



General Terms and Conditions Day Ahead

**of RWE Gas Storage West GmbH, Hollestraße 7a, 45127 Essen
(hereinafter, "RGSWest")**

**for access to the natural gas storage facilities operated by RGSWest for day-
ahead utilisation**

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Preamble

RWE Gas Storage West GmbH (RGSWest) grants third parties access to the natural gas storage facilities marketed by it for storage of natural gas. Access to storage facilities by ways of day-ahead utilization is provided based on a framework agreement to be concluded between RGSWest and each storage customer. This framework agreement is based on the following General Terms and Conditions of Business of RGSWest for Storage Facility Access for day-ahead utilization ("Terms and Conditions Day-Ahead").

Part 1 General information

§ 1 Scope of application

- (1) These Terms and Conditions Day-Ahead contain the general provisions of RGSWest regarding access to and use of the natural gas storage facilities marketed by it in the form of day-ahead utilization.
- (2) Access to the storage facilities in the form of day-ahead utilization is provided based on the framework agreement referred to in Part 2 and subject to these Terms and Conditions Day-Ahead and the Annexes: "Fee for Day-Ahead Use", "Technical Framework Conditions", "Operation and Nomination" and "Balancing".
- (3) Storage facility is defined in the following contractual rules as a single physical storage facility or the combination of in minimum two storage facilities to a storage pool.
- (4) The integration of any general terms and conditions of a storage customer is hereby expressly rejected.

Part 2 Initiation of framework agreement

§ 2 Request by storage customer

- (1) The storage customer shall initially submit a written request to conclude a framework agreement for day-ahead utilization to RGSWest.
- (2) A complete request for day-ahead utilization pursuant to Paragraph (1) must contain the following information:
 - a) data on the storage customer (company name, contact person, address, e-mail address)
 - b) requested storage facility / storage facility designation for the day-ahead utilization
 - c) period within which day-ahead utilization by the storage customer is available (starting date and end date of framework agreement)

§ 3 Processing of request, conclusion of contract

- (1) After receipt of the request for the conclusion of a framework agreement for day-ahead utilization, RGSWest shall verify that the request is complete.
- (2) RGSWest shall respond to the request within a processing period of fifteen (15) working days after receipt thereof pursuant to the provisions in Paragraphs (3) and (4) below.
- (3) If the request is incomplete, RGSWest shall notify the storage customer at the latest within three (3) working days after receipt of the request of the information required to process the request. Upon receipt of the missing information, the processing period of fifteen (15) working days pursuant to Paragraph (2) shall begin again.
- (4) If the request is complete, RGSWest shall send the storage customer an initialed, though not signed framework agreement for day-ahead utilization in duplicate. RGSWest shall moreover notify the customer of the documents which have to be submitted to RGSWest in order to perform a credit screening of the storage customer. However, the sending of the framework agreement by RGSWest to the storage customer shall not constitute a binding offer on the part of RGSWest but shall be considered as a request to the storage customer to submit a binding offer to conclude the framework agreement.
- (5) If the storage customer agrees with the framework agreement sent pursuant to Paragraph (4), the customer shall send the signed agreement in duplicate with the documents required for the credit screening within ten (10) working days from the receipt of the framework agreement by the storage customer by mail or initially by fax to RGSWest. The transmission by fax shall already be considered as the issuance of a binding offer to conclude the framework agreement. The storage customer shall be bound to this binding offer for fifteen (15) working days after the transmission by fax. If, as a result of the credit screening pursuant to § 13, the storage customer must provide a security, the storage customer shall be entitled to rescind its binding offer within five (5) working days after receipt of the notice from RGSWest pursuant to § 13(3).
- (6) The framework agreement is concluded upon acceptance of the storage customer's binding offer by RGSWest within the binding period. The receipt by the storage customer of the framework agreement signed by RGSWest shall be considered as an acceptance declaration. The storage customer's receipt of the framework agreement by fax shall be sufficient.
- (7) If RGSWest does not accept the binding offer of the storage customer, RGSWest shall notify the storage customer in text form providing the rationale.
- (8) A binding offer for the conclusion of a framework agreement may only be submitted for a storage year (= period from 1 April of one (1) calendar year at 6:00 a.m. until 1 April of the next calendar year at 6:00 a.m.) The binding offer may be submitted:
 - a) for the relevant current storage year at any time; and
 - b) for the next storage year following the date of the request with a lead time of two (2) months.
- (9) The maximum term of the framework agreement shall be one (1) storage year.
- (10) The conclusion of the framework agreement for day-ahead utilization shall require that the storage customer has firm working gas volumes in the corresponding storage facility for the period within which day-ahead utilization can be made.

