

## Master Agreement on the Sale and Supply of Fuel Gas Quantities

between

**COMPANY**

- hereinafter referred to as "FUEL GAS SELLER" -

and

**GASCADE Gastransport GmbH**

**Kölnische Strasse 108-112**

**34119 Kassel, Germany**

- hereinafter referred to as "GASCADE" -

- hereinafter also referred to jointly  
as the "Parties" -

**(Agreement ID: XX\_GC\_VG\_2020)**

## PART 1: GENERAL

### Article 1: Subject matter of this Master Agreement

This Master Agreement defines the general arrangements for the sale, supply and balancing of fuel gas quantities to GASCADE. The Parties shall define the details of the sale and delivery of fuel gas by the FUEL GAS SELLER in the individual agreement attached as an annex to the master agreement. The fuel gas quantities shall be procured by the FUEL GAS SELLER in its own name and on its own account and sold to GASCADE. GASCADE shall order the required fuel gas quantities from the FUEL GAS SELLER. The FUEL GAS SELLER shall provide the ordered fuel gas quantities in the GASPOOL market area and GASCADE shall take delivery of the ordered fuel gas quantities at the handover point.

### Article 2: Definitions

(1) The terms used shall have the following meanings:

1. **"Invitation to tender conditions"** denotes the terms and conditions for the invitation to tender for the procurement and supply of fuel gas quantities issued by GASCADE Gastransport GmbH in the version dated 15 January 2020.
2. **"Individual agreement"** denotes Annex 1 to the Master Agreement defining the terms and conditions for the supply and pricing of fuel gas quantities.
3. **"GASPOOL"** denotes GASPOOL Balancing Services GmbH.
4. **"GASPOOL hub"** denotes the virtual trading point in the GASPOOL market area.
5. **"Handling fee"** denotes the charge levied for a specified delivery point on top of the spot price.
6. **"Gas day"** denotes the period of time from 6:00 a.m. CET on a calendar day to 6:00 a.m. CET of the next calendar day.
7. **"CET"** denotes the statutory time in Germany.
8. **"Spot price"** denotes the final settlement price on PEGAS in accordance with Article 7 (2).
9. **"Business days"** denotes all days that are not a Saturday or Sunday or a public holiday in at least one federal state of Germany.

10. **“Individual order”** denotes Annex 2 and the binding order placed by GASCADE for an individual fuel gas quantity in accordance with Article 5.

- (2) Terms used in the singular shall also include the plural, except where expressly otherwise stated or where the context otherwise requires. Terms not defined herein shall have the meanings indicated by the Energy Industry Act (EnWG) of 7 July 2005 and the Gas Network Access Ordinance (GasNZV) of 3 September 2010 in the version from time to time in force. All references to time relate to CET.

## **PART 2: ORDERING FUEL GAS QUANTITIES**

### **Article 3: Obligations of the Parties, transfer of ownership and passage of risk**

- (1) The FUEL GAS SELLER shall be obliged to provide and hand over to GASCADE a fuel gas quantity ordered in accordance with Article 5 at the GASPOOL hub as the agreed handover or takeover point. The FUEL GAS SELLER shall be at liberty to acquire the ordered fuel gas quantities at the respective trading point or make them available at the handover or takeover point from another source.
- (2) GASCADE shall be obliged to take over a fuel gas quantity that has been ordered in accordance with Article 5 and provided at the handover or takeover point agreed in Article 6 and to pay the FUEL GAS SELLER the fee as defined in Article 7.
- (3) The Parties shall be bound by the rights and obligations in the respective individual order.
- (4) Ownership of the fuel gas quantities and risk for them shall be transferred at the start of the hour that has definitively been allocated by the market area manager GASPOOL.

### **Article 4: Contents of the individual agreement to the Master Agreement**

- (1) The individual agreement provides the basis for the sale and supply of fuel gas quantities by the FUEL GAS SELLER, but does not obligate GASCADE to place an individual order in accordance with Article 5. The individual agreement must contain at least the following information (cf. Annex 1):
- The company name of the FUEL GAS SELLER
  - The contact data of the Parties for handling an individual order
  - Balancing group or shipper code
  - Reference to the respective Master Agreement
  - Designation of the delivery point
  - Details of the reference price

- Details of any handling fee
- (2) The Parties shall be obliged to notify each other about changes to the contact and handling data defined in the individual agreement, in writing and in good time with a period of notice of ten (10) business days.
- (3) The FUEL GAS SELLER must have been admitted as a bidder in accordance with Section 2 (9) of the invitation to tender conditions before an individual agreement under this Master Agreement can be concluded.

