

**TERMS AND
CONDITIONS
EP COMMODITIES B.V.**

**FOR ELECTRICITY SUPPLY TO
BUSINESS CUSTOMERS**

PREAMBULE

This translation is for information purposes only.
In case of discrepancies, the Dutch version will prevail.

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ARTICLE 1

Definitions and applicability

1.1 In these General Terms and Conditions, the following definitions apply:

Connection:

the connection as described in article 1 paragraph 1 subparagraph (b) of the Electricity Act of 1998;

Connection and transportation contract

the contract between a customer and a grid manager, or a grid owner that has not appointed a grid manager, for the connection of the electrical installation under article 15 of the Electricity Act of 1998, to the grid of the grid manager or grid owner, as well as to the transportation of electricity to the customer's connection;

Net assets

the customer's net assets, calculated by subtracting the amount of the liabilities from the assets;

Electrical installation

the system of cables and accessories, switching and distribution devices, electrical equipment, transformers and motors of the customer that is connected for the consumption of electricity, either permanently or not, and this from the point where measuring equipment is installed or from a similar transition point to which the grid manager and customer have agreed;

High-volume connection

a connection with a total maximum transmission value in excess of 3 x 80 Ampere or a connection as referred to in article 1, paragraph 2 or paragraph 3 of the (Dutch) Electricity Act 1998. Furthermore, low-volume connections as referred to in article 95(n) of the same Electricity Act are considered to be high-volume connections.

Low-volume connection:

a connection with a total maximum transmission value smaller than or equal to 3 x 80 Ampere, not being a connection as referred to in article 1, paragraph 2 or paragraph 3 of the (Dutch) Electricity Act 1998.

Measuring device:

The system of equipment designed to at least measure the volume of exchanged electricity;

Measurement controller:

a natural person or legal entity as referred to in the Electricity Glossary and as meant by article 31, paragraph 1, under a, b and c of the (Dutch) Electricity Act 1998.

Customer

the party that purchases or will purchase electricity from the supplier for the operation of its business or exercise of its profession;

Supplier

EP Commodities B.V.;

Delivery

making the amount of electricity agreed with the customer available at the point of delivery, which does not include transportation;

Point of delivery

the point on the national grid where electricity is made available ("Grid Interconnection"), from where (national) grid manager(s) will convey the electricity to the customer's connection;

Measuring equipment

equipment used to determine the volume of the delivery, to provide invoicing data, and to monitor consumption;

Person responsible for measurements

a natural person or legal body as referred to in article 1.2.1 of the Measuring Code;

Grid

one or more connections that are designed to transport electricity and all corresponding transformer, switch, distribution and sub-stations as well as other auxiliary equipment, not being a direct line, save for the extent to which those connections and auxiliary equipment are located within the installation of a producer or consumer;

Grid manager

a company that has been appointed to manage one or several grids under articles 10, 13 or 14 of the Electricity Act of 1998;

Contract

the contract as referred to in article 2;

Programme responsibility

programme responsibility as defined in article 1 subparagraph o of the Electricity Act of 1998.

1.2 These general terms and conditions are an integral part of the contract between the supplier and the customer. Any (general) terms and conditions of the customers are hereby expressly rejected.

1.3 All contracts to which these terms and conditions apply will be subject to Dutch law.

ARTICLE 2

Delivery contract

2.1 Delivery will be by virtue of a contract between the supplier and the customer. The contract will, as a rule, be entered into in writing.

2.2 In case of inconsistencies between a stipulation from these general terms and conditions and a stipulation from the contract, the contract shall prevail.

- 2.3** The contract is entered into for a fixed term, unless agreed otherwise.
- 2.4** Parties will remain bound by the stipulations from the contract and the general terms and conditions, until they have fulfilled all their obligations ensuing from the contract and general terms and conditions.
- 2.5** In case of any restriction, ending or interruption of the supply as mentioned in Article 3, the agreement will remain valid without prejudice.
- 2.6** The customer agrees to the contract remaining valid if the legal form of the supplier is changed or if the supplier intends or is obliged to transfer his company to another legal body.
- 2.7** The customer may not transfer his rights and obligations ensuing from the contract to a third party without the written consent of the supplier. The supplier will not withhold his consent to this, provided he has no reasonable grounds to do so.