§ 4 Implementation period

- (1) For purposes of the technical implementation of the framework agreement, the framework agreement must have been concluded ten (10) working days at the latest before the starting date foreseen in the framework agreement, so that the storage customer can begin the day-ahead utilization as of the starting date mentioned in the framework agreement. If a shipper code is already available for the day-ahead utilization so that a new shipper code need not be issued by RGSWest, and the storage customer has already passed the communications test pursuant to the Annex "Operation and Nomination", at variance with Sentence 1, the framework agreement must have been concluded at the latest five (5) working days before the starting date foreseen in the framework agreement for the storage customer to start the day-ahead utilization on the starting date set out in the framework agreement.
- (2) If the framework agreement is concluded in a period of less than ten (10) working days — or less than five (5) working days in the case of Paragraph (1), Sentence 2 — to the starting date foreseen in the framework agreement, the storage customer may first start the day-ahead utilization ten (10) working days — or less five (5) working days in the case of Paragraph (1), Sentence 2 — after the conclusion of the framework agreement, irrespective of the foreseen starting date.

Part 3 Provisions of the framework agreement

§ 5 Subject of agreement

- (1) With the conclusion of the framework agreement, the storage customer may use the injection and withdrawal capacity not used by other storage customers in the relevant hour for the relevant natural gas storage facility in order to inject and withdraw natural gas (day-ahead utilization).
- (2) The injection and withdrawal capacity likely available for the relevant day of day-ahead utilization (hereinafter, "Day D") shall be published on the preceding day (hereinafter, "Day D-1") normally at 4:00 p.m. on the Internet page of RGSWest as a forecast.
- (3) The storage customer shall be entitled for the term of the framework agreement and with due regard to the provisions described therein to nominate the injection and/or withdrawal capacity foreseen by it for day-ahead utilization and to use such capacity if it is actually available on Day D. The amount of the nomination may not exceed the injection and/or withdrawal capacity published as a forecast on Day D-1.
- (4) Nominations for day-ahead utilization for Day D shall be possible between 4:00 p.m. CET on Day D-1 to 3:00 a.m. CET on Day D. Renominations of the nominations made pursuant to Sentence 1 by the storage customers may be made once only and prior to 3:00 a.m. CET on Day D at the latest. Further renominations of the storage customers shall exclusively be possible in the case of a reduction of the nomination or renomination by RGSWest (cf. Paragraphs (5), (6)m (7)) and must relate to the relevant nomination reduced by RGSWest.
- (5) The actually available injection and withdrawal capacity for day-ahead utilization on Day D may vary from the forecast capacity published on Day D-1 due to, *inter alia*, renominations by the storage customers with firm and/or interruptible capacity rights.
- (6) RGSWest shall have the right to reduce nominations for the day-ahead utilization with priority over all other nominations with firm and/or interruptible capacity rights.

