



**General Terms and Conditions  
for Balance Responsible Parties  
in the Eastern Market Area**

**(GTC BRP)**

Gas Market Rules

Version 4 – February 2012

Sample version for submission

*DRAFT*

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## A) General

### I. Basis of the General Terms and Conditions

Section 92 of the *Bundesgesetz, mit dem Neuregelungen auf dem Gebiet der Erdgaswirtschaft erlassen werden* (Federal Act Providing New Rules for the Natural Gas Sector) (*Gaswirtschaftsgesetz* [Natural Gas Act] 2011), Federal Law Gazette I no. 107/2011 forms the basis of these General Terms and Conditions for Balance Responsible Parties (GTC BRP).

### II. Balance group membership

Membership in a balance group is an indispensable prerequisite for consumers, natural gas undertakings or producers to participate in the liberalised Austrian natural gas market. Membership is established either by contracts with a balance responsible party (direct membership) or by contracts with suppliers that are balance group members (indirect membership). Indirect balance group members do not have any direct contractual relationship with the balance responsible party. If the balance responsible party is also the supplier, the system user is an indirect member of the balance group unless it requests direct membership.

### III. Definitions

The terms of relevance for these General Terms and Conditions are defined in the annex (chapter 1 of the Gas Market Code, Definitions).

### IV. Object of the GTC BRP

The GTC BRP form an integrated part of the legal relationship between the direct balance group member and the balance responsible party and govern their mutual rights and obligations. The *Gasmarktmodell-Verordnung* (Gas Market Model Ordinance), the *Gas-Wechsel-Verordnung* (Gas Switching Ordinance) and the Gas Market Code as published by the regulatory authority shall apply to the legal relationship between the balance group member and the balance responsible party.

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## V. Data exchange / data protection

1. Any and all data transmissions carried out on the basis of these GTC BRP shall be accomplished in the manner defined by the system operators, the market area manager, the clearing and settlement agent, the distribution area manager and in accordance with the provisions of the Gas Market Model Ordinance and the Gas Market Code.
2. The balance responsible party shall use the data required for fulfilling its tasks exclusively in accordance with the relevant federal regulations and transmit these data only to those market participants requiring these data for carrying out their tasks if and to the extent to which data transmission is permissible in the individual case pursuant to section 7 *Datenschutzgesetz* (Data Protection Act) 2000. The right of the data subject pursuant to section 4 item 3 Data Protection Act 2000 to obtain information as specified in section 26 Data Protection Act 2000 shall remain unaffected.
3. In addition, the balance responsible party and the balance group member shall treat with strict confidentiality any business and trade secrets of which they obtain knowledge in connection with membership of the respective balance group and shall not disclose any such information to third parties.

## VI. Compensation and remuneration

1. Imbalance charges: The balance responsible party shall pay in advance for all balance group members the imbalance charges including the balancing incentive markup according to the Gas Market Model Ordinance to the market area manager and the clearing and settlement agent as well as the fee for the clearing and settlement agent according to section 89 Natural Gas Act 2011 and the costs accrued for trading at the natural gas exchange and shall then pass on these expenses to the balance group members.
2. How exactly these costs are passed on, and particularly the key that governs their distribution, shall be agreed between the balance responsible party and the direct balance group members. Discriminatory treatment of individual members vis-à-vis other members shall not be admissible. The distribution key agreed with the regular balance group members shall also apply for assigned balance group members, unless otherwise provided below.
3. Assigned balance group members shall bear the imbalance costs caused by their deviations from the schedules or nominations transmitted. In the case of no transmission or transmission of an incomplete schedule the scheduled value is assumed to be zero.

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The balancing energy shall be billed at the rate calculated and published by the clearing and settlement agent.

4. If the collateral to be deposited by the balance responsible party with the clearing and settlement agent increases due to the assignment made, the assigned member shall bear the additional costs (e.g. costs for bank guarantees) in full.
  
5. **Fee of the balance responsible party:** The balance responsible party's fee for its services shall be agreed between the balance responsible party and the direct balance group members. In the case of assigned members, the official assignment decision will indicate in accordance with the relevant statutory provisions an appropriate fee, not disproportionate to the purpose of the measure, due to be paid by the assigned balance group member.