ARTICLE 3

Delivery and termination of delivery

- 3.1** The supplier agrees to make the amount of electricity referred to in the contract available to the customer at the point of delivery. The customer agrees to take up the indicated amount of electricity from the point of delivery during the full term of the contract on the conditions included in these general terms and conditions.
- 3.2** The customer will have to enter into a connection and transportation contract at his own expense.
- 3.3** Contrary to the provisions of article 3.2, it shall apply in respect of low-volume connections of the client that the supplier, based on the Electricity Act 1998, concludes the Connection and Transportation Agreement with the client on behalf of the grid operator and periodically invoices the client on the basis of the Connection and Transportation Agreement. The client shall be obliged to pay those invoices to the supplier. The client shall be discharged from his obligations through payment of those invoices only.
- 3.4** The supplier has the right to terminate the contract, after prior formal notice, without recourse to the courts, if and insofar the customer fails or has failed to comply with the contract, these general terms and conditions or the instructions and regulations that apply under these terms and conditions. The supplier will only exercise its right to terminate the contract if and insofar non-compliance with obligations on the part of the customer justifies it.
- 3.5** If the supplier exercises his right to terminate the contract as referred to in this article, the customer will be notified of this by phone without delay. After that, the supplier will con-firm termination in writing, stating reasons. The amounts that the customer already owed the supplier at the time the contract is terminated, as well as those amounts that the customer will owe under the agreed minimum take-or-pay volume, will then become payable with immediate effect.
- 3.6** The supplier's exercise of his rights to terminate the contract as referred to in this article can not lead to the supplier incurring liability for possible ensuing direct or indirect damage.

ARTICLE 4

Determining the delivered volume

- 4.1**
 - a. The customer will, at his own expense and risk, take care of the installation and maintenance of measuring equipment. This measuring equipment will have to meet the requirements set by the Measuring Code, as well as any additional requirements set by the gridmanager. The customer will also make sure, insofar as required by law, that a certified person is assigned as the party responsible for his measuring equipment and measurements.
 - b. The customer agrees that expenses incurred for the establishment and maintenance of the grid connection, and any possible expenses for meter readings and other services incurred by the grid manager, will be passed on to the customer. The customer will ensure these costs are paid.
- 4.2** Unless expressly agreed otherwise, the volume of supplied electricity will be set in line with the stipulations to that effect from or under the connection and transportation contract. The customer will, insofar as required, work with the grid manager or grid owner to make sure he can provide the supplier with all the relevant details.
- 4.3** If the supplier cannot dispose of a meter reading or consumption data, or if a clear error was made in the meter reading or processing of the meter readings and/or consumption data, the supplier has the right to determine the delivered volume as per article 5 paragraph 4. As soon as the correct data are available to the supplier, enabling it to establish the delivered volume after all using the meter readings, the supplier will issue correction invoices to offset any differences within a reasonable term.

- 4.4** The customer is not permitted to perform any actions or have actions performed that hamper the (correct) determination of the delivered volume, neither is he permitted to create a situation in which the normal functioning of the measuring equipment is obstructed.
- 4.5** In respect of the Client's low-volume connections, the supplier shall undertake to have payment settled for an entire calendar year, or a part thereof in the event that new connections are realised during the year in question. The supplier shall to that end annually record the relevant meter values in the month of December. If so requested by the supplier, the client shall record The requested meter values and make them available to the supplier. Should the meter values physically recorded by the grid operator at any moment deviate from the meter values that are applied for annual settlement, the supplier shall revise the annual settlement.
- 4.6** In respect of the Client's annually recorded high-volume connections, the supplier shall undertake to have payment settled for an entire calendar year, or a part thereof in the event that new connections are realised during the year in question. The supplier shall to that end annually record the relevant meter values in the month of December. If so requested by the supplier, the client shall record the requested meter values and make them available to the supplier. Should the meter values physically recorded by the measurement controller or the grid operator at any moment deviate from the meter values that are applied for annual settlement, the supplier shall be entitled to revise the annual settlement and charge the client accordingly.
- 4.7** If meter values are not submitted by the client correctly or in a timely manner, and the client submits a request for correction of an invoice received by him on the basis of incorrect meter values or an estimate, the supplier reserves the right to charge the client an administration fee of EUR 150.00 (in words: one hundred and fifty euros) for each connection.

