

# GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF ENERGY

**V. 10/03/2017**

## 1 DEFINITIONS, INTERPRETATION

### *Definitions*

In this contract and in all documents exchanged by and between the Parties relating thereto:

- Capitalised terms,
- Units and abbreviations

shall have the meaning given to them in Annex 1, "Definitions, Units, Abbreviations." The Particular Terms and Conditions and other Annexes may contain additional terms defined and used in said Particular Terms and Conditions and Annexes.

### *Interpretation*

In this contract:

- a) The order of precedence in the event of discrepancy between the documents shall be as follows:
  1. The "Particular Terms and Conditions of Supply"
  2. The "General Terms and Conditions of Supply"
  3. Annex 1: "Definitions, Units, Abbreviations,"
  4. Annex 2: Authorisation
  5. Annex 3: Customer datasheet
- b) Unless indicated otherwise:
  - (i) Any reference to an article in the General Terms and Conditions shall pertain to said article of the General Terms and Conditions;
  - (ii) Any reference to an article in the Particular Terms and Conditions shall pertain to said article of the Particular Terms and Conditions;
- c) Where required by the context, any reference in the singular shall include the plural and vice-versa;
- d) The words "include," "comprise" and their equivalents shall not mean that the lists they introduce are exhaustive;
- e) The turns of phrases "such as," "for example" and "in particular" shall be interpreted in the same way as the verb "include" and its equivalents.

## 2 OBJECT

The object of this Contract is, on the one hand, the supply of Energy by the Supplier to the Customer during the entire Supply Period at the Supply Point, and, on the other hand, the offtake and payment by the Customer to the Supplier for said supply, in accordance with the provisions stipulated in the General Terms and Conditions, the Particular Terms and Conditions and the Annexes to the Contract.

During the term of this Contract, the Customer shall offtake all the electricity and/or natural gas to cover his needs from the Supplier, to the exclusion of any other electricity and/or natural gas supplier in the country where the Supply Point(s) is/are located.

The arrangements for connection to the system, the arrangements for the use of the System and those relating to the Metering are not governed by this Contract, but by separate contracts concluded by and between the System Operator and the Customer.

## 3 QUANTITIES

**3.1** As of the entry into force of this Contract, and during the Supply Period, the Supplier shall supply the Quantities to the Customer at the Supply Point in accordance with the terms and conditions of the Contract.

**3.2** The Quantities are specified in the Particular Terms and Conditions and the Customer's offtake and the Supplier's supply relating to these Quantities are defined below and in the Particular Terms and Conditions.

**3.3** In the event that the Customer's needs should, during the Supply Period, exceed the level of the Quantities that the Supplier has undertaken to supply, the Customer shall turn to the Supplier for any additional supply as promptly as possible, and the Supplier shall take reasonable measures to be able to submit an offer as soon as possible.

## 4 ENTRY INTO FORCE, EFFECT, TERM

**4.1** The Contract shall enter into force on the date it is signed by the Parties or on the start date of the Supply Period, whichever of these dates comes first.

**4.2** The Supplier's supply commitment shall enter into force on the start date of the Supply Period for the term of said period, subject to compliance with and the maintaining of all the following conditions:

- a) The effective termination, by the Customer, of his contract for the supply of Energy with his previous supplier;
- b) The existence of a connection of the Supply Point to the System of the System Operator identified in the Particular Terms and Conditions for the supply of Energy, as well as the contracts necessary for that connection, access to and use of the System by and between the Customer and the afore-cited System Operator;
- c) The provision of a financial guarantee by the Customer, in accordance with Article 8;
- d) The existence of the contracts necessary for the transmission or distribution of Energy, depending on the case, by and between the Supplier and the System Operator.

**4.3** Except where an option for renewal is mentioned specifically in the Particular Terms and Conditions, the Supplier's commitment to supply Energy shall end automatically upon the expiry of the Supply Period. The contract shall end automatically upon the expiry of the Supply Period, once the accounts between the parties have been settled.

