

**Terms and Conditions for the Tender and Award
Process for the Purchase of Fuel Gas of GRTgaz
Deutschland GmbH**

As of: 11.10.2011



Preamble

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

GRTgaz D is conducting a tender process for the purchase of fuel gas from 11.10.2011 to 24.10.2011 in accordance with these Terms and Conditions for the tender and award process. GRTgaz D seeks to guarantee that the lowest offer is contracted and is thus conducting this tender in a discrimination-free, transparent, and market-oriented manner. This ensures that only the most cost-efficient offer will be contracted.

The following Terms and Conditions of tender of GRTgaz D provide a description of the tender and award process and bindingly set out the rules to be complied with by all participants during the process. The tender documents consist of:

- The Terms and Conditions for the tender and award process of GRTgaz D and its annexes:
 - Annex 1: Qualification Form;
 - Annex 2: Gas Specification;
 - Annex 3: Tender Form;
 - Annex 4: Bid Bond

You are requested to provide us with a binding offer by sending us the tender documents by **24th Oktober 2011**, 12:00 hours CEST at the latest. The offer shall consist of the fully completed and signed tender documents.



Ms Inga Thomas will be happy to answer any questions you might have relating to our tender at the address provided below.

Inga Thomas
Head of Key Account Management
GRTgaz Deutschland GmbH
Zimmerstr. 56
D- 10117 Berlin

Mobile: 00-49 172 39 59 455

Fax: 00-49 30 72 61 90 49- 99

E-Mail: inga.thomas@grtgaz-deutschland.de

Web: www.grtgaz-deutschland.de

Article 1 General provisions relating to the tender and award process

A precondition for participation in the tender is the admission for submission of a qualified offer. Such an offer can only be submitted by tenderers which fulfil the preconditions under Article 7 Section 1. The process shall be carried out in the German and English languages; if there is any inconsistency or ambiguity between the two versions, the German version shall prevail. The tenderer shall be responsible for the correctness and completeness of all data, documents and evidence supplied. English or German translations of documents and/or evidence, which have not been issued in German or English originally, shall be submitted to GRTgaz D. The tenderer shall bear both the cost and the risk of translation.

Article 2 Subject matter of the tender

2.1. Subject matter of the tender and award process shall be the provision of gas by the tenderer at the delivery point on a firm basis. The products shall be specified as follows:

- Delivery of the total quantity: The maximal total annual quantity may amount up to 500 GWh.



- Minimal annual quantity: The minimal annual quantity to be delivered to GRTgaz D shall not fall below 120 GWh for the whole period of delivery.
- Maximal hourly quantity: The maximal hourly quantity to be delivered to GRTgaz D shall not exceed 94.100 kWh/h for the whole period of delivery.
- Minimal hourly quantity: The minimal hourly quantity to be delivered to GRTgaz D shall not fall below 13.400 kWh/h for the whole period of delivery.

2.2. Gas Specification

The gas specification of GRTgaz D shall be applicable. It is provided in Annex 2 to these Terms and Conditions.

Article 3 Operational procedures of delivery

The contractual amount to be delivered to GRTgaz D on a daily basis within the limits of the provisions under Article 2 Section 2 No. 1 shall be at the discretion of GRTgaz D and shall be communicated to the successful tenderer in advance. The operational procedure shall be set out in an Operating Agreement between the successful tenderer and GRTgaz D, which is otherwise specified.

Article 4 Offer price

The offered prices P in appendix 3 shall be exclusive of any applicable value added tax and other taxes and fees. The tenderer shall submit a binding offer.

Article 5 Delivery-/Acceptance points

5.1. The successful tenderer shall make available the gas quantities by an exit nomination from one of the upstream networks of GRTgaz D at the points Obergailbach Exit (France), Oberkappel Exit (Austria) or Waidhaus/Roszvadov Exit (Czech Republic). GRTgaz D shall accept the agreed gas quantity by an entry nomination according to the provisions of the Operating Manual¹ at the acceptance points Medelsheim Entry, Oberkappel Entry or Waidhaus Entry. The required entry capacity shall be made

¹ http://www.grtgaz-deutschland.de/content/kundenbereich/kapazitaetsinformationen/kivertraege/documents/C_GRTgazD_%20Annex2_Standard_Terms_and_conditions_OperatingManual_EN.pdf



available by GRTgaz D on an interruptible basis. GRTgaz D shall be entitled to reduce or to interrupt entry nominations if required by the system. In this event, no contract penalties pursuant to Article 14 of the Fuel Gas Delivery Contract shall apply. The tenderer shall book the required exit capacity from the upstream network.

- 5.2. A breakdown of the information technology does not release the successful tenderer from his obligation to deliver.