- (7) RGSWest shall reduce capacity rights by requesting the storage customer to renominate so that the storage customer then nominates a value no larger than the value stated in the request. If the storage customer nominates a value larger than the value stated by RGSWest, the nomination shall be rejected by RGSWest.
- (8) The storage customer is obliged to provide the natural gas volumes nominated for injection at the storage facility injection points.
- (9) RGSWest shall be obliged with due regard to the Annex "Technical Framework Conditions" to take over the natural gas volumes nominated by the storage customer at the storage facility injection points at the same time and with the same thermal volumes and to inject and to store them with the same thermal volumes.
- (10) RGSWest shall be obliged with due regard to the Annex "Technical Framework Conditions" to withdraw the natural gas volumes nominated by the storage customer for withdrawal and to make them available at the storage facility withdrawal points.
- (11) The storage customer shall be obliged to take over the natural gas volumes made available by RGSWest at the storage facility withdrawal points at the same time and with the same thermal volumes.
- (12) RGSWest shall be entitled to take over, store or respectively make available at the storage facility withdrawal points the natural gas volumes taken over for injection or made available for withdrawal together with and inseparably from other natural gas volumes at the storage facility injection points. The identity of the natural gas need not be preserved. The natural gas injected by the storage customer shall remain the (co-)property of the storage customer.
- (13) According to the framework agreement RGSWest shall be obliged to withdraw and make available natural gas volumes only to the extent that the corresponding natural gas volumes have been injected on behalf of the storage customer prior to the withdrawal or have been transferred to the storage customer by other storage customers within the same natural gas storage.

§ 6 Fee

The storage customer shall be obliged to pay RGSWest the respective fee for the day-ahead utilization as published in the Annex "Fee for Day-Ahead Use" under www.rwe-gasstorage-west.com at the date of nomination.

§ 7 Non-compliance with contract

- (1) Provisions regarding the failure by the storage customer to utilize the working gas volume as required are defined in the Annex "Technical Framework Conditions".
- (2) If the natural gas volumes delivered by the storage customer at the storage injection point do not meet the technical requirements with respect to the gas quality or pressure ratios pursuant to the Annex "Technical Framework Conditions" (hereinafter "off-spec gas"), RGSWest shall be entitled to reject the take-over of the off-spec gas in whole or in part. The storage customer must in this case immediately adjust its nomination at this storage injection point accordingly, and reduce the further provision of the off-spec gas at this storage injection point accordingly. The other rights and duties of the contractual partners shall not be prejudiced hereby.
- (3) If the natural gas volumes delivered by RGSWest at the storage withdrawal point do not meet the technical requirements with respect to the gas quality or pressure ratios pursuant to the Annex "Technical Framework Conditions", the storage customer shall be entitled to reject the take-over of the off-spec gas in whole or in part. The storage customer must in this case immediately adjust its nomination at this storage withdrawal point accordingly. RGSWest must in this case immediately reduce the provision of the off-spec gas at this storage withdrawal point accordingly. The other rights and duties of the contractual partners shall not be prejudiced hereby.
- (4) The parties shall inform each other without delay of variations in the requirements for quality and/or pressure ratios pursuant to the Annex "Technical Framework Conditions" of which they become aware and which are relevant for the execution of the framework agreement
- (5) If, based on conduct on the part of the storage customer not complying with the contract, not insubstantial impairments in the storage systems, the safety of the operations, the rights of third parties or the security of supply can be expected in the reasonable and prudent estimation of RGSWest, RGSWest shall be entitled to reduce or interrupt the storage access to the extent this eliminates the irregular condition. Moreover, RGSWest may demand the establishment of technical measures at the expense of the storage customer to the extent necessary to observe the contractual provisions. If the technical measures are necessary as a result of conduct not complying with the contract on the part of the storage customer and further storage customers for the same natural gas storage facility, RGSWest shall divide the costs for establishing these technical measures in proportion to the amount of respectively maintained working gas volume among the affected storage customers which have to bear these costs.

Part 4 Operation

§ 8 Nomination

The storage customer shall be obliged to nominate the natural gas volumes to be assumed by RGSWest for injection and the natural gas volumes to be provided upon withdrawal in accordance with the provisions of the Annex "Operation and Nomination".

§ 9 Allocation

Provisions on the allocation of the natural gas volumes taken over hourly by the storage customer from RGSWest at the injection or withdrawal points of the storage facility for injection or the natural gas volumes made available hourly by the storage customer for withdrawal are determined in the Annex "Balancing".