## 5 TERMS AND CONDITIONS OF SUPPLY

### **a. Firm nature of the supply**

The supply of Energy may not be interrupted or reduced, except:

- a) By particular agreement on an option to reduce or interrupt the supply in the Particular Terms and Conditions, and/or
- b) In case of Force Majeure, as provided in Article 9, and/or
- c) In case of suspension as provided in Article 10, and/or
- d) For an option to reduce or interrupt the supply imposed by a System Operator, which is not covered by Article 9 or 10.

If case of reduction or interruption of the supply as referred to in the preceding paragraph under (a), (b) or (d), the Customer's offtake commitment and the Supplier's supply

commitment shall be reduced accordingly, without prejudice to Article 5(c).

**b. Transfer of ownership and risks**

The transfer to the Customer of the ownership of the Energy and risks shall take place when the Energy is made available at the Supply Point.

**c. Connection and use of the System**

The Customer shall comply with the provisions of the connection and use contract, or equivalent, referred to in Article 4.2. b) or any other equivalent regulatory provisions during the entire term of the Contract.

Failure on the part of the Customer to comply with the afore-cited provisions shall not result in the suspension of the performance of the Customer's offtake or payment obligations with regard to the Supplier.

**d. Characteristics of the Energy and terms and conditions of the supply**

The Supplier shall not have any obligations with regard to the Customer concerning the characteristics of the energy and the technical conditions of the supply, as these are specified by the System Operator and thus fall under the latter's responsibility. The Customer undertakes to accept the Energy in accordance with those specifications, including any other change of said specifications likely to occur in the course of the Contract.

**e. Metering of the Energy**

The Metering of the Quantities of Energy supplied in performance of the Contract at the Supply Point shall be carried out by the Metering Provider, without prejudice to right of the Parties contest the results of said Metering at all times.

The Customers shall give power of attorney to the Supplier by these General Terms and Conditions, to ask the Metering Provider, in the name and for the account of the Customer, to transmit the Metering data at the Supply Point.

Without prejudice to Article 7.2., in the event that the Metering Provider had to correct the metering data transmitted, even after the expiry of the Contract, the Supplier shall as of right rectify the invoices drawn up accordingly.

At the Supplier's request, the Customer shall provide support for the Supplier in the latter's efforts with the Metering Provider for the installation of a remote-reading device, where necessary.

**f. Customer's facilities**

The Customer shall be required to take all such safety and maintenance measures as necessary, in accordance with the laws, decrees, ordinances and implementing decrees applicable to the facilities and structures which he owns or has the enjoyment of, in order to prevent any incident, particularly related to any temporary stoppage of the supply of Energy.

**g. Offtake forecasts**

Without prejudice to the respective commitments of the parties as regards the Quantities, the Customer shall provide the Supplier with all useful elements to enable the latter to foresee optimally the Quantities of Energy to be conveyed to the Supply Point via the System Operator. The arrangements for this information are specified in the Particular Terms and Conditions.

**6 PRICE, TAXES, PENALTIES**

**6.1** The price, including the Commodity Term and the Transport Term, of the supply of Energy by the Supplier is determined in the Particular Terms and Conditions.

**6.2** Prices or tariffs mentioned in the Particular Terms and Conditions are exclusive of tax. Taxes, existing, imposed or to be imposed by a competent authority during the performance of the Contract, shall be added as of right to the aforementioned prices and tariffs and shall be payable under the same conditions.

**6.3** If a Minimum Quantity (MiQ) is provided in the Particular Terms and Conditions, the Customer shall notify the Supplier as promptly as possible when he considers that his offtake of Energy for a reference period will not reach the MiQ threshold.

