the generality of the foregoing, events of force majeure include, in particular, natural disasters, war, labour disputes, acts of sovereignty by governments and other institutions (regardless of their legality), breach or failure of any facilities or equipment which can be used directly to fulfil this contract, in particular the transport network immediately above or below the delivery point for both parties.
- (3) The party that cannot meet its obligations must inform the other party without delay about the conditions preventing it from the performance of its obligations and must

make all commercially reasonable efforts to mitigate and eliminate as rapidly as possible the effects of Force Majeure.

## **§ 10 Replacement**

- (1) If the supplier or a third party authorised by it fail to meet obligations resulting from this contract for reasons for which the supplier or the authorised third party are responsible, GRTgaz D will be entitled to invoice the supplier for the total expenses for any gas replacement that may be necessary as a result.
- (2) § 11 and 12 are not affected by this. However, payments under these paragraphs will be credited.

## **§ 11 Contractual penalties**

- (1) In the event that the amount provided by the supplier is different from the contractual volume (§§ 2, 3), GRTgaz D will charge the supplier a penalty calculated as follows:
  - a. If the supplier falls below the amounts declared in accordance with § 3, the supplier must pay the structuring fee and price for positive balancing energy to GRTgaz D.
  - b. If the Supplier falls below the agreed minimum annual quantity (§ 3), the supplier must pay the average price of the increased or decreased amount (Mehr- und Mindermengenpreis) in the year multiplied by three (3) to GRTgaz D.
- (2) The structural contributions (Strukturierungsbeiträge) valid for the period, positive balancing energy prices (positive Ausgleichsenergiepreise) and addition/reduction volume prices (Mehr-/Mindermengenpreise) will be published on the website of NetConnect Germany at <http://www.net-connect-germany.de>.
- (3) § 12 will not be affected.

## § 12 Liability

- (1) Except for the provisions of paragraph (2) and § 11 and § 8 (Late Payment) and § 5 (damages as a result of non-compliant gas), the liability of the parties under or in connection with this Contract is limited to liability for gross negligence and intentional misconduct.
- (2) Nothing in this Contract causes the exclusion or limitation of liability of any party for personal injury or death resulting from gross negligence or intentional misconduct of that party and any of its officers, support personnel and contractors.

## § 13 Term and Termination

- (1) This contract is valid for the period defined in **Annex 2**. Thereafter, the contract remains legally binding on the parties, but only in respect of all rights and obligations already established or to be established under the Contract that have already been completely fulfilled by both parties.
- (2) A party has the right to terminate the contract for good cause without notice on an extraordinary basis ("**Early Termination**"). A good cause arises especially if one party breaches a material obligation under this Contract or the Federal Agency imposes for GRTgaz D binding rules regarding fuel gas procurement or if the assets of the supplier have been subject to an admissible application for the opening of insolvency proceedings.
- (3) The notice must be given in writing.

## § 14 Assignment

Either party may only with the prior written consent of the other party assign its rights and/or obligations under this contract to a third party. This consent will not be unreasonably withheld.

## § 15 Invalidity of provisions

- (1) If any provision of this Contract or its annexes is or become invalid or unenforceable, the contract and the annexes will remain unaffected in other respects.
- (2) The contracting parties undertake to replace the invalid or unenforceable provision in a suitable procedure by other provisions, with as similar as possible economic result. This applies correspondingly to loopholes.

## § 16 Confidentiality

- (1) This Contract and all information provided under it are confidential, unless such information is already publicly available for some other reason as a result of a wrongful act of the party who has received such information ("**Confidential Information**"). For clarity, all information and documents about the MEGAL pipeline system or any related documents obtained prior to and during the contractual relations and the fulfilment of the contract constitute Confidential Information.
- (2) Both parties undertake to treat such Confidential Information as confidential and pass it on to any third party only with the prior written consent of the other party.
- (3) Each party has the right to disclose confidential information which it has received from the other party, without its written permission:
  - a) to an affiliated company, provided that it is equally committed to confidentiality;
  - b) to its representatives, consultants, banks and insurance companies, if and to the extent that disclosure is necessary for the proper performance of contractual obligations and such persons or companies have committed themselves before to the confidential treatment of the information because of their profession or are legally required to maintain secrecy;
  - c) or to the extent that this confidential information;
    - a. is already known legitimately to the receiving party of this information at the time at which it was received from the other party;
    - b. is already publicly available or accessible to the public other than by action or omission of the receiving party or

- c. must be disclosed by a party under a mandatory statutory provision or a judicial or administrative order or a request of the regulatory authority; in which case the disclosing party must notify the other party of this without delay.
- (4) If information has been made available to any third party under paragraph (2), as a precondition for such disclosure adequate security measures must be taken to prevent that third party from making this information further available without the written consent of the parties and using this information for any purpose other than the one for which this information has been made available.
- (5) The obligation to maintain confidentiality ends 4 years after the end of the contract.
- (6) § 6a of the Energy Act remains unaffected.

## **§ 17 Governing Law and Arbitration**

- (1) This Contract will be governed by and construed in accordance with the substantive laws of the Federal Republic of Germany, excluding any application of the "United Nations Convention on Contracts for the International Sale of Goods" of 11 April 1980.
- (2) Any dispute arising out of or in connection with this Contract, in particular disputes concerning the provisions, validity, effectiveness, interpretation and performance of this contract, will be finally settled by arbitration in Berlin in accordance with the Conciliation and Arbitration Rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts.
- (3) The arbitral tribunal will consist of three arbitrators, one of whom will chair it. The chair must be qualified to hold the office of judge. The arbitral tribunal is formed by the party that has taken the matter in dispute to arbitration appointing one arbitrator and asking the other party to designate a second arbitrator, whereupon the two appointed arbitrators select a chair. If a party fails to appoint an arbitrator within a period of 4 weeks, the party that initiated the arbitration will request the president of the Higher Regional Court in Berlin to propose a second arbitrator. The proposal is binding on both parties. If the arbitrators have not selected the chair within 4 weeks, a party may request the President of the Higher Regional Court in Berlin to propose a chair. The proposal is binding on both parties.

