

**Supplementary business terms and conditions of XXXX for new capacities to be created from 01.10.2021**

These supplementary business terms and conditions regulate supplementary as well as deviating provisions for the marketing of incremental capacities to and from the General Business Terms and Conditions of XXXX ("transmission network operator") in the version of XX.XX.XXXX (hereinafter "General Business Terms and Conditions") within the meaning of Art. 3 Subclause 1 of the Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a Network Code on Capacity Allocation Mechanisms in Transmission Systems and repealing Regulation (EU) No 984/2013 (hereinafter referred to as "NC CAM").

**§ 1 General information, field of application**

1. The transmission network operator planned and consulted the projects for incremental capacity pursuant to the stipulations of Art. 27 et seqq. NC CAM on the basis of a market demand analysis. The Federal Network Agency approved these projects pursuant to Art. 28 NC CAM and published the corresponding resolutions. The incremental capacities are partly offered pursuant to Art. 29 NC CAM in the annual auction and partly pursuant to Art. 30 NC CAM within the scope of the alternative capacity allocation mechanism together with the respectively available capacity ("existing capacity") as standard products within the scope of coordinated offer levels. The list of the respective infeed and outlet points, at which the marketing of the incremental capacities is carried out in the auction procedure or within the scope of the alternative allocation mechanism, is enclosed with the supplementary business terms and conditions as Appendix 1.
2. The supplementary business terms and conditions shall apply to all infeed or outlet contracts, which include incremental capacities. Insofar as an infeed or outlet contract includes both incremental capacity as well as existing capacity, these supplementary business terms and conditions shall also apply to this existing capacity.
3. Insofar as no supplementary regulations and / or regulations that deviate from the General Business Terms and Conditions are set forth in these supplementary business terms and conditions, incidentally the General Business Terms and Conditions of the transmission network operator shall apply to incremental capacities.

**§ 2 Marketing horizon**

1. The offer levels, which include incremental capacities, will be offered for the period of up to 15 gas business years from the expected start of the operational use of the incremental capacity.

**§ 3 Conclusion of contract in the annual auctions**

1. The infeed or outlet contract with regard to incremental capacities between the transport customer and the transmission network operator shall be concluded with the allocation pursuant to § 1 Subclause 2 General Business Terms and Conditions with the condition that the allocation pursuant to Art. 17 Paragraph 21 Sentence 3 NC CAM is carried out for the offer level, with which the largest capacity quantity is offered, with which the feasibility test pursuant to Art. 22 Paragraph 3 NC CAM led to a positive result.

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2. The transmission network operator will announce the allocation pursuant to Art. 11 Para. 10 NC CAM.

#### **§ 4 Conclusion of contract within the scope of the alternative allocation mechanism**

1. Notwithstanding § 1 Subclause 1 General Business Terms and Conditions the allocation of the incremental capacities shall be carried out within the scope of the alternative allocation mechanism pursuant to Art. 30 NC CAM with prioritisation of the binding demands of the largest capacity quantity for standard capacity products as described in the following paragraphs.
2. The conclusion of the infeed and outlet contract shall not be carried out via a capacity booking platform, but via direct enquiries at the transmission network operator in a text form (pursuant to Subclause 4 of this § 4). The prerequisite for the conclusion of the contract is the admissibility of the transport customer by the transmission network operator. § 2a General Business Terms and Conditions shall apply accordingly. Notwithstanding § 2a Subclause 3 Sentences 2 to 4 General Business Terms and Conditions the transport customer will report at least one person of the transport customer, who is authorised to representation, as well as the corresponding changes directly to the transmission network operator.
3. The transmission network operator will make a form available on the website [www.fnb-gas-capacity.de](http://www.fnb-gas-capacity.de), in which all offer levels are listed for existing capacity and incremental capacity as well as information is contained pertaining to the necessary scope of the booking for the positive economical test (hereinafter referred to as "Booking Form"). The sample of the booking form is enclosed with these supplementary business terms and conditions as Appendix 2. The publication of the form shall be carried out two months before the day of the annual auction for standard annual products (5 May 2021).
4. The participation in the alternative allocation mechanism is carried out by the sending of the completed Booking Form signed by the person of the transport customer authorised to representation pursuant to Subclause 2 Sentence 4 to the email address stated in the publication of the project proposal as well as to the email address of the Federal Network Agency: [incremental-capacities@bnetza.de](mailto:incremental-capacities@bnetza.de), by 5 July 2021, 5 p.m. (hereinafter referred to as "Booking Day"). As an option the transport customer can, in addition to the sending of the aforementioned email, send the completed Booking Form by post to the FNB Gas e.V. Decisive for the participation in the alternative allocation mechanism is merely the sending of the Booking Form by email pursuant to Sentence 1.
5. The infeed or outlet contract with regard to incremental capacities will be concluded between the transmission network operator and the transport customer at the end of the Booking Day, which made a binding enquiry for the largest capacity quantity, with the condition that the feasibility test pursuant to Art. 22 Paragraph 3 NC CAM for the respective offer level led to a positive result. In case of equal submitted enquiries, the time of receipt of the Booking Form by email pursuant to Subclause 4 shall decide on the priority. The earlier received Booking Form will be assumed in this case.