The foregoing notwithstanding, each time the Quantity of Energy offtaken by the Customer during a Reference Period is below the MiQ, the Supplier shall

- (i) Invoice the Customer for
  - a. The Transport Term for the Quantities not offtaken;
  - b. An amount equal to the Quantities not offtaken in relation to the MiQ, multiplied by the average weighted by the Quantities offtaken during the Reference Period of the Proportional Term (PT); and shall

- (ii) Credit the Customer for an amount equal to the Quantities not offtaken in relation to the MiQ, multiplied by the lowest price between the Proportional Term (PT) weighted by the offtaken Quantities applied during the Reference Period and the Sub-consumption Proportional Term (P3), determined as follows:

**P3** = The arithmetic average of the MQ INDEX quotations applicable to supplies during the Reference Period, reduced by €1.5 / MWh.

The invoicing shall be carried out within the deadlines stipulated in Article 7.9 below.

**6.4** If a Maximum Quantity (MaQ) is stipulated in the Particular Terms and Conditions, when the Customer considers that the Energy he will offtake during a Reference period will exceed the MaQ threshold, he shall inform the supplier as soon as possible.

The foregoing notwithstanding, each time that the Quantity of Energy offtaken by the customer during a Reference Period exceeds the MaQ, the Supplier shall invoice the exceeding Quantities by applying the highest price between (i) the average weighted by the Quantities offtaken during the Reference Period of the Proportional Term (PT), and (ii) the Overrun Proportional Term (P2) determined as followed:

**P2** = The average weighted by the Quantities offtaken during the Reference Period concerned with the MQ INDEX quotation, increased by €1.5/MWh.

If the Quantities offtaken are measured on a monthly or annual basis, P2 shall be calculated on the basis of the arithmetic average of the MQ INDEX quotations during each month or year in the corresponding Quantities offtaken.

The invoicing shall be carried out within the deadlines stipulated in Article 7.9 below.

**6.5** The Supplier shall apply to the Customer all the expenses arising out of the application of the System Tariffs, including any penalties chargeable to the Customer.

**7 TERMS AND CONDITIONS OF INVOICING AND PAYMENT**

**7.1** Insofar as possible, the Supplier shall issue to the Customer, at the latest by the 10<sup>th</sup> of the calendar month (M+1) which follows the month of supply (M), an invoice based on the Metering data supplied by the Metering Provider concerning the Supply point for month M. The invoices shall be drawn up in euros and shall be payable by direct debit.

**7.2** An invoice may be drawn up provisionally according to reasonable estimates by the Supplier when all the elements required for drawing up said invoice are not available at the time of invoicing. The adjustment shall be carried out when the subsequent invoices are drawn up as soon as the missing information is received.

**7.3** The payment term for an invoice shall be 20 calendar days as of the end of the month of delivery.

**7.4** In case of late payment or deterioration in the financial position as indicated in Article 8.2d) and e), the Supplier may reduce the periodicity of invoicing on a day to day basis, and/or reduce the payment term. A payment shall be considered to have been made when the Supplier's bank account is credited for the invoiced amount in full.

**7.5** In the event of late payment of the invoices, and without prejudice to all other rights reserved for the Supplier (and in particular the Supplier's right to notify the System Operator and request that supply be cut off), the sums payable shall accrue, as of right, with an annual interest for late payment, fixed at the Prime Rate of the European Central Bank, plus 8 (eight) percentage points, without any need for special notice, unless stipulated otherwise by law. In addition, the Customer shall be as of right liable to the Supplier for compensation for recovery costs amounting to €40. If the Supplier were to incur recovery expenses (such as reminder expenses, court expenses and legal fees) exceeding the afore-indicated amount, the Supplier shall be entitled to demand additional compensation from the Customer.

**7.6** Any payment shall be attributed by priority to the interest and recovery expenses, and then to the Supplier's most recent claim, unless the Supplier should decide otherwise.