Part 5 General provisions

§ 10 Interruptions of service for planned measures and disruptions

- (1) During planned measures pursuant to Sentence 2 or disruptions of the natural gas storage pursuant to Sentence 3, RGSWest shall be entitled to interrupt or restrict the storage facility operation. "Planned measures" means measures to perform maintenance (servicing, inspection and repair) and measures to execute installations, alterations or extensions of equipment in the natural gas storage facility. "Disruptions of the natural gas storage" means unplanned interruptions or other unplanned irregularities in natural gas storage or unplanned interruptions or other unplanned irregularities in the provision or the take-over of natural gas for injection or withdrawal. In the aforementioned cases, RGSWest shall be entitled to restrict storage facility utilization accordingly and shall be released in this regard from its contractual obligations.
- (2) RGSWest shall endeavor to restrict planned measures pursuant to Paragraph (1) to the necessary degree while assuring the highest possible availability of storage facility utilization.

§ 11 Interruptions of service in the case of imminent danger

RGSWest shall be entitled to interrupt storage facility utilization at any time without prior notice if this is necessary and objectively justified, particularly in order to:

- (1) prevent or avert imminent danger to persons, installations, the environment; or
- (2) assure that disruptive effects on installations of RGSWest or third parties are averted.

§ 12 Invoicing and payment

- (1) The fee for day-ahead utilization pursuant to the Annex "Fee for Day-Ahead Use" shall be invoiced monthly for the previous month. The invoice shall be issued prior to the 20th calendar day assuming the kWh of natural gas injected or withdrawn pursuant to the allocation according to the day-ahead utilization for the storage customer in the previous month.
- (2) The fee pursuant to Paragraph (1) is to be paid within fourteen (14) days after receipt of an invoice by the storage customer by remittance onto the bank account disclosed in the invoice.
- (3) If a deadline pursuant to Paragraphs (1) to (2) falls on a weekend or holiday, the deadline shall be considered the following banking day.
- (4) In the event of default of one contractual partner, the other contractual partner shall be entitled without any further reminder and without prejudice to further claims to demand the default interest stipulated by law (§ 288 of the German Civil Code – *BGB*).
- (5) Objections to invoices are to be made immediately after they are detected. Objections to invoices shall not entitle the party to delay or refuse payment, unless obvious errors (e.g. calculation mistakes) are concerned.
- (6) One contractual partner can only set off claims of the other contractual partner or assert a retention right if its due counterclaims are recognized or declared by non-appealable judgment.
- (7) Claims of the contractual partner against RGSWest may only be assigned to third parties with the written approval by RGSWest.

§ 13 Credit Requirements

The rules on credit requirements as agreed in the underlying storage contract between the parties are applicable *mutatis mutandis*.

§ 14 Insurance requirement

The storage customer must document the existence of adequate liability insurance to RGSWest before concluding the framework agreement and maintain such insurance for the term of the framework agreement. Liability insurance shall normally be considered as "adequate" if it covers a liability amount of EUR 2.5 million. For the scope of damage to be covered, the "General Terms and Conditions of Liability Insurance" of the insurance companies licensed to conduct insurance business by the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) shall apply.

§ 15 Force majeure

- (1) A contractual partner shall be released from its contractual obligations if and to the extent such partner is hindered in the performance due to *force majeure*, through measures of courts or authorities or through other circumstances for which such partner is not responsible or if the performance is unreasonable for such partner as a result. Accordingly, the other contractual partner shall be released from the obligations corresponding to these obligations.

- (2) "*Force majeure*" shall mean events outside the control of the affected contractual partner which cannot be prevented in due time even upon application of due diligence and all financial reasonable means, e.g. natural disasters, war, emergency measures, etc. This shall also include strikes and lock-outs.
- (3) The contractual partner affected by the events pursuant to Paragraphs (1) or (2) must notify the other contractual partner comprehensively and without undue delay of the disruption. Such partner must remedy the disruption as quickly as possible with the reasonable means at its disposal.

