

Contract
for the Supply of Fuel Gas "Bands"

between

Open Grid Europe GmbH, Kallenbergstraße 5, 45141 Essen

- hereinafter referred to as "OGE"-

and

[Supplier]

- hereinafter referred to as "Supplier" -,

hereinafter referred to singly as "Party" and jointly as "Parties"

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Recitals

In accordance with Section 22, para. 1 of the Act on the Supply of Electricity and Gas (Energy Industry Act - EnWG) of 7 July 2005, last amended by Art. 24, Section 28 of the Act of 23 June 2017, the operators of energy supply networks have to procure the energy which they require to cover losses according to transparent, non-discriminatory and market-oriented procedures, also in relation to affiliated or associated companies.

OGE is correspondingly applying the principles of Section 22, para. 1 EnWG of a market-oriented, transparent and non-discriminatory procedure to the procurement of the so-called fuel gas necessary for the proper and smooth operation of its network.

In this procedure, the Supplier has been awarded the Contract to supply gas on the conditions mentioned in this Contract. The Parties to this Contract conclude the following gas delivery Contract for the purposes of documentation:

Article 1 - Object of the Contract

- (1) OGE shall buy, the Supplier shall sell and deliver to OGE the following amounts of gas according to the provisions of this Contract for the period from 01 January 2022, 6 a.m., to 01 January 2023, 6 a.m., at the virtual trading point Trading Hub Europe (THE)

[as per Annex 3 – Annual Profile]

- (2) Within the meaning of this Contract,
 - one hour shall be a period of time of sixty (60) minutes commencing on the full hour and ending on the full hour;
 - one day shall be a period of time commencing at six (6) o'clock ante meridiem on any calendar day and ending at six (6) o'clock ante meridiem on the next calendar day;
 - one delivery month shall be a period of time commencing at six (6) o'clock ante meridiem on the first day of any calendar month and ending at six (6) o'clock ante meridiem on the first day of the next calendar month.

Article 2 - Scope of Gas Delivery and Purchase

- (1) The Supplier shall hold available and deliver the annual, daily and hourly quantities according to the order given to him and in accordance with the notifications of quantities in Article 4.
- (2) OGE shall take delivery of and pay for the gas quantities which it has bought and which the Supplier is to deliver in accordance with Section 1 of this Article 2.
- (3) Reporting in fulfilment of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT) and its implementing acts provided in Commission Implementing Regulation (EU) No 1348/2014 shall be done by the supplier.

Article 3 - Gas Quality

The gas to be delivered under this Contract shall be the gases of the second gas family of gases in accordance with Code of Practice G 260 on gas quality issued by the Deutscher Verein des Gas- und Wasserfaches e.V. in the version applicable at the given time H- and L-Gas respectively.

Article 4 - Notifications of Quantities, Delivery of Gas

- (1) OGE shall notify the Supplier of the planned daily quantities by means of a daily band which it requires by the deadlines and in the form described in Annex 2 (Rules for the Notification of Gas Quantities).
- (2) Within the framework of the quantities under Article 1, section 1, the Supplier shall deliver to OGE the ordered quantities in accordance with the preceding section 1 at the Trading Hub Europe (THE).

Article 5 - Contacts

- (1) The OGE contact for commercial questions is:

Open Grid Europe GmbH
Ralf Bernschein
Bamlerstraße 1b
45141 Essen
Tel. No.: +49 201 3642 14255
Fax No.: +49 201 3642 8 14255

- (2) The OGE contact for technical questions (in particular notifications of quantities) is:

Open Grid Europe GmbH
Christoph Rode
Kallenbergstr. 5
45141 Essen
Tel. Nr.: +49 201 3642 12771
Fax-Nr.: +49 201 3642 8 12771

- (3) The Supplier's contact is

[Supplier]
[Contact person]
[Street]
[Location]
[Tel. No.:]
[Fax-No.:.....]

Article 6 - Gas Price

- (1) OGE pays to suppliers for the [product] for the tender period

[price in accordance with bid; Annex 1 (tender sheet)]

- (2) The Supplier shall pay all fees, charges, taxes and other costs incurred up to the point when the gas is delivered.