**7.7** An invoice shall be disputed by the Customer by means of registered letter with acknowledgment of receipt, specifying the reasons and attaching all documents in support, within 15 (fifteen) calendar days as of the date of invoice. Beyond that time limit, the invoice shall be considered as having been accepted by the Customer, except in the case of obvious material errors (error in the calculation or transcription of the figures, malfunction of the Metering device, etc.).

**7.8** The dispute of an invoice by the customer before the competent authorities, where required, shall in no way affect the latter's obligation to comply with the

payment due days for the non-contested amount. Compensation shall be possible only with the explicit consent of the Supplier.

**7.9** The sums payable by the Customer for Minimum Quantities not offtaken shall be invoiced at the latest 14 (fourteen) days after the end of the Reference Period for which the offtake obligations were defined and to which pertains the non-offtake or on any subsequent date on which the Supplier notices the non-offtake.

**7.10** At the end of the Contract, once all the elements needed to that end have been received from the Metering Provider, the Supplier shall draw up an adjustment invoice in accordance with the applicable legal and regulatory provisions.

**8 FINANCIAL GUARANTEES**

**8.1** To cover the Supplier against the risk of the Customer not paying for the Quantities of Energy that are the subject of this Contract, the Supplier shall, upon the conclusion of the contract, be entitled to require from the Customer either an autonomous bank guarantee payable upon first request issued by a reputable solvent banking institution, or the actual payment of the amount of guarantee to the Supplier by way of deposit. If the guarantee is called, the total amount of the bank guarantee shall in no way be reduced and in the event that a deposit has been made, the guarantor shall reconstitute the guarantee at once to the level it had been originally provided by way of surety.

**8.2** The Supplier may also require a guarantee in the course of the Contract if one of the following events were to occur:

a) In the event of late payment of an invoice or if official notice to pay an invoice produces no results, or

b) In the event that an existing guarantee is terminated, or

c) In the event of refusal of the Supplier's credit insurance to cover the Customer, notwithstanding whether the credit insurance had accepted to cover the Customer at the time the Contract was concluded, or

d) When the customer's solvency index reaches 280 (two hundred and eighty) points at Creditreform, or

e) When the Supplier's internal solvency analysis shows a deterioration that can affect the Customer's capacity to fulfil his obligations arising out of the Contract, or,

f) If the Customer refuses to provide his certified annual accounts to the Supplier at the latter's request, or

g) In the event where, according to the latest information available, the maximum exposure calculated over 3 (three) consecutive months for all the contracts that the Customer has concluded with the Enovos Group exceeds 10% (ten percent) of the Customer's equity.

**8.3** As the Supplier organises his supply by taking into account the Quantities of Energy to be delivered to the Customer under this Contract, particularly the Provisional Quantities and the Minimum Quantities, as well as the prices agreed and fixed with the Customer in the Contract, he may, in addition to the guarantee stipulated in Article 8.1, demand an additional guarantee to cover the price risk of supply

risk until he initially foresees expiry of the contract, if one of the events mentioned in Article 8.2 a) to g) were to occur. This guarantee shall be for an amount equivalent to the difference between a) on the one hand, the price fixed in the Contract (i) for the Provisional Quantities over the next 6 (six) months of the Contract or (ii) in the presence of Minimum Quantities, for all the remaining Minimum Quantities of the contract, and b) on the other hand, the market price for these Quantities on the date that the event occurred. This difference shall be recalculated and the guarantee adjusted, if necessary, at the start of each month. This guarantee shall be returned to the Customer as soon as the opening cases provided under 8.2 a) to g) cease.