§ 16 Liability

- (1) The contractual partners shall be liable to each other for damages based on injury to life, body or health, unless the contractual partner itself, its legal representatives, servants [*Erfüllungsgehilfen*] or vicarious agents [*Verrichtungsgehilfen*] have not acted intentionally or negligently.
- (2) In the event of a breach of material contractual duties, the contractual partners shall be liable to each other for property and pecuniary damage, unless the contractual partner itself, its legal representatives, servants or vicarious agents have not acted intentionally or negligently; the liability of the contractual partners in the case of property or pecuniary damage caused by ordinary negligence shall be limited to the typical and reasonably foreseeable damage. In the event of transactions of the present type, a "typical and reasonably foreseeable damage " can regularly be assumed in the case of damages of up to EUR 2.5 million per damage event for property damages and up to EUR 1.0 million per damage event for pecuniary damages.
- (3) The contractual partners shall be liable to each other for property and pecuniary damages in the case of a breach of non-material contractual obligations, unless the contractual partner itself, its legal representatives, servants or vicarious agents have not acted intentionally or negligently.
- (4) The liability of the contractual partners themselves and for their legal representatives or managing servants and vicarious agents pursuant to Paragraph (3) shall be limited in case of property and pecuniary damages caused by gross negligence to the typical and reasonably foreseeable damage. The liability of the contractual partners for simple (*einfache*) servants shall be limited in case of property damages caused by gross negligence to EUR 1.5 million and in the case of pecuniary damages caused by gross negligence to EUR 500,000 per damage event.
- (5) At variance with Paragraphs (2),(3) and (4), RGSWest shall be liable for property and pecuniary damages which the storage customer incurs as a consequence of an interruption or other irregularity in the take-over or delivery of natural gas, based on breach of contract or tortious act only if the property damage has been caused intentionally or negligently and the pecuniary damage has been caused intentionally or grossly negligently by RGSWest, its legal representatives, servants or vicarious agents, whereby the existence of intentional action or negligence in the case of property damages and intentional action or gross negligence in the case of pecuniary damages shall be presumed subject to refutation. In the case of property damages not caused intentionally, the liability pursuant to this Paragraph (5) shall be limited to EUR 2.5 million per damage event. In the case of pecuniary damages not caused intentionally, the liability pursuant to this Paragraph (5) shall be limited to EUR 1.0 million per damage event.
- (6) If the aggregate individual damage compensation claims of the storage customer against RGSWest pursuant to Paragraphs (2),(3),(4) and (5) for a single damage event exceed the

maximum limit of EUR ten (10) million, the damage compensation claim of the storage customer shall be reduced in the ratio by which the aggregate damage compensation claims of all storage customers of RGSWest stand to this maximum limit.

- (7) Any liability of the contractual partner in accordance with compulsory provisions of the Liability Law (*Haftpflichtgesetz*) or the Product Liability Act (*Produkthaftungsgesetz*) and other legal provisions shall not be prejudiced hereby.
- (8) Paragraphs (1) to (7) shall also apply to the personal liability of legal representatives, employees, servants and other vicarious agents of the contractual partners.

§ 17 Data disclosure and processing

RGSWest shall be entitled to forward consumption, settlement and contractual data to the adjacent network operator if and to the extent this is necessary for the due execution of the relevant framework agreement. The storage customer hereby gives its consent to the automated processing of data by RGSWest or an enterprise commissioned by RGSWest in accordance with the provisions of data protection law.