Article 6 Period of delivery

The period of delivery shall be from 1st January 2012 06:00 hours to 1st January 2013 06:00 hours.

Article 7 Participation in the Tender process and submission of tenders

- 7.1. The submission of a binding tender is a precondition for the consideration of the tenderer in the award process. In order to submit a binding tender as a tenderer and to be included in the list of tenderers, the following documents need to be sent to GRTgaz D together with the tender:
- a) A completed qualification form (Annex 1) signed by the interested party or by an authorized representative,
 - b) A signed copy of these Terms and Conditions for the tender and award process,
 - c) Proof of Creditworthiness pursuant to Article 12 of these Terms and Conditions,
 - d) A copy of a current trade register extract, in the case of companies not registered in Germany a comparable proof regarding authorization to represent and financial resources (for example, register extract) including a German or an English translation thereof,
 - e) A business report of the last completed year of business, in the case of companies not resident in Germany with a German or an English translation thereof. In the event that the business report is available on the Internet, a reference to the website shall be sufficient.



7.2. For the submission of tenders, the Tender Form of GRTgaz D (Annex 3) shall be used exclusively.

7.3. In the event that the interested party has been admitted as shipper of GRTgaz D, no proof of performance according to Section 7.1. Nos. c) to e) needs to be submitted.

7.4. Exclusion criteria

GRTgaz D shall be entitled to exclude tenderers from the award process for material reason. A material reason shall be, including but not limited to:

- a) Non-performance of the required creditworthiness criteria,
- b) Application for/or initiation of insolvency proceedings or of comparable proceedings,
- c) Falsified or incorrect indications,
- d) Non-acceptance of the Fuel Gas Delivery Contract.

Article 8 Award process

8.1. The tender form and the other documents referred to in Article 7 Section 1 shall be submitted to GRTgaz D by letter, fax or as e-mail attachment in „Portable Document Format“ (PDF) after completion and signature. For the award process, GRTgaz D shall consider all offers received for the tender period.

8.2. After termination of the tendering phase, GRTgaz D shall determine the economically most advantageous offer. The tender shall terminate with the award of contract. There is no claim to the award of contract. GRTgaz D shall not be obligated to accept a binding offer.

8.3. The complete documents shall be received by GRTgaz D by 24th October 2011, 12:00 hours CEST at the latest. GRTgaz D shall inform the tenderers by email on 24th October 2011, 14:00 hours CEST whether or not they have been awarded contract. The successful tenderer shall additionally be informed by letter. Tenders received late or incomplete tenders shall not be considered.



- 8.4. Only one tender from each tenderer shall be accepted bindingly. In the event that several tenders of a tenderer are present, only the last offer received by GRTgaz D shall be considered in the tender process, and in the event that they were received at the same time, only the most advantageous offer shall be considered. In the event that several tenderers offered the same price, the first offer received shall be chosen.
- 8.5. The successful tenderer shall be obligated to sign the Fuel Gas Delivery Contract, which has been published in advance on the website of GRTgaz D.

Article 9 Data processing and confidentiality

- 9.1. GRTgaz D shall be entitled to collect, save and use the data of the tenderer received within the tender and award process within the limits of the provisions of the data protection acts.
- 9.2. Subject to the provisions of Section 9.1 and Section 9.3, the Parties shall treat confidentially the content of this tender documents and all information which they obtain in connection with said contract (hereinafter referred to as "confidential information") and shall not disclose such confidential information or make it accessible to third parties without the prior written consent of the Party affected. The Parties undertake to use the confidential information obtained exclusively for the purpose of performing the contract concerned.
- 9.3. Either Party shall be entitled to disclose without the written consent of the other Party any confidential information obtained from the other Party
- a) to an affiliated company, provided that such company assumes the same confidentiality obligation;
 - b) to its representatives, consultants, banks and insurers if and to the extent that disclosure is needed for proper performance of the contractual obligations and such persons or companies have undertaken to treat such information confidentially prior to the receipt thereof or are under a professional secrecy obligation in respect of such information; or
 - c) to the extent that the confidential information
 - was legitimately known to the Party receiving the information at the time it was obtained from the other Party;

- was already in the public domain or becomes publicly available other than through an act or omission of the receiving Party; or
- was to be disclosed by a Party due to a statutory provision or a court or official order or a request of the regulatory authorities; in any such case, the disclosing Party shall inform the other Party thereof without undue delay.

9.4. The confidentiality obligations shall remain in force for a period of 4 (four) years after the expiry or termination of the contract concerned.

9.5. Section 9 of the Energy Industry Act (EnWG) shall remain unaffected.

Article 10 Premature termination of the process

GRTgaz D shall be entitled at anytime to prematurely terminate the tender and award process and to refrain from conducting the award process. In this event, all documents of the tenderers shall be destroyed by GRTgaz D without undue delay.