Article 7 - Invoicing

- (1) The gas quantity agreed in Article 1, section 1 and delivered to OGE shall be invoiced in the month following delivery by the Supplier. The quantity of gas delivered shall be deemed to be the quantity which has been nominated by OGE. In addition to the gas price, VAT shall be charged at the rate prevailing and shown separately.
- (2) The billing for the month of December takes place on December 8th by means of a preliminary statement on the basis of an amount that the Supplier agrees with OGE. In January of the following year a final settlement with the actual quantities for the month of December shall be invoiced.
- (2) The invoice shall be sent in writing to the commercial contact of OGE.
- (3) OGE shall pay within twenty-eight (28) days of invoice receipt.

Article 8 - Force Majeure

- (1) If a Party is unable to perform its obligations because of force majeure pursuant to Section 2 of this Article 8, said Party shall be released from its obligations. The other Party shall be released from its corresponding obligations to the extent and as long as said first Party is prevented from performing its obligations because of force majeure.
- (2) For the purposes of this Contract for the Supply of Fuel Gas, "force majeure" shall be deemed to be any unforeseeable external circumstance which the Party affected could not have been expected to prevent or could not have prevented in good time by applying reasonable care and measures which it would have been technically feasible and commercially viable to take. Without limitation, force majeure shall include natural disasters, terrorist attacks, power failure, failure of telecommunications connections, strikes and lock-outs, provided that the lock-outs are lawful, and legal provisions or measures by governments, courts or authorities, irrespective of whether such measures are lawful.
- (3) The Party affected by force majeure shall, without undue delay, inform the other Party thereof, stating the reasons for and likely duration of the disruption that has occurred. In any such case, the Party affected shall take all technically feasible and economically viable steps to resume the performance of its obligations as soon as possible.
- (4) The Parties shall work together as far as possible on the elimination of errors and disruptions.

Article 9 - Liability

The Parties' liability shall be as prescribed by law.



Article 10 - Security

- (1) OGE may, in substantiated cases and in the event that no security has already been submitted in the pre-qualification procedure, demand security from the Supplier in a reasonable form and amount if there is concern that the Supplier will not perform its delivery obligations under this Contract, or will not perform them in time. Without limitation, a substantiated case exists if
 - the Supplier defaults twice on its delivery obligations within the term of the Contract;
 - enforcement proceedings are initiated against the Supplier.
- (2) If the Supplier does not comply with a justified written demand for security within fourteen (14) calendar days, OGE shall have the right to terminate the gas supply Contract with immediate effect and without any further notification.
- (3) OGE may use the security if the Supplier does not perform its delivery obligations under this Contract, or does not perform them in time, and OGE incurs expenses as a result of the Supplier's failure to deliver in accordance with Article 9.

Article 11 - Confidentiality

- (1) The Parties shall treat confidentially the content of this Contract and all information which they obtain in connection with said Contract (hereinafter referred to as "confidential information") and shall not disclose such confidential information or make it accessible to third parties without the prior written consent of the Party affected. The Parties undertake to use the confidential information obtained exclusively for the purpose of performing this Contract.
- (2) Either Party shall be entitled to disclose, without the written consent of the other Party, any confidential information obtained from the other Party
 - to an affiliated company, provided that such company assumes the same confidentiality obligation;
 - to its representatives, consultants, banks and insurers if and to the extent that disclosure is needed for proper performance of the Contractual obligations and such persons or companies have undertaken to treat such information confidentially prior to the receipt thereof or are under a professional secrecy obligation in respect of such information;
 - or to the extent that the confidential information
 - was legitimately known to the Party receiving the information at the time it was obtained from the other Party;
 - was already in the public domain or becomes publicly available other than through an act or omission of the receiving Party;
 - or has to be disclosed by a Party due to a statutory provision or a court or official order; in any such case, the disclosing Party shall inform the other Party thereof without undue delay.
- (3) The confidentiality obligations shall remain in force for a period of two (2) years beyond expiry or termination of this Contract.

- (4) § 6a of the Energy Industry Act (EnWG) shall remain unaffected.