ARTICLE 5

Inspection of the measuring equipment

- 5.1** Without prejudice to the stipulations in the connection and transportation contract, both the customer and the supplier can request to have the measuring equipment inspected if they doubt the correctness of the measurements, in line with relevant stipulations from or under the connection and transportation contract.
- 5.2** The cost of such an inspection will fall to the party that is proven to be in the wrong.
- 5.3** If inspection of the measuring equipment, as referred to in this article or otherwise as per the corresponding stipulations from or under the connection and transportation contract, shows that the deviation of the measuring equipment exceeds permitted levels, the supplier will, in consultation with the customer and the person responsible for measuring, determine the delivered volume on the basis of the outcome of the inspection. Recalculation will take place for the period that the measuring equipment functioned incorrectly, yet not exceed a period of twenty-four (24) months, backdated from the moment the measuring equipment malfunction was remedied. In cases 5 as referred to in article 4 paragraph 4, as well as when the customer himself could reasonably have detected the incorrectness of the measurement, there will be full recalculation.
- 5.4** If the inspection provides no employable measure for determining the delivered volume, the supplier is authorised to estimate the delivered volume in the period under consideration using the best data that the supplier has available; the following can serve as measure:
- the volume delivered in the equivalent period in the previous year; or
 - the average delivered volume in immediately preceding and following periods; or
 - another fair measure, to be determined in consultation with the customer.

ARTICLE 6

Payment

- 6.1** The customer will owe payment for the electricity supply as agreed in the contract. The customer agrees to supply the data required to establish the payable amounts upon request.
- 6.2** All amounts payable by the customer under the contract will be subject to taxation, surcharges and levies that the supplier is obliged or authorised to charge under a government decision.
- 6.3** All amounts payable by the customer under the contract will be invoiced to him by the supplier by way of an itemised bill.
- 6.4** Unless agreed otherwise in writing, the invoice will have to be settled within fourteen (14) days after the invoice date. The supplier will indicate how the invoice can be settled.
- 6.5** The payment obligation will not be annulled or suspended on the basis of objections to the invoice. Only when a clear mistake was made on the invoice, the customer will be entitled to not pay the invoice in full, but only pay the amount that is not under discussion, provided that the customer has notified the supplier in writing, stating reasons, why the invoice is incorrect, within fourteen (14) days after expiry of the payment term referred to in the previous paragraph. If subsequent inspections show that the invoice was correct after all, the customer will owe the legal interests as referred.

- 6.6** The customer is not authorised to offset any amounts invoiced to him against any amounts the supplier owes him.
- 6.7** Invoices relating to electricity supply will be considered one and indivisible. Part payments are only allowed with the consent of the supplier.
- 6.8** If the customer fails to pay, pay in full or pay on time (except for cases as referred to in paragraph 5 of this article), he will automatically be deemed to be in default.
- 6.9** If and as soon as the customer defaults, he will incur a late-payment interest that is equal to the legal commercial interest rate as referred to in article 6:119a of the Dutch Civil Code, without prejudice to the supplier's entitlement to compensation for collection costs incurred in and/or out of court. All amounts referred to in this paragraph are immediately due and payable.
- 6.10** In case the customer defaults and/or the supplier terminates the supply, the supplier will have the right to cancel his programme responsibility at the grid manager in question. The supplier will notify the customer of that without de-lay. The supplier will not be liable for any damages suffered by the customer due to the cancellation of the programme responsibility.

ARTICLE 7

Surety

- 7.1** If the supplier deems the customer's creditworthiness too low, the supplier will have the right to request the customer to supply surety (in the form of a bank guarantee, deposit or in another way) for payment on the basis of the amounts payable under the contract.
- 7.2** Creditworthiness will in any case be considered too low when:
- the customer has a Standard & Poors and/or Moody's credit rating, and the Standard & Poors rating is below BBB- or the Moody's rating is lower than Baa3.
 - the customer does not have a Standard & Poors or Moody's credit rating, but does have a Dun & Bradstreet rating, and the Dun & Bradstreet failure score is 75 or lower, or the Dun & Bradstreet risk indicator score is 3 or higher.
 - the customer neither has a credit rating nor Dun & Bradstreet scores, and his net assets have dropped thirty (30%) percent in relation to the previous year. The supplier can request that the client render his assistance to a credit assessment by the supplier, which would involve the customer supplying financial details required to ascertain whether a net assets decrease has indeed occurred.
- 7.3** The surety referred to in paragraph 1 will be equal to the amount the customer will owe, on the basis of the calculations of the supplier, over a period of three (3) months. Any de-posit will be returned as soon as the need for a surety ceases to exist, and in any case as soon as possible after termination of the contract, after subtracting any outstanding amounts.
- 7.4** Interest will be paid on a deposit from the date it is received by the supplier, at a rate that is equal to the legal interest rate as referred to in 6:119 of the Dutch Civil Code, minus three percentage points. Interest will be paid on an annual basis and, if this comes before that moment, upon repayment of the deposit.