#### **Article 5: Contents of an individual order**

An individual order must contain at least the following information (cf. Annex 2):

- The contact data of the Parties for handling the respective individual order
- The Master Agreement ID
- The individual order ID
- Designation of the delivery point and the spot market product
- The balancing group or the shipper code for transfer at the GASPOOL hub
- The hourly quantities on the delivery day and the delivery period as defined in Article 8

#### **Article 6: Handover or takeover point**

Fuel gas quantities shall be handed over to GASCADE at the GASPOOL hub.

#### **Article 7: Fee**

- (1) The fee to be paid by GASCADE to the FUEL GAS SELLER shall comprise a quantity-based fee per ordered and provided MWh of fuel gas in accordance with Section (2) of this Article 7 and a handling fee in accordance with Section (4) of this Article 7.
- (2) The quantity-based fee shall be as derived from the finally published European Gas Spot Index (EGSI) for GASPOOL on PEGAS ([www.powernext.com/spot-market-data](http://www.powernext.com/spot-market-data)) for the gas day in question.
- (3) If the spot price for the gas day used in accordance with Section (2) of this Article 7 is not published or is not published in a comparable manner, the Parties shall reach a different arrangement that corresponds as closely as possible to the economic rationale of the provisions on pricing.
- (4) The handling fee shall be in euros per ordered and provided MWh of fuel gas in accordance with the individual agreement (Annex 1).

## **Article 8: Gas quantity and period of time**

- (1) The fuel gas quantity ordered by GASCADE is specified in MWh/h.
- (2) The individual order shall comprise a PEGAS spot market product in the form of a daily band.
- (3) The individual orders and provision shall be carried out with the same hourly quantities of 10 MWh or a multiple of 10 MWh. If GASCADE orders smaller hourly quantities, the FUEL GAS SELLER is required to supply these quantities to the best of its ability.
- (4) The maximum hourly quantity per individual order shall be 450 MWh.
- (5) The delivery period for which the fuel gas quantities are ordered shall commence at 6:00 a.m. on the specified start date and end at 6:00 a.m. on the specified end date. The standard trading products at the trading point in question must be taken into account in selection of the period of time between the start date and the end date.

## **Article 9: Placement and confirmation of orders**

- (1) If GASCADE requires a fuel gas quantity, GASCADE shall submit to the FUEL GAS SELLER a binding individual order for each gas day. Individual orders for the next gas day must be placed by e-mail by no later than 11:00 a.m. GASCADE shall place orders for the subsequent weekend and next Monday by no later than the Friday. Before nationwide public holidays in Germany, the order shall be placed for the public holiday and the next gas day.
- (2) The FUEL GAS SELLER shall confirm receipt of an individual order by returning the countersigned individual order by e-mail to the agreed GASCADE contact person by no later than 2:00 p.m. on the business day. If GASCADE does not receive any confirmation by 2:00 p.m., the Parties shall consult and agree over the phone. The return of the countersigned individual order by e-mail by the FUEL GAS SELLER to GASCADE serves solely as confirmation. The agreement is already concluded upon receipt of the individual orders by the FUEL GAS SELLER. By way of derogation, the agreement shall be formed in the case of Section 8 (3) sentence 2 only after receipt of the countersigned individual order of the FUEL GAS SELLER by GASCADE in accordance with sentence 1.
- (3) The right of GASCADE to place an individual order with the FUEL GAS SELLER shall end when the agreement ends in accordance with Article 22 (2).

## **Article 10: Formation of an individual agreement**

An individual agreement as an annex to the Master Agreement shall be formed after GASCADE has signed the individual agreement in accordance with the annex that has been sent and signed by the FUEL GAS SELLER in duplicate. The FUEL GAS SELLER shall receive a copy of the individual agreement that has been signed by GASCADE. It can be sent by post or e-mail.

## **PART 3: GENERAL PROVISIONS**

### **Article 11: Taxes**

- (1) The fees specified in this Master Agreement, the individual agreement or individual orders based thereon shall be net fees; value-added tax at the applicable rate shall be charged separately on top of them.
- (2) If energy tax is incurred on natural gas ("natural gas tax"), it shall be disclosed separately at the statutory rate and additionally invoiced.