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6. The transmission network operator will inform the individual transport customers, which participated in the alternative allocation mechanism, about the respective results of the allocation without delay.

#### **§ 5 Remunerations**

1. The remunerations within the meaning of § 25 General Business Terms and Conditions are remunerations formed in future according to the regulatory stipulations or approved by the regulatory authorities in future, as well as the other remunerations stated in § 25 Subclause 1 of the General Business Terms and Conditions respectively remuneration components, including a possible auction surcharge, a possible obligatory minimum surplus pursuant to Art. 33 Commission Regulation (EU)2017/460 of 16 March 2017 for the stipulation of a network code regarding harmonised transmission fee structures as well as possible future allocations, which will apply in the service period of the infeed or outlet contract according to the price sheet published on the website of the transmission network operator. The service period is in this case the period of time, for which the contractual rights and obligations of the transmission network operator and of the transport customer apply pursuant to § 3 and § 4 of the General Business Terms and Conditions of the transmission network operator.
2. Within the scope of the auction or the alternative allocation mechanism the specific capacity remuneration that is current at the time of this auction or, in the event of the alternative allocation mechanism, the sending of the Booking Form, formed according to the regulatory stipulations, will be used. The use of the specific capacity remuneration according to Sentence 1 is however, within the scope of the auction or the alternative allocation mechanism, no agreement on the capacity remuneration in the service period of the infeed or outlet contract and does not include any reference to the amount of the remunerations actually agreed and to be settled for the service period of the infeed or outlet contract according to Subclause 1. The specific capacity remunerations will respectively be agreed for the service period of the infeed and outlet contract from 1.10. to 31.12 of a respective year and from 1.1. to 30.9. of a respective year based on the remunerations formed in future according to respectively applicable regulatory stipulations or remunerations approved by the regulatory authority. The publication of new remunerations therefore do not include any price adjustment within the meaning of § 25 Subclause 3 Sentence 1 and Subclause 4 General Business Terms and Conditions. In deviation from Sentence 1 a possible auction surcharge will be agreed with the allocation within the scope of the auction.
3. In deviation from § 25 Par. 4 General Business Terms and Conditions the transport customer is entitled to terminate the infeed or outlet contract after the publication of the specific capacity remuneration formed and agreed pursuant to Subclause 1, that is effective for the respective service period of the infeed or outlet contract, for the following service period with a period of notice of 10 workdays to the respective start of the following service period, insofar as the specific capacity remuneration formed and agreed pursuant to Subclause 1 exceeds the maximum remuneration limit shown for the service period pursuant to Annex 1 of these supplementary business terms and conditions ("Special right of termination"). The special right of termination pursuant to Sentence 1 shall exclusively exist with regard to the respective service period of the infeed or outlet contract pursuant to Subclause 1, for which the published remunerations apply.
4. The transport customer can terminate the respective infeed or outlet contract with regard to the respective terminable service period pursuant to Subclause 3 in full or partly with respect to the amount of the capacity booking. A partial termination according to

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Sentence 1 is only permitted as a standard reduction in the originally booked capacity for the respective service period.