- (4) The responsible Court under § 1062 of the Civil Procedure is the Court of Appeal in Berlin. In other respects, the arbitration will be subject to §§ 1025 to 1065 of the Code of Civil Procedure.
- (5) § 31 of the Energy Act remains unaffected.

## **§ 18 Notices and Announcements**

Unless otherwise stipulated in this Contract, all notices, statements or invoices that are sent from one party to the other must be made in writing by letter or fax. As far as the other party agrees, the transmission of statements, volume notices or other messages by electronic communications and data transmission (e-mail) is permitted.

## **§ 19 Economic clause**

- (1) If during the term of this contract unforeseen circumstances arise which could have significant economic, technical and legal implications for the contract that were not, however, envisaged or at the time of execution of the contract could not be considered, the parties may apply for a change of the contract to the extent that it would be unreasonable for the requesting party to perform or fulfil a specific provision of this Contract.
- (2) The application will contain a justification with a proposal for an amendment of the contract.
- (3) The application for amendment must be submitted to the other party within a reasonable time from the date on which the requesting Party is informed of the relevant fact and its impact on the performance of the contract. The parties will then consult with each other to carry out the modification of the contract on a fair basis.





## § 20 Written form

Any additions, changes or supplements to this contract must be in writing and will require the signature of both parties. The written form requirement also applies to changes to this written form clause.

## § 21 Language

If the contract is drawn up in English, the German version is decisive in the event of conflict.

## § 22 Annexes

**Annexes 1 to 3** to this Contract are part of it.

This Contract has been duly signed in two original copies, one for GRTgaz D and one for the supplier.

GRTgaz Deutschland GmbH  
Berlin, on

Supplier  
Location, on

## **Annex 1 to the Contract for the supply of fuel gas: Fuel gas specification**

### **Gas Specification**

The gas to be transferred or handed over at the entry points and/or exit points of the MEGAL pipeline system must comply with the respective provisions of the DVGW worksheet G 260, 2<sup>nd</sup> gas family in the valid version.

Gas at the entry points Waidhaus and Oberkappel must also comply with the following specifications:

- a) The calorific value must be minimum 10,700 kWh/m<sup>3</sup> and maximum 12,800 kWh/m<sup>3</sup>.
- b) The Wobbe Index must be between 13,400 MJ/m<sup>3</sup> and 15.7 kWh/m<sup>3</sup>.
- c) The following maximum levels must not be exceeded:
  - a. Oxygen (O<sub>2</sub>) 0.5 vol. %
  - b. Carbon dioxide (CO<sub>2</sub>) 3 vol. %
- d) The carbon content per volume
  - a. C1 over 81%
  - b. C2 below 10.5%
  - c. C3 below 4.2%
  - d. C4 below 2%
  - e. C5 below 1%
- e) The content of hydrogen sulphide (H<sub>2</sub>S) must not exceed 5 mg/m<sup>3</sup>.
- f) The mercaptan sulphur content (RSH) must not exceed 6 mg/m<sup>3</sup>. A short-term increase to 16 mg/m<sup>3</sup> is allowed.
- g) The total sulphur content (S) must not exceed 30 mg/m<sup>3</sup>. A short-term increase to 150 mg/m<sup>3</sup> is allowed.
- h) At an absolute pressure of 40.2 bar, the dew point of water must not exceed - 8 °C. The dew point of water at the exit point Medelsheim/Obergailbach must not exceed - 8 °C at an absolute pressure of 65 bar.
- i) The dew point for hydrocarbons may not exceed 0 °C at absolute pressures from 1 to 81 bar.



**Annex 2 to the Contract for the supply of fuel gas: - Bid sheet for fuel gas  
(Copy of Annex 1 to the conditions of tender: Bid sheet for fuel gas  
provided by the supplier)**

## **Annex 3 to the Contract for supply of fuel gas: contacts and bank account**

### **1. On § 3 paragraph (6) of the Contract**

The volume notice will be sent to the supplier by GRTgaz D FAO the following contact:

**Name:**

**E-mail:**

**Fax:**

### **2. On § 3 paragraph (7) of the Contract**

The confirmation of the volume notice will be sent by the supplier by fax or e-mail to the following contact of GRTgaz D:

Mr. Nikolaj Kotiasvili  
GRTgaz Deutschland GmbH  
Zimmerstrasse 56  
10117 Berlin  
Germany  
Tel. +49 30 72 61 90 49 46  
Fax: 49 30 72 61 90 49 90  
Email: [fuelgas@grtgaz-deutschland.de](mailto:fuelgas@grtgaz-deutschland.de)

### **3. On § 8 paragraph (7) of the Contract**

Information regarding billing and payment at GRTgaz D is available from the following contact:

Dr. Bernd Rachlitz  
GRTgaz Deutschland GmbH  
Zimmerstraße 56  
10117 Berlin  
Germany  
Tel: 49-30-72 61 90 49 17  
Fax: 49-30-72 61 90 49 99  
Bernd.Rachlitz @ GRTgaz-deutschland.de



For information regarding billing and payment from the supplier the following contact will be available:

XXX

**4. On § 8 paragraph (8) of the Contract**

Payments will be made by the respective debtor by transfer to the bank account indicated below:

Supplier

XXX

GRTgaz D

XXX