



# ***General Terms and Conditions for Transmission Network Access***

Gas Market Rules

February 2012

Sample version for submission

*DRAFT*

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## Contents

I.	Subject matter .....	3
II.	Definitions.....	3
III.	Applicable law.....	3
IV.	System access application and conclusion of the system access contract.....	4
V.	Transport service.....	4
VI.	Injection and withdrawal – gas quality.....	5
VII.	Determination and allocation of amounts .....	6
VIII.	Utilisation of unused booked capacity .....	6
IX.	System utilisation charge .....	7
X.	Invoicing .....	7
XI.	Payment, payment delays and reminders .....	7
XII.	Obligations to provide information.....	8
XIII.	Transmission of data – data protection – confidentiality .....	9
XIV.	Other provisions.....	9
XV.	Change of circumstances and of the General Terms and Conditions for Transmission Network Access.....	10
XVI.	Severability clause.....	10
XVII.	Force majeure.....	10
XVIII.	Contract termination for important reasons .....	11
XIX.	Succession in title .....	11
XX.	Warranties .....	11
XXI.	Collateral .....	12
XXII.	Liability, indemnification and holding harmless.....	13
Annex 1:	Definitions	
Annex 2:	Sample Bank Guarantee	

## I. Subject matter

- (1) For the purpose of transmission network access as defined in sections 31 and 32 *Gaswirtschaftsgesetz* (Natural Gas Act) 2011, the General Terms and Conditions for Transmission Network Access shall govern the following:
  - the injection of natural gas into a transmission system;
  - the withdrawal of natural gas from a transmission system;
  - the mutual rights and obligations of the contracting parties;
- (2) The transmission system operator shall be obligated according to the system access contract to permit the system user to use its transmission system pursuant to the following stipulations:
  - section 31 Natural Gas Act 2011;
  - the *Gasmarktmodell-Verordnung* (Gas Market Model Ordinance) 2012, including annexes;
  - these General Terms and Conditions, including annexes;
  - on the basis of the system utilisation charge set forth in section 82 Natural Gas Act 2011, along with any statutory surcharges.

## II. Definitions

The terms used in the General Terms and Conditions for Transmission Network Access may be found in annex 1. In addition, the definitions of Article 2 Regulation (EC) No 715/2009, section 7 Natural Gas Act 2011 and those specified in section 2 Gas Market Model Ordinance 2012 shall apply.

## III. Applicable law

- (1) Austrian law shall apply to the legal relationship between the transmission system operator and the system user that arises from the system access contract, while precluding the conflict-of-law provisions of international private law contained in Austrian law.
- (2) Without prejudice to the jurisdictional competence of the ordinary courts, both the transmission system operator and the system user may submit to the regulatory

authority disputes or complaints, such as disputes arising from the settlement of charges. Disputes shall be arbitrated by the regulatory authority in accordance with the stipulations of section 26 *Energie-Control-Gesetz* (E-Control Act). With regard to refusal of system access or the priority in allocating capacity, the pertinent provisions of the Natural Gas Act 2011 as well as the ordinances and official decisions based on that Act shall apply as amended.

#### **IV. System access application and conclusion of the system access**

##### **contract**

- (1) The provisions specified in sections 3 to 15 Gas Market Model Ordinance 2012 shall apply to transmission system access and to the conclusion of the system access contract.

#### **V. Transport service**

- (1) The transmission system operator shall be obliged pursuant to annex 3 Gas Market Model Ordinance to receive the system user's nominations and to validate this information for consistency (matching).
- (2) The transmission system operator shall be obliged to accept at the entry point of its transmission system natural gas up to the maximum agreed capacity and to make natural gas up to the maximum agreed capacity available at the exit point of its transmission system. The transmission system operator shall not be obliged to accept at the entry point any handover of natural gas exceeding the maximum agreed capacity nor to make amounts exceeding the maximum agreed capacity available at the exit point. As a prerequisite for injection and withdrawal, nominations as specified in annex 3 Gas Market Model Ordinance must be submitted to the transmission system operator.
- (3) The transmission system operator does not acquire ownership of the natural gas transported on behalf of the system user.
- (4) Pursuant to the statutory provisions of the Natural Gas Act 2011 and in cooperation with the market area manager, the transmission system operator shall ensure pressure maintenance and the balance of injection and withdrawal while observing an economical method of operation.