### **Article 12: Invoicing and payment**

- (1) The FUEL GAS SELLER shall invoice GASCADE monthly for the resultant fees in accordance with Article 7 (2) and (4) for the ordered and provided fuel gas quantities, taking into account Article 11 and with the total sum rounded to two (2) decimal places. Invoices shall be sent to the following e-mailbox: rechnungen@gascade.de
- (2) GASCADE shall pay the invoice no later than twenty (20) business days after receiving it. The payment shall be made by bank transfer of the amount in question being to an account of the FUEL GAS SELLER to be specified on the invoice.
- (3) In the event of invoicing for the month of December, this shall take place on 1 December 2020 by means of a preliminary invoice that the FUEL GAS SELLER provides on the basis of forecast prices and quantities to be agreed with OGT. In the January of the following year, a final invoice shall be issued with the actual quantities and prices for the month of December.
- (4) Offsetting claims against the FUEL GAS SELLER or asserting a right of retention is only permissible if the claims are undisputed or an enforceable judgement has been rendered in respect of them.
- (5) The place of performance for payments is the administrative office of the FUEL GAS SELLER.

### **Article 13: Violation of contractual obligations and termination for good cause**

- (1) If, after GASCADE has called off fuel gas on time, the FUEL GAS SELLER fails to fulfil its contractual obligations in full or in part (in particular its obligations from the underlying individual order) and the FUEL GAS SELLER is to blame for that, GASCADE shall be discharged from its obligation to pay for the affected fuel gas quantities. GASCADE shall be authorised, without the need for further warning, to reject further fulfilment and to replace the gas quantities with quantities from other FUEL GAS SELLERS. The right of GASCADE to claim damages shall remain unaffected.

(2) This Master Agreement and its associated individual agreement can be terminated extraordinarily for good cause. Grounds for good cause shall include in particular:

- a) a Party repeatedly violates its contractual obligations;
- b) execution is levied on the assets of the other Party and is not averted within three (3) months.

Good cause in relation to the FUEL GAS SELLER shall also include if admission as a bidder has been withdrawn from the FUEL GAS SELLER in accordance with Section 2 (3) and Section 2 (9) Subsection 2 of the invitation to tender conditions.

(3) Measures defined in (2) of this Article 13 shall not be valid unless given in writing.

#### **Article 14: Force majeure and impediments to performance**

(1) The Parties shall be released from fulfilling their obligations if and to the extent they are prevented from fulfilling them due to force majeure or circumstances over which they have no control and which it would be unreasonable for them to avert considering the quid pro quo, even applying the due care and technical and economic means that can reasonably be expected. They shall include in particular, but not exhaustively:

- disruptions to delivery and procurement due to strikes,
- lockouts,
- legislative acts,
- official measures,
- power outage,
- natural disasters,
- terrorist attacks,
- outage of communications connections, and
- disruptions to operations, defects, and necessary repairs, but not the impossibility of paying money.

(2) The Party affected by force majeure shall notify the other Party immediately and inform it of the anticipated duration of the force majeure. The affected Party will use all technically possible and economically reasonable means to ensure that the requirements to fulfil this Master Agreement and the individual agreement, including the individual orders, are restored.

(3) Irrespective of (1) of this Article 14, the Parties shall be released from fulfilling their obligations under this Master Agreement, including the associated individual orders, if work to maintain the pipeline system or measures to build new or modify or expand existing facilities or to build new facilities (such as gas pressure regulating and metering stations, compressors, etc.) mean that GASCADE is not able to fulfil its obligations from the concluded grid access contracts.



- (4) Article 16 (2) of the Energy Industry Act (EnWG) shall not be affected.

### **Article 15: Liability**

- (1) The Parties shall be liable without limitation for injury to life, body or health through fault on their own part and on the part of their own subcontractors and legal representatives; "fault" here shall denote intent and type of negligence. The Parties shall furthermore be liable without limitation for loss or damage due to breach of obligations caused with intent or through gross negligence on the part of the Parties themselves, their subcontractors or their legal representatives.
- (2) In cases of simple negligence, the Parties shall be liable only for loss or damage arising from the breach of contractual obligations that must be fulfilled to ensure proper implementation of the agreement and on the fulfilment of which the Party may usually rely (cardinal obligations). The Parties' liability shall be limited to loss or damage that is typical of the agreement and was foreseeable when the agreement was concluded.
- (3) GASCADE shall not be liable for financial loss caused by measures under Article 16 (2) of the Energy Industry Act (EnWG). In particular, measures under Section 16 (2) of the Energy Industry Act (EnWG) include measures taken to ensure fuel gas supplies to domestic customers under Section 53 a of the Energy Industry Act (EnWG).
- (4) The provision in Section 5 of the Gas Network Access Ordinance (GasNZV) shall not be affected.
- (5) Liability of the Parties under peremptory provisions of the Third Party Liability Act (*Haftpflichtgesetz*) and other legal provisions shall remain unaffected.
- (6) Sections (1) to (5) of this Article 15 shall also apply in favour of employees and agents of GASCADE. With the exception of Sections (3) and (4) of this article, this shall also apply mutatis mutandis to the FUEL GAS SELLER.