ARTICLE 8

Duty to inform and other obligations of the customer

- 8.1** The customer agrees to render the supplier all required assistance in the execution of the stipulations of the contract and these general terms and conditions and the monitoring of the compliance therewith, in particular by notifying the supplier, four weeks in advance, of any planned:
- changes to bank account numbers and invoice address;
 - replacement and/or adjustment of the customer's connection; in case of actual replacement and/or adjustment of the connection, the supplier will have the right to review the prices agreed with the customer.
- 8.2** The customer agrees to inform the supplier in writing and at least four (4) weeks in advance of a planned relocation, change of address, possible ceasing of his operations, (trade) name changes, takeover, (legal) merger, division or sale of a business unit and/or any other drastic change in the customer's company structure and/or management.
- 8.3** The customer can in cases referred to in the previous paragraph ask the supplier to adapt the current contract to the changed circumstances. The supplier will accede to such a request insofar as this can reasonably be required. The supplier can attach conditions to his collaboration.
- 8.4** The customer has to make sure that the supplier has the right details for the correct execution of the contract at least four (4) weeks prior to the commencement date of the contract. If the supplier does not have the right customer details at least four (4) weeks prior to the commencement date of the contract, the supplier cannot be held liable for any shortcomings in the compliance with the contract. Costs incurred by the supplier as a result will fall to the customer.
- 8.5** In case of failure to comply with the duty to inform (on time) as referred to in paragraph 1 and paragraph 2 of this article, a fine amounting to one hundred and fifty euros (€150) will be imposed per connection for administration costs.

8.6 The customer agrees to render the supplier the assistance required to implement and execute the stipulations from or under these general terms and conditions and the monitoring of compliance therewith, in particular to notify the supplier as quickly as possible of all details, occurrences and changes to circumstances that could affect the execution of the contract, including, but not limited to, a situation where the customer foresees substantial deviations from the consumption levels that were expected by the supplier. Unless agreed otherwise, a substantial deviation is understood to mean a deviation of over 15% from the agreed required volume, or - if smaller than aforementioned percentage - a deviation that exceeds 15 GWh (2MW).

- 8.7**
- a. if the customer switches to another supplier before the contract has ended, and if the customer fails to declare by registered letter that he wants to switch back to the current supplier within fourteen (14) days, after having been declared in default, the customer will forfeit an immediately payable fine that will be calculated on the basis of the following formula: the number of months remaining on the contract multiplied by the average volume of consumed electricity in the preceding months and the price per kWh, as stated in the contract. If the contract does not state a fixed price because the price can be determined by the customer during the term of the contract ('pegged value'), the price will be set by the supplier's immediate pegging of the remaining supply period.
 - b. The fine will be imposed on the customer, without prejudice to the supplier's right to require that the customer still comply with the contract, and without prejudice to the supplier's right to claim damages, insofar as these exceed the aforementioned fine.

ARTICLE 9

Liability

- 9.1** Where shortcomings in the compliance with his obligations are concerned, the supplier will only be liable insofar as these shortcomings can be attributed to the supplier (imputable non-compliance).
- 9.2** Except for cases where the damage is caused by intent or gross negligence on the part of the supplier, the supplier can never be held to compensation for business damages, including, but not limited to: loss of profit or income, production failure, production downtime, missing out on savings, damage due to business stagnation and immaterial damage.
- 9.3** The supplier's liability will in any case be limited to three times the average monthly invoice amount (excluding VAT and levies) for electricity supply to the customer, up to a maximum amount of one million euros (€1,000,000)

per event and up to a maximum amount of five million euros (€5,000,000) per year.

ARTICLE 10

Final clauses

- 10.1** Disputes ensuing from the contract, these general terms and conditions, any applicable instructions and regulations or other agreements on the basis of the contract or the general terms and conditions, will be submitted to the court of Amsterdam, unless parties agree otherwise.
- 10.2** Amendments or additions to the contract are only valid if these have been agreed by both parties in writing.
- 10.3** In case stipulations from or under the Electricity Act of 1998 or otherwise applicable legislation and regulations lead to circumstances that are as such that unchanged continuation of the contract and these general terms and conditions in relation to the supplier can, in all fairness, not be expected, the supplier has the right to change the contract and/or general terms and conditions insofar necessary.
- 10.4** If one or several articles from the contract or these general terms and conditions are void or annulled, the remaining articles will remain fully valid, and parties will enter into consultation to agree a new stipulation to replace the void or annulled article, which will be in the vein of the original stipulation as much as possible.
- 10.5** These general terms and conditions can be cited as: "General terms and conditions for electricity supply to business customers".
- 10.6** These general terms and conditions are available on www.epnl.nl, can be consulted at the offices of the supplier, and can be obtained upon request, free of charge.

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