- (5) If firm capacity is no longer available to the extent demanded by the system user, the transmission system operator shall offer interruptible capacity as defined in section 36 para. 1 Natural Gas Act 2011. If the system user has booked interruptible capacity, transport may be interrupted at any time to the extent necessary to carry out firm transports.
- (6) The transmission system operator shall give notice of any interruption of an interruptible transport without delay and at least three hours prior to the interruption.
- (7) If it is necessary to interrupt interruptible transports in order to carry out firm transports, the relevant interruptible transports shall be interrupted in proportion to the contracted capacity (pro rata).
- (8) In the event of any temporary disruptions within the transmission system, the transmission system operator shall be obliged to make every effort to avoid any ensuing reduction of the agreed capacity. If a reduction of the capacity can no longer be avoided, it shall be allocated to the system users in proportion to the contracted capacity (pro rata).
- (9) If as a result of planned repair or maintenance activities the transmission system operator is not able to transport the contracted amount of natural gas, it shall be released from its contractual obligations only insofar as it has informed the system user, pursuant to Chapter 3 Annex I Regulation (EC) No 715/2009, of the beginning, the end and the extent of the expected limitation of the contractual capacity.
- (10) Subject to the available capacity, the transmission system operator and the system user shall endeavour to transport before or after the repair or maintenance activities the amount of natural gas unable to be transported due to the repair or maintenance activities, in addition to the amount of natural gas nominated by the system user. The maximum technical line capacity shall not be exceeded however.

## **VI. Injection and withdrawal – gas quality**

- (1) The system user shall be obliged not to exceed the agreed maximum capacity for the entry and exit points stipulated by contract when utilising transport services.
- (2) The system user shall be obliged to hand over at the entry point only natural gas conforming to the specifications in annex 2 Gas Market Model Ordinance. The transmission system operator and the system user shall be obliged to inform the

other party immediately if the quality specifications in annex 2 Gas Market Model Ordinance are not met (referred to hereafter as “off-spec gas”).

- (3) The transmission system operator shall be entitled to refuse acceptance of off-spec gas at the entry point. The natural gas delivered by the system user shall not be considered delivered in such a case. It shall remain within the sole discretion of the transmission system operator whether to transport any off-spec gas.
- (4) The system user shall be entitled to refuse acceptance of off-spec gas at the exit point, provided that the system user did not hand over the off-spec gas at the entry point and the transmission system operator did not refuse transport. If the system user refuses to accept any off-spec gas, the natural gas delivered by the transmission system operator shall not be considered delivered.
- (5) The system user acknowledges that the natural gas handed over by it at the entry point may be mixed with gas provided by other system users and that the gas received at the exit point may in some cases not be identical with that delivered by it at the entry point. Provided that the natural gas handed over by the system user at the entry point conforms to the specifications in annex 2 Gas Market Model Ordinance, the transmission system operator shall be obliged to hand over at the exit point only natural gas conforming to the specifications defined in annex 2 Gas Market Model Ordinance.

## **VII. Determination and allocation of amounts**

- (1) Section 32 para. 3 Gas Market Model Ordinance stipulates that the energy quantities handed over or received by the system user at an entry/exit point are received together with other energy quantities as part of an overall energy flow, and that the energy quantities from the nominations confirmed in each case are to be considered the received energy volumes.

## **VIII. Utilisation of unused booked capacity**

- (1) The system user shall be obliged to make unused booked capacity available to third parties. The system user shall offer unused booked capacity only via the online platform specified in section 39 Natural Gas Act 2011 (secondary capacity platform) at appropriate prices.