- 8.4** If a guarantee is required when the Contract is concluded, it shall be provided to the Supplier or paid into his bank account at the latest 45 (forty-five) Business Days before the actual start of the supply of Energy. If a guarantee is required in the course of the contract, whether to cover unpaid sums as stipulated in clause 8.1 or to cover the risk following an opening case, as stipulated in clause 8.2 a) to g), the guarantee shall be provided to the Supplier or paid into his bank account within 5 (five) Business Days of the receipt of the request for a guarantee from the Supplier to the Customer.
- 8.5** The amount of the guarantee shall be fixed in the Particular Terms and Conditions. If it is not, it shall amount to the Supplier's provisional turnover for this contract for the highest three consecutive months. If the price for the supply of Energy includes a Floating Price, the amount of the guarantee provided by default supra shall be calculated on the basis of the latest indices available on the day that the amount of the guarantee is calculated.
- 8.6** The guarantee may be adjusted by the Supplier during the course of the Contract. The amount of the guarantee shall correspond to the highest of the following two values: (i) Supplier's turnover generated for this Contract for the highest 3 (three) consecutive months of the expired periods or (ii) the provisional turnover for the highest 3 (three) consecutive months for non-expired periods. In the event that the price for the supply of natural gas includes a Floating Price, the provisional turnover shall be calculated on the basis of the last indices available on the day that the amount of the guarantee is recalculated.
- 8.7** The guarantee shall be maintained for 10 (ten) Business Days after the due date of the invoice of the last month of supply, and at least for a period of up to 45 (forty-five) Business Days after the last day of the month of supply. The sum paid may be offset by the Supplier in the event of a creditors' arrangement procedure. A payment by way of surety shall not accrue interest for the Customer.
- 8.8** The guarantee may under no circumstances be offset by the Customer with invoiced consumption or other amounts payable to the Supplier by the Customer under this Contract, without the prior Consent of the Supplier.

## 9 FORCE MAJEURE

**9.1** The Party affected by a case of Force Majeure shall be required to:

- Inform the other Party, as promptly as possible and by any and all means, of the occurrence and end of the Force Majeure,

- Make every reasonable effort to limit the effects and duration of the Force Majeure, and allow the normal resumption of the fulfilment of his obligations.

**9.2** The Force Majeure may result in the suspension of the reciprocal obligations of the parties, without prejudice to Article 21.4. The Customer shall nonetheless be required, for the entire duration of the suspension, to pay the Fixed Term and the Transport Term for which the Supplier is liable to the System Operator, as well as all sums due, including penalties, for the performance of the Contract, up to the time that the Force Majeure occurred.

**9.3** If the Force Majeure or its effects were to be extended over a period exceeding 30 consecutive Business Days or when they are of such nature as to persist during such a period, the parties shall negotiate an amendment to the Contract taking the consequences of the Force Majeure into account, its probable duration and the interests of the two Parties. If they fail to reach an agreement within 60 (sixty) Business Days as of the occurrence of the Force Majeure, either Party shall be entitled to terminate the Contract without notice or compensation of any form whatsoever.

## 10 SUSPENSION

**10.1** Without prejudice to Article 11 and apart from a case of Force Majeure, the Supplier shall be authorised to suspend the supply in whole or in part in the following cases, for a period during which said cases occur:

- a) Delay in the payment, total or partial, of an invoice by the Customer, or
- b) Failure to fulfil or to maintain one of the obligations stipulated under Article 4.2. a) to c) and Article 8, or
- c) Failure, on the part of the Customer, in particular in the case of Fraud, to fulfil one of his essential obligations referred to in a) and b) supra.

The suspension shall enter into effect after official relevant notice served to the Customer by the Supplier by registered letter has remained without effect for 5 (five) Business Days as of the date of dispatch.

**10.2** In case of suspension as referred to in Article 10.1, the expenses for the suspension of the supply and the reinstatement of the facilities shall be borne by the Customer and paid to the Supplier before the supply is restored.

**10.3** The full or partial, but immediate, suspension of the obligation to supply may also occur, without the Supplier being held liable, even if he had been notified beforehand, in case of works for the alteration, maintenance, repair or verification of the facilities of the System Operator and/or the Customer. The Party which is cognisant of such works must inform the other Party as soon as possible.

**10.4** In all the cases of suspension provided in this Article 10, apart from the case referred to in Article 10.3 resulting from works on the System Operator's facilities, the provisions of Article 6.3. shall continue to apply during the entire suspension period.