§ 18 Confidentiality

- (1) Both contractual partners shall be obligated to treat confidentially the data of which they become/have become aware in connection with the execution of the framework agreement. Confidential treatment shall mean that information received from the other contractual partner shall not be made available to third parties without the prior written consent of the other contractual partner which gave the information and that such information may not be used commercially on behalf of third parties. The contractual partners shall not be authorized to use such data for any purpose other than to fulfill the duties assumed in accordance with this contract. The contractual partners shall also impose a corresponding obligation on the persons whom they use to fulfill the obligations incumbent upon them in accordance with the framework agreement
- (2) Any necessary disclosure to tax or legal advisors and the disclosure of the necessary technical information to subcontractors shall be permissible even without separate written approval of the information provider if the disclosure is limited to the scope necessary for the performance of the framework agreement and the recipients of the information for their part agree to treat the information confidentially or are obligated to maintain confidentiality by law and profession.
- (3) The duty to maintain confidentiality shall not apply to information that was previously known to the recipient at the time it was provided without any obligation to maintain secrecy or which was already available to the general public at the time of the provision or became available to the general public at a later time without default of the recipient.
- (4) Without prejudice to the above provisions, each contractual partner shall be entitled to meet its legal and statutory duties to provide information also in relation to the information provided to it. The other contractual partner must be informed hereof.
- (5) The duty to maintain confidentiality shall exist for the term of each framework agreement and shall continue to exist for five years beyond the cessation of each framework agreement.

§ 19 Economic Changes

- (1) If the technical, financial, organizational or legal prerequisites under which the framework agreement was agreed fundamentally change, each of the parties may request that the framework agreement be supplemented and/or adjusted while maintaining the commercial synallagma and/or that such contract be transformed into a contract properly taking these changes into consideration. The party that invokes such circumstances must substantiate and prove the relevant facts.
- (2) If no agreement regarding the adjustment of the contractual provisions is concluded within three months after one party has requested an adjustment pursuant to Paragraph (1), each contractual partner may take the legal recourse foreseen in §24. The claim to the new contractual provisions shall commence on the date the requesting party first requests the new contractual provisions from the other party by invoking the altered circumstances.

§ 20 Modification of these Terms and Conditions

- (1) RGSWest shall be entitled to amend these Terms and Conditions Day-Ahead at any time, even with effect for all existing framework agreements. Such a change - except for a change of the fees - shall be notified to the storage customer in writing with notice of at least three months. In such event, the storage customer shall be entitled to appeal the adjustment of these Terms and Conditions Day-Ahead within six (6) weeks after the receipt of the change notice. The storage customer must be informed separately in the written notice of this appeal right to appeal and its significance and of the significance of any failure to submit an appeal.
- (2) Notwithstanding Paragraph (1), RGSWest shall be entitled to amend these Terms and Conditions Day-Ahead with effect for all existing framework agreements with immediate effect if a change is necessary in order to comply with applicable national or international laws, legal regulations and/or binding standards of national or international courts or authorities, particularly the Federal Network Agency (*Bundesnetzagentur*) and generally accepted rules of engineering.
- (3) Notwithstanding Paragraphs (1) and (2), RGSWest shall be entitled to amend the Annex "Operation and Nomination" with effect for all existing framework agreements with prior notice of three (3) months in order to maintain the operative integrity of the storage facility or the upstream natural gas transport systems and/or generally accepted rules of engineering (particularly EASEE-gas and DVGW) or determinations of national and/or international authorities.
- (4) The rectification of obvious typographical or calculation errors shall not constitute an amendment of these Terms and Conditions Day-Ahead and shall be possible at any time.

§ 21 Legal succession

- (1) With the prior approval of the other contractual partner, the contractual partner shall be entitled to transfer the entire framework agreement to a third party.
- (2) The approval is to be granted provided no concerns exist about the technical and financial reliability of the third party. In particular, financial concerns shall not exist if:
 - a) the third party documents sufficient credit standing or provides adequate security upon request pursuant to § 13; and

- b) the third party documents liability insurance pursuant to § 14.
- (3) As a supplement to Paragraphs (1) and (2), any transfer of the framework agreement from the storage customer to a third party shall require that the third party has already concluded a storage contract concerning a working gas volume for the same storage facility or concludes such a contract in connection with the transfer of the rights and duties and the term of the storage contract concerning a working gas volume does not cease before the term of the framework agreement.
- (4) The approval is to be issued or denied within an appropriate period, at the latest four weeks after receipt of the request for approval and the provision of documentation pursuant to Paragraph (2).
- (5) A legal succession by an affiliated company in the terms of § 15 of the Corporation Act (*Aktiengesetz*) shall not require the prior approval of the other contractual partner.