- (2) If the system user fails to offer unused booked capacity via the secondary capacity platform, the transmission system operator shall be entitled to withdraw fully or partially from the system user booked capacity as specified in sections 14 and 15 Gas Market Model Ordinance.

## **IX. System utilisation charge**

The system user shall be obliged to pay to the transmission system operator the system utilisation charge pursuant to sections 72 et sqq. Natural Gas Act 2011 plus any statutory surcharges. If within the framework of an auction the system user purchases capacity at a price above the levels specified in sections 72 et sqq. Natural Gas Act 2011, the system user shall be obliged to pay that auction price for the term of the contract. If no system utilisation charges have been specified by ordinance, the system user shall in any case pay the appropriate charge.

## **X. Invoicing**

The transmission system operator shall be obliged to present an electronic invoice by no later than the fifth working day of the month following the month in which the agreed transport service was provided. The transmission system operator may request information from transport customers for preparing invoices.

## **XI. Payment, payment delays and reminders**

- (1) The system user shall be obliged to pay the invoices presented by the transmission system operator as specified in point X, plus any banking charges incurred, by no later than the [depends on company] working day of the following month (due date), by remitting payment to an account to be disclosed by the transmission system operator. If the transmission system operator fails to present an invoice on time, the due date shall be postponed by the corresponding number of days.
- (2) If the due date is not a banking day in Austria, the system user shall remit payment by no later than the first banking day following the due date.
- (3) Any objections raised by the system user against the invoice shall not entitle the user to postpone or refuse payment of the invoice amount. If upon examination the invoice is determined to be incorrect, the system user shall be entitled to charge interest for the partial sum of the invoice determined to be incorrect. Interest shall be calculated on the basis of an annual interest rate equal to the

three-month EURIBOR plus four percentage points or on the basis of the statutory interest rate, depending on which interest rate is higher on the day when the invoice is recalculated.

- (4) The invoice shall be deemed acknowledged by the contracting parties if no complaint is filed within three months of the due date.
- (5) In the event of payment delay, interest on arrears shall be charged from and including the day following the due date and until but not including the date when the amount is credited to the transmission system operator's account. Interest shall be based on an annual interest rate equal to the three-month EURIBOR plus four percentage points or on the statutory interest rate, depending on which interest rate is higher on the day when the invoice is recalculated. The system user shall reimburse the transmission system operator for any expense actually incurred through reminders, resubmissions and any other actions suited and necessary for out-of-court measures to enforce or collect the debt, provided that the expense is caused by the system user and is reasonably proportionate to the enforced debt. Such expense may also be charged as a lump sum. The amount of the lump sum shall be made public.
- (6) Without prejudice to the provisions of point XI, in the event of a payment delay on the part of the system user, the transmission system operator shall be obliged to notify the system user of this fact and grant the user a further ten-day period following written notification to remit payment. If payment is not made by the end of the additional ten days, the transmission system operator shall be entitled to terminate the system access contract with immediate effect and to use the collateral to cover any open debt claim held against the system user. The foregoing shall not limit in any way the transmission system operator's right to claim compensation for any amount outstanding not covered by the collateral.

## **XII. Obligations to provide information**

- (1) The transmission system operator and the system user shall provide each other with such information as is required in order to fulfil their contractual obligations and the obligations to provide information as specified in Chapter 3 Annex 1 Regulation (EC) No 715/2009 as well as to ensure system interoperability. Section 31 Gas Market Model Ordinance shall additionally apply.
- (2) If the system user has data transmission systems operating on a 24-hour basis, every correspondence concerning specifications for system operation shall be conducted directly between the contact persons representing the system user and the transmission system operator via such data transmission systems.