Article 11 Cost

11.1. GRTgaz D shall not charge any fees for the participation in the tender.

11.2. The tenderer shall bear any costs accruing in context with its participation in the tender and award process of GRTgaz D. This shall also apply in the event that the tender is terminated prematurely by GRTgaz D pursuant to Article 10 of these Terms and Conditions.

Article 12 Assessment of creditworthiness and security

12.1. The tenderer must produce proof of sufficient creditworthiness through a long-term Standard & Poor's rating of at least A- and or a long-term Moody's rating of A3 or a Creditreform rating of less than 220.

12.2. Where the tenderer has not demonstrated a sufficient rating, he is obligated to submit to GRTgaz D a written Bid Bond (Annex 4). This guarantee shall be submitted in the



form resulting from the Form according to Annex 4. The guarantor shall either be a German financial institution authorized as a customs and tax guarantor in Germany or a bank with head office in one of the member states of the European Union and a long-term Standard & Poor's rating of A- or a long-term Moody's rating of A3. The guarantee document shall be returned

- To a tenderer, which has not received an award of contract, directly after termination of the award process;
- To a successful tenderer within the award process, provided it fulfils the requirements of Article 12 Section 1 and provides evidence thereof to GRTgaz D, or that the sum indicated in its tender has been transferred to GRTgaz D.

12.3. In the event that the successful tenderer or its agents do not fulfill the obligations resulting from these General Terms and Conditions , or have not paid to GRTgaz D the sum indicated in its tender in accordance with the terms and conditions set out in the Fuel Gas Supply and Delivery Contract, GRTgaz D shall be entitled to redeem the guarantee.

Article 13 Force Majeure

13.1. In the event that GRTgaz D is restricted by force majeure in conducting this tender and award process, the respective process shall remain dormant until these conditions and their consequences have been eliminated. In these events, GRTgaz D shall do its utmost to ensure that the respective process can be continued as quickly as possible.

13.2. For the purposes of these Terms and Conditions for Access to the Network, "force majeure" shall be deemed any unforeseeable external circumstance which the Party affected could not have been expected to prevent or could not have prevented in good time by applying reasonable care and measures which it would have been technically feasible and commercially viable to take. Without limitation, force majeure shall include natural disasters, terrorist attacks, power failure, failure of telecommunications connections, strikes and lock-outs, provided that the lock-outs are lawful, and legal provisions or measures by governments, courts or authorities, irrespective of whether such measures are lawful.



Article 14 Liability

- 14.1. GRTgaz D shall be liable for loss or damage in the form of death, personal injury or damage to health according to the legal provisions. For other damages GRTgaz D shall only be liable in the event that such loss or damage was caused by wilful act or omission or negligence of GRTgaz or its statutory representatives, servants, agents and employees, or in the event of culpable breach of essential process regulations. In the event of breach of essential process regulations, liability shall be limited to such typical loss or damage as could reasonably have been foreseen in connection with the contract concerned.
- 14.2. GRTgaz D shall not be liable for damages caused by technical malfunctions and/or software errors as well as errors in data processing equipment and data transmission equipment.

Article 15 Applicable law

These General Terms and Conditions are exclusively subject to the laws of the Federal Republic of Germany with the exception of the provisions regarding international private law.

§ 16 Severability

- 16.1. If any of the provisions of this Agreement or its Appendices/Annexes are or become invalid or unenforceable, the other provisions of the Agreement and its Appendices/Annexes shall remain in full force and effect.
- 16.2. The Parties undertake to replace the invalid or unenforceable provisions in an appropriate procedure by other provisions having as far as possible the same economic results. The foregoing provision shall also apply to any gaps in this Agreement or its Appendices / Annexes.



§ 17 Arbitration and Applicable Law

- 17.1. Any disputes arising out of a contract shall be exclusively and finally settled by a court of arbitration.
- 17.2. The court of arbitration shall be made up of three arbitrators, one of whom shall act as chairman of the court of arbitration. The chairman shall be fully trained and qualified to be a judge. The court of arbitration shall be formed by the Party instituting arbitration proceedings describing the matter in dispute, appointing an arbitrator and calling upon the other Party to appoint a second arbitrator, and the two named arbitrators then selecting the chairman. If either Party fails to appoint an arbitrator within a period of 4 (four) weeks, the Party that instituted the arbitration proceedings shall be entitled to request the president of the competent court to propose a second arbitrator. The proposal shall be binding on the Parties. If the arbitrators have not selected the chairmen within a period of 4 (four) weeks, either Party shall be entitled to request the president of the competent court to propose a chairman. The proposal shall be binding on the Parties.
- 17.3. The venue for any arbitration proceedings shall be Berlin. The competent court of jurisdiction pursuant to Section 1062 of the German Code of Civil Procedure (Zivilprozessordnung) shall be the Higher Regional Court of Berlin. In all other respects, Sections 1025 to 1065 of the German Code of Civil Procedure shall apply to the arbitration proceedings.
- 17.4. Section 31 of the Energy Industry Act (EnWG) shall not be affected.