**10.5** In case of the suspension referred to in Article 10.3 resulting from works on the System Operator's facilities, the Customer shall be required to pay to the Supplier the Fixed Term and the Transport Term for the suspended supplies.

## 11 TERMINATION

**11.1** The Contract may be terminated as of right without prior judicial intervention, effective immediately and without prejudice to any compensation payable by the defaulting Party, in the following cases:

11.1.1. By the Supplier, after prior notice served by registered letter remained without effect for 10 (ten) Business Days as of the date of dispatch, in case of:

- a) Late payment, total or partial, of an invoice by the Customer, or
- b) Failure to fulfil or to maintain one of the obligations stipulated in Article 4.2. a) to c) and Article 8, or
- c) Serious failure on the Part of the Customer to fulfil one of his essential obligations other than those referred to in a) and b).

11.1.2. By the Customer, after prior notice served by registered letter with acknowledgement of receipt remained without effect for 10 (ten) Business Days as of the date of dispatch, in case of serious failure on the part of the Supplier to fulfil one of his essential obligations;

**11.2** In the event of wrongful termination by the Customer or of termination by the Supplier owing to the Customer's fault, the Supplier shall be entitled, without prejudice to his right to claim other damages and delay interests,

11.2.1. to apply Article 6.3 for all Minimum Quantity not offtaken by the Customer between the date of termination and the end of the supply period;

11.2.2. of no Minimum Quantity is fixed, to invoice a flat-rate compensation calculated according to the following formula:  $80\% \times$  (the monthly Provisional Quantity for the remaining Supply Period)  $\times$  the Proportional Term of monthly supply concerned for each month of the remaining supply Period. If no monthly Provisional Quantity is stipulated in the Particular Terms and Conditions, for the purposes of this clause, the monthly Provisional Quantity shall be equal to 1/12 of the annual Provisional Quantity. In the event that the Commodity Term of supply is based on a Floating Price formula, it shall be established on the termination date on the basis of the "future" prices corresponding to the indexing reference defined in the formula for the Commodity Term of supply.

11.2.3. The Customer shall moreover remain liable to pay the Supplier for the entire Quantity of Energy he offtakes after the termination date of this Contract, which would still be allocated to the Supplier by the DSO/TSO. The price applicable shall be the price invoiced by the DSO/TSO to the Supplier in the event of an imbalance of his portfolio with a minimum corresponding to the average weighted by the offtaken Quantities of the MQ INDEX quotations during the period concerned, multiplied by a factor of 1,3.

11.2.4. The Customer's debts shall become payable immediately and in full. The Supplier shall have the exclusive right to offset, in due proportion, any debts with claims he holds against the Customer, without any notification, service of official notice or prior judicial procedure. The Customer shall not, however, be entitled to offset his claims with his debt with regard to the Supplier. Furthermore, the Supplier shall have the right to call the financial guarantee provided in Article 8 of this Contract.

**11.3** The opening of bankruptcy or collective insolvency proceedings against the Customer, or the dissolution of the Customer, or if a substantial part of his assets is transferred to another company or is the subject of a

preventive seizure or executory attachment upsetting or endangering the day to day business of the Customer, shall

(i) automatically entail, as of right, the end of this Contract; and

(ii) make all the Customer's debt payable immediately and in full; and

(iii) grant an exclusive right to the Supplier to offset any debts with claims that he holds against the Customer, without prior notification or official notice, or prior judicial intervention, except for decision to the contrary by the Supplier, notified to the Customer within 15 (fifteen) Business Days, by registered letter.

## 12 LIABILITY, INSURANCE

**12.1** The Customer and the Supplier shall assume, each in those matters that concern them, and shall hold the other Party harmless from any consequences of the liability they incur by virtue of ordinary law for any and all damages, of any nature whatsoever, caused to third parties or to their own employees during fulfilment of their respective obligations arising out of this Contract.