### **XIII. Transmission of data – data protection – confidentiality**

- (1) The transmission system operator shall be entitled to use the system user data required for fulfilling its tasks exclusively in accordance with the relevant statutory requirements and may transmit these data only to the extent necessary and legally permissible to those market participants requiring these data for carrying out their tasks, specifically to the market area manager and the distribution area manager.
- (2) The transmission system operator shall make available to the relevant market participants the information and data which the latter require to complete their tasks as well as to ensure safe and efficient system operation, coordinated expansion and system interoperability. Corresponding obligations to provide information shall apply to the system user towards the transmission system operator whose system is fed by the system user.
- (3) The transmission of data under these General Terms and Conditions for Transmission Network Access shall be carried out in accordance with the specific manner set forth for each case in the current version of the Gas Market Model Ordinance and of the Gas Market Code.
- (4) Additional data shall only be made available by the transmission system operator upon request and against reimbursement, provided that data transmission is permissible in the individual case pursuant to section 7 para. 2 *Datenschutzgesetz* (Data Protection Act) 2000. The right of the data subject within the meaning of section 4 item 3 Data Protection Act 2000 to obtain information as specified in section 26 Data Protection Act 2000 shall remain unaffected.
- (5) The transmission system operator and the system user shall treat confidentially any business and trade secrets of which they obtain knowledge while carrying out business activities and shall not disclose any such information to third parties. The disclosure of information and data to the regulatory authority to the extent defined by law shall be exempted from the foregoing.

### **XIV. Other provisions**

The system access contract or any changes or amendments thereto shall be required in writing.

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## **XV. Change of circumstances and of the General Terms and Conditions for Transmission Network Access**

- (1) If system use should become more or less expensive in the future as a result of laws being passed or ordinances or authority decisions being issued, the prices shall be raised or lowered to the resulting level as of the date when the aforementioned circumstances become effective.
- (2) If a version of the General Terms and Conditions for Transmission Network Access is approved that has been amended compared with the version valid when the system access contract was concluded, the transmission system operator shall notify the system user of the amendments without delay by registered mail and on request send a copy of the amended General Terms and Conditions for Transmission Network Access. If the system user raises no objection to application of the modified General Terms and Conditions within four weeks of receiving written notification, the specific system access contract shall be subject to the modified General Terms and Conditions. The modified General Terms and Conditions shall become effective as of the first day of the month following expiry of the period for raising an objection. If the system user objects to the application of the modified General Terms and Conditions within four weeks of receiving written notification, the transmission system operator shall terminate the system access contract in writing subject to a three-month notice period. The transmission system operator shall explicitly inform the system user in writing of the consequences of objection.

## **XVI. Severability clause**

Should any provisions of the system access contract, including these General Terms and Conditions for Transmission Network Access, be or become void, the validity of the remaining provisions shall remain unaffected thereby. The contracting parties shall undertake to replace the invalid, legally ineffective or void provision with a new and valid provision that approximates as nearly as possible the economic, technical and/or legal intent of the invalid, legally ineffective or void provision.

## **XVII. Force majeure**

- (1) If any contractual obligations cannot be met at all or cannot be met in timely or proper manner due to force majeure 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. Force majeure shall be deemed to include any event or any circumstance or any chain of events and/or circumstances within the transmission system operator's system which prevents one or both contracting

parties from fulfilling their obligations or delays fulfilment, the occurrence of which was unforeseeable and beyond the scope of influence of the contracting parties, and which could not have been foreseen or avoided even by exercising due, customary and reasonable care and diligence. The foregoing shall apply specifically to war, riots, strikes or lock-outs, natural disasters or fire, epidemics, government measures or similar circumstances.

- (2) The inability of the system user to pay the charge referred to in point IX shall not be regarded as a circumstance of force majeure.
- (3) The contracting party affected by force majeure shall be obliged to inform the other contracting party thereof without delay, indicating the foreseeable duration of the interruption and the reasons for it.
- (4) If an event of force majeure lasts more than six months, the contracting parties shall endeavour to adjust the system access contract accordingly.