#### **§ 6 Rights and obligations of the transmission network operator and of the transport customer**

1. The transmission operator will take the financially feasible measures in order to
  - a. ensure that the incremental capacities allocated to the transport customer or allocated within the scope of the alternative allocation mechanism are made available in time for the service period of the infeed or outlet contract, and
  - b. to coordinate the commissioning of the infrastructure for the incremental capacities with adjacent network operators as far as necessary.
2. With the assessment of the financial feasibility within the meaning of Subclause 1 in particular the necessary permits, conditions, secondary provisions under public law, and instructions of the responsible authorities, the basic regulatory conditions, as well as the customary principles developed on the basis of case law relating to indemnifications for owners and parties entitled to use are to be taken into consideration.
3. Insofar as it is determined over the course of that network expansion, which lies in the area of responsibility of the transmission network operator, that the incremental capacities at the Interconnection Point cannot be made available at the start of the service period of the infeed or outlet contract, but only at a later time, the booked infeed and outlet contracts will be reduced pursuant to German Regulation on Access to Gas Supply Networks [*Verordnung über den Zugang zu Gasversorgungsnetzen - GasNZV*] Section 18 pro rata to the part of the existing capacity, insofar as the infeed or outlet contract concerned includes both new capacity to be created as well as existing capacity. Without delay after the transmission network operator has gained certain knowledge of a delay it will inform the transport customer in a text form and communicate when the incremental capacities can be made available and to what extent the booked existing capacities are available at the start of the service period of the infeed or outlet contract. During the delay both the obligations of the transmission network operator to make incremental capacities available, as well as the obligations of the transport customer to pay remunerations for the share of the infeed or outlet contract affected by the delay, shall be suspended. Insofar as the delay is not the responsibility of the transmission network operator, the transport customer is obligated to take part in the auctions as early as possible (or in the new alternative capacity allocation mechanism that is to be carried out, should this be applied) in order directly following the initial marketing period pursuant to NC CAM Article 11 Para. 3 Sentence 2 or Article 30 Para. 1 Sentence 2 of the incremental capacities, to book the standard capacity products at the Interconnection Point concerned, as corresponding with the scope and the period of time of the infeed and outfeed contracts affected by the delay. The obligation of the transport customer shall also be deemed as fulfilled if the incremental capacities are allocated to a third party. Claims of the parties beyond this among one another are excluded.
4. In the event that capacities at Interconnection Points, which are upstream respectively downstream to the respective Interconnection Point of the transmission network operator, are not available at the start of the agreed service period, the transport customer will remain obligated to fulfil the contract. This shall in particular comprise the payment of the remunerations agreed in the infeed or outlet contract. In this case the transport customer is not entitled to rescind the infeed or outlet contract or end this in any other manner. The

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upstream respective downstream capacities at Interconnection Points within the meaning of this Subclause 4 Sentence 1 also comprises the capacities on the other side of the respective Interconnection Point, at which these are marketed bundled. In this case the obligation of the transport customer to fulfil the contract shall apply in deviation from § 8 Subclause 6 of the General Business Terms and Conditions.

5. With regard to Subclause 3 and Subclause 4 it in particular applies that the transport customer is not entitled to refer to Section 313 German Civil Code [*Bürgerliches Gesetzbuch - BGB*] (interference to the business basis) or Section 314 BGB (termination of permanent obligations for good cause) or § 31 Par. 5 General Business Terms and Conditions (suspension of or adjustment to contractual obligations).

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#### Appendix 1

Greifswald (Upgrade)	Auctions
Lubmin II (Upgrade)	Auctions
Greifswald (new capacity to be created and relevant existing capacity)	Alternative capacity allocation mechanism
Lubmin II (new capacity to be created and relevant existing capacity)	
VIP-TTF-GASPOOL-H (new capacity to be created and relevant existing capacity)	
VIP-TTF-NCG-H (relevant existing capacity)	
Mallnow (new capacity to be created and relevant existing capacity)	Auctions
Ellund (new capacity to be created and relevant existing capacity)	Auctions
GCP GAZ-SYSTEM/ONTRAS (new capacity to be created and relevant existing capacity)	Auctions

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#### **Appendix 2**

**See Annex 2 of the consultation document regarding the procedure initiated in 2019 for incremental capacity at the border between TTF and THE as well as between the Russian Federation and THE of XX.XX.2020.**