**12.2** The Supplier shall be held liable only in case of a gross misconduct or proven fraud in respect of one of his obligations arising out of this Contract, and only for direct damages (to the exclusion of indirect damages, as provided under Article 12.5 (b) of this contract), duly justified, foreseeable at the time of the entry into force of the Contract, and within the limit of the following sums:

- a) Per Supply Point and per event, an amount equal to the monthly average Quantity of Energy offtaken at the Supply Point in the course of the calendar year in which the act or omission involving liability was committed, multiplied by the weighted average of the Proportional Term of the same year, and
- b) Per Supply Point and per calendar year, two times the amount defined under a) supra.

**12.3** Compensation claims by the Customer must be lodged with the Supplier by means of a registered letter with acknowledgement of receipt within 20 (twenty) Business Days, as of the day of occurrence of the damage or the date on which the damage could have been reasonably detected. The right to compensation shall be excluded in the event of a late claim.

**12.4** Under no circumstances shall the Supplier be held liable for damages resulting from an irregularity, interruption or limitation of supply attributable to the System Operator, and the Customer shall take charge of any actions and recourse to be taken against the latter.

**12.5** Compensation between the parties shall be generally excluded for:

- a) Damages resulting from a case of Force Majeure,
- b) Indirect damages such as loss of goodwill, loss of profit, loss of production, loss of business opportunities, claims by third parties, and tying up of activities.

**12.6** Article 12.5 b) notwithstanding, the Customer shall compensate the Supplier for any damages and costs resulting from the non-fulfilment of its obligations arising out of the contract of connection and use, or equivalent, referred to in Article 4.2. b), or subsequent to an unlawful action on the part of the Customer against the System Operator.

**12.7** Each of the Parties undertakes to obtain from its insurers a waiver within the same limits as those provided in the Contract. Otherwise, each Party shall cover the

other Party against the consequences of any recourse on the part of its insurers, owing to the failure of that Party to fulfil its obligations, and exceeding the limits stipulated in the Contract.

**12.8** This Article 12 shall remain in force after the termination of the Contract, for any reason whatsoever, including in case of termination due to the fault of one Party.

### **13 ASSIGNMENT OF THE CONTRACT**

The rights and obligations of this Contract may not be assigned by one Party to a third party without the prior written consent of the other Party.

The Supplier is nonetheless entitled to assign all or part of its rights and obligations arising out of this Contract to Affiliated Companies, to use its rights arising out of this Contract as a security (pledge, collateral, guarantee or any other type of security) or to transfer any claims or rights against the Customer to a third party by any means

### **14 CHANGES OF CIRCUMSTANCES**

**14.1** Without prejudice to the adaptation mode of particular changes provided elsewhere in the Contract, in the event of an unforeseeable and fundamental change in the laws and regulations applicable to the Contract after the date of its entry into force that has a substantial effect on the economic balance of the contractual relations in that the performance would become prejudicial for one of the Parties, the Parties shall negotiate in good faith any ensuing adaptation to the Contract so as to maintain the initial economic balance thereof. If the Parties fail to reach an agreement within 3 (three) calendar months as of the date of the request for an adaptation by the first Party to take action, the Parties agree to appoint an expert by mutual agreement within 30 (thirty) calendar days to settle the matter concerning the adaptation once and for all within 60 (sixty) calendar days as of his appointment. The Parties shall assume the expenses for the expert in equal parts. If they cannot agree on the choice of expert, the latter shall be appointed, at the request of the first Party to take action, by the President of the competent commercial court of the place where the Supplier is established.

**14.2** The foregoing notwithstanding, the Parties agree as of now to include in the Contract the consequences of all changes to the System Tariffs required by law, a regulation, a regulatory authority or a System Operator.

### **15 COMMUNICATION BETWEEN THE PARTIES**

**15.1** The Parties shall keep each other informed, at all times and as promptly as possible, of any and all events, circumstances or information of any nature whatsoever likely to have a significant impact on the performance of the Contract.