Article 12 - Term of Contract and Termination

- (1) This Contract shall enter into force with retroactive effect on Contract award. It documents the mutual rights and obligations on the delivery of gas by the Supplier on the basis of one or more successful tenders in the OGE call for tenders for fuel gas. This Contract shall end at the end of the delivery period without notice having to be given.
- (2) Notwithstanding paragraph 1, this Contract may be terminated with immediate effect for reasonable cause. Without limitation, the infringement of a major obligation under this Contract by one of the Parties or a change by the Federal Network Agency to other requirements which are binding on OGE regarding the procurement of fuel gas shall constitute reasonable cause. This Contract may also be terminated with immediate effect in the event of repeated significant infringements of this Contract.
- (3) Notice of termination shall not be valid unless made in writing.

Article 13 - Assignment

Subject to the prior written consent of the other Party, each Party shall be entitled to assign its rights and/or obligations under this Contract to any other person. Said consent shall be given by the other Party if the Party proposing said assignment demonstrates that said other person warrants that the rights and obligations so assigned will be performed by said other person.

Article 14 - Severability

- (1) If individual provisions of this Contract are or become invalid or if there are any omissions in this Contract, this Contract shall in all other respects remain valid.
- (2) The Parties shall replace the invalid provision by another provision having as far as possible the same economic or legal purpose intended in the Contract and in a legally permissible manner corresponding as closely as possible to the ideas of the Parties. The foregoing shall also apply to any omissions in this Contract.

Article 15 - Changes in Circumstances

- (1) If unforeseeable circumstances occur during the term of this Contract which have considerable economic, technical or legal effects on this Contract but which were not provided for in this Contract or were not considered when the Contract was concluded, and if it would consequently be unreasonable for a Party to fulfill a particular Contractual provision, the Party affected shall be entitled to demand from the other Party a corresponding amendment of the Contractual provisions that takes account of the changed circumstances as well as all economic, technical and legal consequences for the other Party.
- (2) The Party citing the circumstances described in Section 1 of this Article 16 shall specify and prove the necessary facts.
- (3) Entitlement to amendment of the Contractual provisions shall exist from the date on which the demanding Party first demands amendments to the Contractual provisions because of the changed circumstances, unless the demanding Party could not be reasonably expected to make the demand at an earlier time.

Article 16 - Written Form

- (1) All declarations, notifications of gas quantities or other notifications mentioned in this Gas Supply Contract shall be made in writing. Provided the other Party agrees, such declarations, notifications of gas quantities or other notifications may also be made by electronic data transfer (e.g. e-mail) or by phone.
- (2) Any subsidiary verbal agreements shall be deemed null and void. Unless otherwise agreed hereinabove, any amendments or additions to as well as the termination or cancellation of this Contract shall not be valid unless made in writing. Any waiver of this written form requirement shall likewise not be valid unless made in writing.

Article 17 - Arbitration and Applicable Law

- (1) Any disputes arising out of this Contract shall be exclusively and finally settled by a court of arbitration.
- (2) The court of arbitration shall be made up of three arbitrators, one of whom shall act as chairman of the court of arbitration. The chairman shall be fully educated and trained to be a judge. The court of arbitration shall be formed by the Party instituting arbitration proceedings describing the matter in dispute, appointing an arbitrator and calling upon the other Party to appoint a second arbitrator, and the two named arbitrators then selecting the chairman. If either Party fails to appoint an arbitrator within a period of four (4) weeks, the Party that instituted the arbitration proceedings shall be entitled to ask the president of the relevant court to propose a second arbitrator. The proposal shall be binding on the Parties. If the arbitrators have not selected the chairman within a period of four (4) weeks, either Party shall be entitled to ask the president of the relevant court to propose a chairman. The proposal shall be binding on the Parties.
- (3) The venue for any arbitration proceedings shall be Düsseldorf.
- (4) The court of jurisdiction pursuant to Section 1062 of the German Code of Civil Procedure (Zivilprozessordnung) shall be Düsseldorf Higher Regional Court. In all other respects, Sections 1025 to 1065 of the German Code of Civil Procedure shall apply to the arbitration proceedings.
- (5) This Contract and its interpretation shall be governed by German law. Even Contracts concluded with non-German parties shall be governed exclusively by German law. The UN Convention on Contracts for the International Sale of Goods shall not apply.

Essen, _____
Open Grid Europe GmbH

[Location], _____
[Supplier]

Annex 1 – Tender sheet
Annex 2 – Rules for the Notification of Gas Quantities
Annex 3 – Annual Profile

Annex 1 - Tender sheet

Tender sheet H-Gas-Bands

Deadline for receipt of tenders: 24.08.2021 – 11:00 a.m.
Binding period until: 24.08.2021 – 11:30 a.m.