### **Article 16: Confidentiality and data protection**

- (1) Subject to the provisions of Section (2) of this Article 16, the Parties shall treat confidentially the content of this Master Agreement and the individual agreement, including the individual orders, and all information which they obtain in connection with the Master Agreement, individual agreement and individual orders (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 exclusively for the purpose of performing the Master Agreement, individual agreement and individual orders.
- (2) Either Party shall be entitled to disclose without the written consent of the other Party any confidential information obtained from the other Party





- a) to an affiliated company as defined in Article 15 of the Stock Corporation Act (AktG), provided that such a company is likewise obligated to maintain confidentiality,
  - b) 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
  - c) 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 or a request of the regulatory authorities.
- (3) The obligation to maintain confidentiality shall remain in force for a period of two (2) years after the expiry or termination of the Master Agreement.
- (4) GASCADE shall be entitled to transmit billing and contractual data to third parties in so far as and as long as necessary for proper performance of this Master Agreement, the individual agreement or the individual orders. The FUEL GAS SELLER hereby declares its acceptance of automated data processing by GASCADE or by a company commissioned by GASCADE in accordance with the provisions of data protection laws.

## **Article 17: Legal succession**

- (1) Either Party shall be authorised to assign the rights and obligations under this Master Agreement or the individual agreement, including the associated individual orders, to a third party. The consent of the other Party shall be required for any such assignment. Said consent shall be denied only if the third party cannot reliably guarantee that this Master Agreement or the individual agreement, including the associated individual orders, will be fulfilled or if there is good cause to justify refusing said consent.
- (2) The consent of the FUEL GAS SELLER shall not be required if GASCADE assigns the rights and obligations under this Master Agreement or the individual agreement, including the associated individual orders, to a company affiliated with GASCADE as defined in Article 15 of the Stock Corporation Act (AktG).
- (3) Section (2) of this Article 17 shall apply mutatis mutandis if GASCADE transfers network operation to a third party.
- (4) The consent of the GASCADE shall not be required if the FUEL GAS SELLER assigns the rights and obligations under this Master Agreement or the individual agreement, including the associated individual orders, to a company that is affiliated with the FUEL GAS SELLER as defined in Article 15 of the Stock Corporation Act (AktG) and that fulfils the requirements specified in the invitation to tender conditions.

## **Article 18: Loyalty**

If, during the term of this Master Agreement, the individual agreement or the associated individual orders, the economic, legal and/or technical circumstances under which the contractual provisions were agreed change so significantly that a Party can no longer be reasonably expected to continue to abide by the contractual provisions because the Parties' intentions of achieving a fair balance between their mutual economic interests can no longer be fulfilled, the Party in question can demand that the contractual provisions be modified to reflect the change in circumstances.

## **Article 19: Severability clause**

- (1) If one or more of the provisions of this Master Agreement, the individual agreement or the associated individual orders are or become invalid or unenforceable, that shall not affect the other provisions or the existence or continuation of this Master Agreement, the individual agreement and the associated individual orders.
- (2) The Parties shall be obliged to replace the invalid or unenforceable provision with a new, valid and enforceable agreement which, in terms of economic success, is as similar as possible to said provision and which is valid at the time of said provision's invalidity or unenforceability.



## Article 20: Written form

Amendments and additions to this Master Agreement, the individual agreement and the associated individual orders shall not be valid unless given in writing. This also applies to amendment to the requirement for written form.

## Article 21: Place of jurisdiction and applicable law

- (1) The place of jurisdiction for any disputes arising from this Master Agreement, the individual agreement and the associated individual orders is Kassel, Germany. Disputes shall be ruled on by ordinary jurisdiction.
- (2) This Master Agreement, the individual agreement and the associated individual orders shall be governed solely by the law of the Federal Republic of Germany, to the exclusion of international private law. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.

## Article 22: Effective date and term

- (1) This Master Agreement shall come into force when it has been signed by both Parties.
- (2) This Master Agreement and the associated individual agreement (Annex 1) shall run from **6:00 a.m. on 1 April 2020, to 6:00 a.m. on 1 April 2021.**
- (3) The right to terminate the agreement for good cause shall remain unaffected.

## Article 23: Integral elements

The invitation to tender conditions, Annex 1 "Individual agreement" and Annex 2 "Individual order" are integral elements of this Master Agreement. If there is a conflict between the provisions of the above integral elements of this Master Agreement and this Master Agreement, the provisions of this Master Agreement shall have precedence.

Place, date

Kassel, date

**COMPANY**

**GASCADE Gastransport GmbH**