**15.2** Unless specified otherwise in the General Terms and Conditions or in the Particular Terms and Conditions, notification and communication by and between the Parties shall be carried out in writing by post, fax or e-mail to the contact persons specified in Annex 3.

### **16 ENTIRETY**

This Contract shall constitute the entirety of the rights and obligations of the Parties in regard to its object. It shall cancel or replace any prior agreement between the parties on the same subject.

The application of all other terms and conditions by and between the Supplier and the Customer is formally excluded.

### **17 DEROGATIONS**

Derogations from or amendments to the terms and conditions of the Contract shall be in writing and signed by both Parties.

### **18 SEVERABILITY**

If a provision of the Contract were to become null and void or non-enforceable, the Parties undertake to replace it with a valid and enforceable provision in compliance with the economic balance initially desired by the Parties when they concluded the Contract. The cancellation of a provision shall not affect the validity of the remaining positions of the Contract.

### **19 TOLERANCE**

The non-application or non-immediate application of the Contract shall under no circumstances be interpreted as a waiver of applying it subsequently.

### **20 DATA PROCESSING**

**20.1** The Customer's personal data shall be treated in accordance with the legislation in force relating to the protection of persons with regard to the processing of personal data at the places where the Customer and the Supplier are established respectively.

**20.2** The Customer authorises the Supplier to exchange the elements relating to consumption and statements as well as data relating to this contract that are necessary for its performance with the System Operator and/or the Metering Provider and/or with any person who guarantees and oversees the management and balance of all the Systems concerned by the performance of this Contract in connection with the organisation of the Energy market.

**20.3** The Customer authorises the Supplier to use his personal data for recovery -- as well as all other -- purposes relating directly or indirectly to the supply of Energy, such as market studies, quality control, etc. The Customer moreover authorises the Supplier to cite him officially as a reference, without specifying the commercial data relating to this Contract.

### **21 CONFIDENTIALITY**

**21.1** Without prejudice to Articles 20 and 13, each Party to the Contract shall refrain from disclosing to a third party, directly or indirectly, all or part of the commercial, industrial, technical, financial and other information that is confidential by nature or designated as such by the other Party. This Contract is confidential.

**21.2** Confidential information may not be disclosed to third parties without the prior consent of the other Party, except

- a) To the respective auditors of the Parties or other advisers bound by a legal or contractual obligation of confidentiality,
- b) By the Supplier to his Affiliated companies,
- c) Under injunction from a judiciary or administrative authority.

**21.3** This article shall not apply to information that:

- a) Has fallen in the public domain without violation of this Contract, prior to being disclosed by one of the Parties,
- b) Is disclosed with the prior, written consent of the other Party,
- c) Is already known to the Party that received the information at the time it was disclosed to that Party,

or became known to said party from a source other than the Party that provided the information, and can be so proven by the Party that received the information.

**21.4** This obligation of Confidentiality shall bind the Parties for the term of the Contract and for an additional period of 2 (two) years.

**21.5** The Customer moreover expressly authorises the Supplier to provide any information to a third party for the purposes of a security or transfer of its rights arising out of the contract to said third party in accordance with Article 13.

## **22 DISPUTES AND APPLICABLE LAW**

**22.1** Unless specified otherwise in this Contract:

- a) The Parties shall endeavour to settle any and all disputes or litigation that may arise between them from the application of the Contract amicably within 30 (thirty) calendar days as of the notification of the dispute or litigation by one of the Parties. Each of the Parties may ask the intervention of the competent regulatory authority for mediation purposes;
- b) Any dispute that cannot be settled amicably within the period stipulated in paragraph a) supra may be referred by either of the Parties to the competent commercial courts of Brabant wallon (Nivelles) (Belgium).

**22.2** This Contract shall be governed by the laws of Belgium.