## **B) Establishing balance group membership**

### **VII. Establishing direct balance group membership**

1. Any entity wishing to become a direct balance group member shall enter into contracts with the balance responsible party which specifically govern the organisation and settlement of the balancing energy resulting from the difference between withdrawal and injection by this balance group member as well as the organisation and settlement of the charges for participation in the natural gas market.
2. Alternatively, direct balance group membership may be established on the basis of an assignment as stipulated under section 95 Natural Gas Act 2011. If suppliers are assigned, their customers indirectly belong to the same balance group of which the supplier is a direct member.
3. If a supplier is assigned, the balance responsible party may require collateral. The assigned supplier may deposit this collateral in the form of a bank guarantee or in cash.
4. The collateral shall cover the potential amount of balancing energy drawn for two months and shall be calculated in detail as follows:
  - a) The quantity results from the quantity supplied to consumers in the market area during the two months following the assignment day of the previous year. If the quantity supplied cannot be determined or the turnover has substantially increased or decreased compared to the previous year, the quantity shall be diligently and reasonably estimated by the balance responsible party.
  - b) The price for consumer volumes results from the average price of the balancing energy as calculated by the clearing and settlement agent for the two calendar months preceding the assignment date by averaging the hourly and daily rates described in the Gas Market Model Ordinance.
  - c) The required amount of the collateral is calculated by multiplying the quantity by the price.

## **C) Terminating balance group membership**

### **VIII. Terminating direct membership**

1. Termination of direct balance group membership shall be possible as of the end of the last gas day of each month (whereas the gas day on the last day of a month ends at 6.00 a.m. of the following day), subject to a two-month notice period.
2. The balance responsible party is obliged to report termination of the balance group membership without delay to: the system operators in whose systems the member's metering points are located; the distribution area manager; the operator of the virtual trading point; the clearing and settlement agent; and the market area manager.
3. Assigned balance group members may in any case terminate their membership in writing as of the end of the last gas day of each month subject to a notice period of two weeks.
4. The balance responsible party may terminate the membership of assigned balance group members subject to the notice period and the termination date specified under point 1 above if it intends to dissolve a balance group that includes assigned members.
5. Both in the case of contractual and assigned direct membership, the balance responsible party shall be entitled to terminate the contract with immediate effect if the contracting partner violates any contractual provisions despite a written warning announcing the possible suspension of the contractual obligations, after having set a reasonable grace period of at least two weeks and this grace period having expired without effect. Such violations shall include in particular:
  - repeated missing or defective data transmission;
  - repeated submission of inaccurate data;
  - non-compliance with payment obligations;
  - failure to deposit collateral.

The balance responsible party shall not assume liability for any damage caused to the contract partner or third parties by justified termination of the contract.

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## **IX. Terminating indirect membership**

Indirect balance group membership may be terminated either by termination of the supplier's direct membership or by termination of the contractual relationship between the indirect balance group member and the supplier.



## **D) Other provisions**

### **X. Disruptions in implementing the contract / liability**

The balance responsible party and the balance group members shall be liable for any damage caused by breach of contractual obligations only in the case of intent or gross negligence. Liability shall be precluded for cases of slight negligence – except where personal injury is involved – and for consequential damage as well as third-party damage.

If any contractual obligations cannot be met at all or cannot be met in timely or proper manner due to force majeure (e.g. war, riots, strikes or lock-outs, natural disasters or fire, epidemics, government measures or similar circumstances) or due to fulfilling future statutory requirements as part of emergency measures, the relevant contractual obligations shall be suspended until the impediments and their consequences have been removed.

### **XI. Formal requirements**

1. Any contracts or changes or amendments to contracts concluded on the basis of these GTC BRP shall be required in writing.
2. (Severability clause) Should any provisions of the contract concluded between the balance responsible party and the balance group member or of the present General Terms and Conditions, including any appendices and annexes as well as any addendums, be or become void, the validity of the remaining provisions shall remain unaffected thereby. The contracting parties shall undertake to replace, as necessary, the invalid provision with a legally valid provision that is equivalent for the two contracting parties with regard to its economic and technical effects.

### **XII. Change of circumstances**

1. If the regulatory authority approves amended General Terms and Conditions for Balance Responsible Parties that differ from the version valid at the time of contract conclusion, the balance responsible party shall notify the contracting partners of these modifications without delay and make the amended version suitably accessible to the contracting parties, including through web publication.
2. Amendments to the GTC BRP shall enter into force at the time indicated, but no earlier than 14 days after notification of the contracting party, unless the latter objects in writing to the amendment within 14 days of notification. If an objection is raised, the balance responsible party shall be entitled to dissolve the contractual relationship subject to a

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two-month notice period from receipt of the objection, as of the end of the last gas day of that month.

### **XIII. Choice of law / place of jurisdiction**

1. These GTC shall be governed by Austrian law, while precluding the conflict-of-law provisions of international private law contained in Austrian law.
2. Where the courts are responsible for resolution of any disputes arising from this contract, the court with subject-matter jurisdiction at the place of the balance responsible party's registered office shall decide.