Bidder: _____

Rules governing each individual tender submitted by the bidder: In response to Open Grid Europe’s call for tenders to supply fuel gas, the aforementioned bidder hereby submits the following legally binding offer in accordance with the General Rules of Procedure and the Delivery Conditions published. Acceptance by Open Grid Europe of the bidder’s offer creates a natural gas supply contract between the bidder and Open Grid Europe based on the terms of the natural gas supply contract specimen published on Open Grid Europe’s homepage on the internet including the changes concerning H-gas, the product (Section 1.1) and the gas price (Section 6) to be made to the contract in accordance with tender. Open Grid Europe and the bidder will promptly sign the natural gas supply contract for documentation purposes. The invoicing for the band products will be on a fixed price basis, the structured products will be invoiced on the basis of volumes actually delivered.

Delivery Period: 1st January 2022 – 1st January 2023, each 6 a.m.

Delivery: Trading Hub Europe

Price quotation: All around price (exclusive of VAT)

German fuel gas tax will be paid by Open Grid Europe.

(€/MWh):

	Band 1	Band 2	Band3
Price €/MWh			

Place, Date

Signature(s)

Annex 2 - Rules for the Notification of Gas Quantities

Rules for the Notification of Gas Quantities

1. Notification of quantities (order)

OGE will notify the Supplier of the natural gas quantities which OGE wishes to take delivery of at the virtual trading point.

The notifications will be made in kWh (daily band product).

1.1 Content of the notifications

Each notification shall contain at least the following information:

- the contract number of the natural gas supply contract,
- the code of the NCG hub account,
- the VTP as the delivery point,
- the validity period,
- the hourly quantity in kWh.

1.2 Daily notifications

The daily notification shall always be made by 2 o'clock p.m. and shall be binding for the following day.

Should the Supplier not have received any daily notification from OGE for the following day by 2 o'clock p.m. of a day, the notified quantity shall be deemed to the quantity notified on the previous day.

2. Confirmation by the Supplier

The daily notification shall be confirmed by a nomination from the Supplier at the virtual trading point.

3. Provision of data

The transfer and exchange of business data, information or documents required for performing this Contract shall be made using the EDIG@S protocol.

4. Procedure in the event of extraordinary operating circumstances (impediments to the performance of contractual obligations)

If any circumstances occur as a result of which OGE and/or the Supplier cannot meet its/their obligations or can only meet them to a limited extent, the Party to the Contract affected by these extraordinary circumstances shall inform the other Party about the situation indicating the probable scope, the duration and the cause of the impediment to the performance of its contractual obligations. This information shall be given by telephone and confirmed in writing.

Annex 3 - Annual Profile

1. Products H-Gas

1.1 Three H-Gas bands

Open Grid Europe is tendering three H-Gas bands. The bidders are entitled to bid for one band, or separately for various bands. 20 MWh/h of H-gas per band will need to be delivered constantly throughout the whole delivery period.

1.2 Five structured H-Gas products

Additionally Open Grid Europe is tendering five structured H-Gas products. The bidders are entitled to bid for “handling fee in €/MWh”. The following table shows the max. quantities to be supplied (in MWh/h) for one structured product according to the terms and conditions of the corresponding contract for structure-deliveries.

Open Grid Europe will require the supplier to deliver not more than the maximum hourly quantity shown for the relevant month.

Month of delivery	Maximum
January	72
February	72
March	72
April	60
May	48
June	48
July	48
August	48
September	48
Oktober	60
November	60
December	72

Values in MWh/h

2. Products L-Gas

2.1 Four structured L-Gas products

Open Grid Europe is tendering four structured L-Gas products. The bidders are entitled to bid for the “handling fee in €/MWh”. The following table shows the quantities to be supplied (in MWh/h) for one structured product according to the terms and conditions of the corresponding contract for structure-deliveries.

Open Grid Europe will require the supplier to deliver not more than the maximum hourly quantity shown for the relevant month.

Month of. delivery	Maximum
January	32
February	32
March	31
April	16
May	13
June	13
July	10
August	8
September	10
Oktober	16
November	31
December	32

Values in MWh/h