## **XVIII. Contract termination for important reasons**

- (1) The right of either contracting party to terminate the system access contract with immediate effect for important reasons shall remain unaffected.
- (2) Examples of important reasons for the transmission system operator are:
  - a. severe breach of contract by the system user;
  - b. the system user's insolvency.

## **XIX. Succession in title**

If a third party takes over a system access contract concluded on the basis of these General Terms and Conditions, the transmission system operator shall be entitled to require from the new system user collateral pursuant to point XXI.

## **XX. Warranties**

- (1) The system user assures to have an unconditional and undisputed right to transport the natural gas handed over at the entry point. The natural gas handed over by the system user shall be free of any liens, encumbrances and third-party claims opposing transport. The system user shall be obliged to indemnify the

transmission system operator for any costs, lawsuits and claims raised by third parties.

- (2) The transmission system operator pledges the natural gas handed over at the exit point to be free of any liens, encumbrances and third-party claims opposing transport.

## **XXI. Collateral**

- (1) If the system user does not fulfil the necessary rating criteria [depending on the company], the transmission system operator shall be entitled to require from the system user collateral which shall serve as security for the system user's payment obligation arising from the system access contract. The system user can elect to provide the collateral either in the form of a bank guarantee or prepayment as specified below.
- (2) Bank guarantee: The system user shall submit a bank guarantee, as shown in annex 2 (sample), to the transmission system operator no later than ten days after concluding the contract.
- (3) Prepayment: The system user shall provide prepayment to the transmission system operator no later than ten days after concluding the contract, remitting payment without deduction to an account to be disclosed by the transmission system operator.
- (4) The amount of the prepayment or the bank guarantee – excluding the bank fees incurred by the transmission system operator – to be submitted by the system user shall depend on the term of the system access contract and shall be calculated as follows:
  - (a) For a system access contract having a term of less than one month, the amount of prepayment or of the bank guarantee shall equal no more than 15% of the system utilisation charge due for the entire transport contract term.
  - (b) For a system access contract having a term of one to six months, the amount of prepayment or of the bank guarantee shall equal the amount of the system utilisation charge due for the first month of transport.
  - (c) For a system access contract having a term of 7 (seven) to 12 (twelve) months, the amount of prepayment or of the bank guarantee shall equal twice the amount of the system utilisation charge due for the first month of transport.
  - (d) For a system access contract having a term of more than 12 (twelve) months, the amount of prepayment or of the bank guarantee shall equal

fifteen percent (15%) of the system utilisation charge due for the entire transport contract term.

- (6) If the system user does not fulfil its obligations as specified in point XXI – except in cases where the obligation is not met on time or to the requested amount – the system access contract shall be considered automatically terminated with immediate effect. In this case the transmission system operator shall be released from its obligations as specified in the General Terms and Conditions.

## **XXII. Liability, indemnification and holding harmless**

- (1) Each contracting party shall be liable exclusively to fulfil the obligations arising from the system access contract.
- (2) Each contracting party shall be liable towards the other party as set forth in the general requirements of law governing compensation. In cases where such law refers to liability due to fault, except for personal injury and claims as stipulated in section 33 para. 6 Natural Gas Act 2011, the contracting party shall only be liable in cases of intent and gross negligence.
- (3) If the transmission system operator is liable due to gross negligence, liability shall be limited to direct damage. Liability for indirect damage, lost earnings and consequential damage shall be precluded without exception.
- (4) The system user shall be liable for any damage incurred to the transmission system operator or third parties (e.g. other system users) through natural gas or biogenic gas which does not conform to specifications and shall indemnify and hold harmless the transmission system operator in such cases.

## **Annex 1**

### **Definitions**

**(Chapter 1 of Gas Market Code to be inserted)**

## **Annex 2**

### **Sample Bank Guarantee**

[insert sample for specific company]