Article 18 Declaration of consent of the tenderer

I/We shall accept the foregoing Terms and Conditions of the tender and acknowledge them as binding.

Date / Signature

Position

Company (Company Stamp)



Annex 1: Qualification Form

**Application for inclusion into the list of tenderers in the tender of
GRTgaz Deutschland GmbH**

GRTgaz Deutschland GmbH, Zimmerstraße 56, 10117 Berlin

Fax: +49 (0)30 - 7261904 – 999

Tenderer:

Name/Company including legal form : _____

Street address: _____

Post Code: _____

Country: _____

Telephone/Fax: _____

E-Mail: _____

1) Self-certification:

The above-referenced tenderer declares herewith that

no insolvency proceedings have been initiated against it, applied for, or have been rejected due to lack of mass

it guarantees to provide a secure and reliable provision of quantities of natural gas. In addition, the tenderer declares herewith that it shall install the required technical information equipment on time and that it shall operate such equipment with suitable availability.



2) Trade register extract:

A current extract from the professional register (in the Federal Republic of Germany referred to as Trade Register or Register of Craftsmen; in the case of foreign tenderers from a member state of the European Union documents pursuant to Article 46 of the Guideline 2004/18/EG or of the country in which the tenderer is resident) is enclosed with the Form.

3) Business report of the last completed business year

A business report of the last completed business year; in the case of companies not resident in Germany also a German or an English translation thereof, is enclosed with the form. If the business report is available on the Internet, a reference to the website shall be sufficient.

In the event that the interested party has been admitted as shipper of GRTgaz D, no proof of performance pursuant to numbers 2) and 3) is necessary.

4) Legally binding declaration:

Hereby we declare

- that the information indicated in this application and the documents submitted are truthful and correct, reflecting the current situation of our company and customary practice;
- that we approve of these General Terms and Conditions for the tender and award process of GRTgaz D in its entirety.

Place, date, signature of the tenderer/company stamp

Annex 2 – Gas Specification

Gas injected and taken out at entry and exit points of the MEGAL pipeline system shall comply with DVGW data sheet G 260, 2nd gas family, in force. The Gas fed into the Pipeline System at Waidhaus and Oberkappel shall comply with the following specifications:

- a) Gross caloric value shall be min. 10,700 kWh/m³ und max. 12,800 kWh/m³.
- b) Wobbe-Index shall be min. 13,400 kWh/m³ and max. 15,700 kWh/m³.
- c) The following contents shall not be exceed:
 - The oxygen (O₂) content shall not exceed 0,5 % by volume.
 - The carbon dioxide (CO₂) content shall not exceed 3 % by volume.
- d) The carbon content per volume
 - C₁ above 81 %
 - C₂ below 10,5 %
 - C₃ below 4,2 %
 - C₄ below 2 %
 - C₅₊ below 1 %
- e) The hydrogen sulphide (H₂S) content shall not exceed 5 mg/m³.
- f) The mercaptan sulphur (RSH) content shall not exceed 6 mg/m³; a short-time limit of 16 mg/m³ shall be admissible.
- g) The total sulphur (S) content shall not exceed 30 mg/m³; a short-time limit of 150 mg/m³ shall be admissible.
- h) The gas shall have a dew point for water not exceeding –8 °C at pressure of 40,2 bar (absolute).
- i) The gas shall have a dew point for hydrocarbons not exceeding 0 °C in a pressure range between 1 and 81 bar (absolute).

Annex 3 – Tender Form

Company name:	
Company address:	
Contact name:	
Position and Department:	
Telephone:	
Mobile phone:	
E-Mail-Address:	

Our binding offer shall be:

	EUR per MWh		Exit point
Sales Price P		Delivery point:	

Place, date

Signature of the authorized representative

Annex 4 – Bid Bond

On behalf of

- Customer -

We

Undertake the following

Bid Bond

In favour of

GRTgaz Deutschland GmbH,
Zimmerstraße 56, D – 10117 Berlin

- Beneficiary-

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

€2.500.000,-



on first demand within 10 (ten) banking days after receipt of the demand. The right to deposit shall be excluded.

Upon expiration of the guarantee, the Beneficiary is obligated to surrender the original guarantee certificate to us without delay.

This guarantee shall be governed by the laws of the Federal Republic of Germany. It has been issued both in the German and the English languages. If there is any inconsistency or ambiguity between the two versions of the guarantee, the German version shall prevail.

(Date, signature)