§ 22 Term and termination

- (1) The framework agreement is concluded pursuant to the procedure described in §3. The framework agreement shall cease on the end date determined in the framework agreement (= term of contract). Should obligations relevant to the contract continue to exist at this point in time, such obligations shall be fulfilled by the parties even after the expiry of the term of performance.
- (2) The period during which day-ahead utilization can take place shall commence (with due regard to the provisions in §4) upon the starting date determined in the framework agreement. The day-ahead utilization period shall cease upon the end date determined in the framework agreement.
- (3) The framework agreement may be terminated for good cause by either contractual partner extraordinarily with immediate effect. "Good cause" shall exist particularly in the event:
 - a) contractual partner has repeatedly breached material provisions of the framework agreement and does so again, despite a prior written warning by the other contractual partner;
 - b) insolvency proceedings are initiated concerning the assets of the other contractual partner or a petition for the initiation of such proceedings is dismissed due to a lack of assets pursuant to § 26 of the Insolvency Code (*Insolvenzordnung*) or seizure measures are instigated pursuant to § 21 of the Insolvency Code concerning the assets of the other contractual partner. The affected contractual partner must inform the other contractual partner about this without delay.
- (4) Irrespective of Paragraph (3), RGSWest may also terminate a framework agreement with immediate effect extraordinarily if the storage customer:
 - a) repeatedly fails to meet a contractual payment obligation for which outstanding amount no security exists and the outstanding amount is not received by RGSWest onto a bank account to be specified by RGSWest within fourteen (14) working days after the storage customer has received a written payment request;
 - b) the security requested pursuant to § 13 is not rendered immediately after a repeated request; or
 - c) the proof of the existence of adequate liability insurance pursuant to § 14 is not provided immediately after a repeated request.

§ 23 Severability

- (1) Should one or more of the provisions contained in a framework agreement, including these Terms and Conditions Day-Ahead, be or become in the future invalid or impracticable in whole or in part, particularly in view of the changes in legal framework conditions such as through regulatory measures, the validity of the other provisions shall not be prejudiced thereby.
- (2) The contractual partners hereby agree in the event of Paragraph 1 to replace the invalid or impracticable provision by another valid and practicable provision which most closely approximates the invalid or impracticable provision in terms of the commercial outcome desired in accordance with the relevant framework agreement, effective from the date of the invalidity or impracticability. The new provision must take the interests of both contractual partners into adequate account. This shall also apply if the contract should contain gaps not considered by the contractual partners.

§ 24 Applicable law, arbitral proceedings and place of jurisdiction

- (1) These terms and conditions and all annexes are subject to German law.
- (2) All disputes derived from or in connection with a framework agreement or regarding the validity thereof are to be settled completely and definitively as follows through arbitral proceedings without recourse to ordinary courts of law:
 - a) The arbitral proceedings shall be conducted in conformance with the arbitral rules of the German Arbitration Institute (DIS);
 - b) the seat of the arbitral tribunal shall be in Dortmund;
 - c) there shall be three arbitrators, of whom at least one must be qualified to occupy the position of a judge in Germany; and
 - d) the proceedings shall be conducted exclusively in German.
- (3) The losing contractual partner shall bear all costs related to the arbitral proceedings. If no contractual partner is completely successful, the costs incurred for the arbitral proceedings shall be divided on a prorated basis between the contractual partners pursuant to § 91 of the German Civil Procedure Code (*Zivilprozessordnung*).
- (4) Neither the contractual partners nor their security providers shall be exonerated from their obligations pursuant to this Agreement or any security agreement regarding this Agreement due to any sought or ongoing arbitral proceedings.

§ 25 Integral Parts of these Terms and Conditions

The Annexes applicable to the relevant storage facility:

- "Fee for Day-Ahead Utilization"
- "Technical Framework Conditions"
- "Operation and Nomination" and
- "Balancing"

shall form integral parts of these Terms and Conditions Day Ahead.