

# **General Terms and Conditions**

**of Austrian Power Grid AG**



**For the Tendering Procedures for Covering Grid Losses  
in Austria**

**version 1.4  
(20 January 2014)**

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## Abbreviations and definitions

**APCS** – imbalance settlement responsible party in the control block of APG and responsible for the registration of Austrian Balance Groups ([www.APCS.at](http://www.APCS.at)).

**Austrian Power Grid AG (“APG”)** – with its registered office at A-1220 Vienna, Wagramer Straße 19, IZD-Tower, Austria, commercial register FN 177696 v HG Wien.

**Bid** – Bidder’s offer for a power (Bid Amount) at a specified price (Bid Price) submitted via the Electronic Auction Platform.

**Bid Amount** – offered amount of power in MW.

**Bid Price** – price in EUR/MWh which Bidder is willing to receive for 1 MWh of offered power.

**Bidder** – a person and/or an entity taking part in the Tendering Process, identified with a unique EIC Code and successfully registered at APG in accordance with the procedure set forth in Article 3.

**Energie-Control GmbH** – Austrian Regulatory Authority for the Electricity and Natural Gas Market ([www.e-control.at](http://www.e-control.at))

**EEX (“European Energy Exchange AG”)** - the leading energy exchange in Central Europe located in Leipzig (Germany).

**EIC-Code** – Energy Identification Code Scheme serving to clear the identification of legal entities in electricity trade (see <http://www.entsoe.eu/index.php?id=73>)

**Electronic Auction Platform** – an electronic web-based trade portal operated by APG (available on <https://www.apg.at/emwebapgrem/startApp.do>).

**Expression of Interest** – the Expression of Interest Form (Annex 1) published at <http://www.apg.at/de/markt/netzverluste/verlustenergiebeschaffung/teilnahmebedingungen>

**KSV** – Austria’s largest association for the protection of creditors (see: <http://www.ksv.at>)

**Schufa** – the oldest credit information agency in field of credit data and score card development in Germany (see <http://www.schufa.de>).

**Tendering Product**– a product (power in MW, energy in MWh) to be bought in set quantities during the Tendering Process.

**Tendering Process** – a transparent, market-oriented and non discriminatory mechanism adopted by APG in order to procure energy required for covering the grid losses, which is laid down in these General Terms and Conditions.

**Time Stamp** – the Electronic Auction Platform system time assigned to a Bid when it leaves and/or comes into the Electronic Auction Platform.

**Sonstige Marktregeln** – Austrian Electricity Market Rules published by the Energie-Control GmbH under <http://www.e-control.at/de/recht/regulierungsrecht/sonstige-marktregeln-strom>.

**Working Day** – the calendar days from Monday to Friday, with the exception of Austrian public holidays.

## 1. Preamble

According to the rules of Austrian federal and provincial electricity law grid operators are obliged to procure energy required for covering the grid losses in a transparent, market-oriented and non discriminatory manner. Energie-Control GmbH laid down the principles for the procurement of grid losses in the Sonstige Marktregeln, Kapitel (Chapter) 8.

Based on the above mentioned Sonstige Marktregeln, Kapitel (Chapter) 8, APG is responsible for conducting the procurement of the energy required for covering the grid losses in a transparent, market-oriented and non discriminatory manner for a majority of the grid losses of Austrian grid operators (> 60%). Hence, APG is performing the procurement process in its own name and on behalf of other Austrian grid operators.

These General Terms and Conditions and its Annexes define all issues, preconditions and conditions related to the participation, the procurement and the delivery and acceptance of the energy for grid losses in Austria. The procurement procedures will start in 2010.

## 2. Subject of the Tendering Process

APG purchases in its own name and on behalf of other Austrian grid operators energy for grid losses in the course of Tender Processes starting with the delivery period of 2011. The procurement of energy for grid losses is based on standardised future products as traded on Power Exchanges (e.g. EEX). The announcement of each individual tender as well as related market information (type of Tendering Products) will be published at the Electronic Auction Platform in due time. An example of some standard products is displayed in Table 1. APG is entitled to define Tendering Products based at its own discretion.

Table 1: Standard Tendering Products (illustrative example)

Alias	Product	From	To	Status	Power	Energy	Closure Date	Time
MB_2012/04	Baseload	01.04.2012	30.04.2012	opened	2	1440	DD.MM.YYYY	hh:mm
MP_2012/04	Peakload	01.04.2012	30.04.2012	opened	1	276	DD.MM.YYYY	hh:mm
YB_2013	Baseload	01.01.2013	31.12.2013	accepted	1	8760	DD.MM.YYYY	hh:mm

Legend: MB-Monthly Base; MP-Monthly-Peak; YB-Yearly Base; DD-day; MM-month; YYYY-year; hh-hour; mm- minutes;

## 3. Requirements for participation in Tendering Process

### 3.1. Expression of interest

Interested Bidders may use the form Expression of Interest (Annex 1) and submit it to APG (Fax, Mail). The registration process is then performed according to the following provisions. By signing the Expression of Interest (Annex 1) every Bidder irrevocably declares the acceptance of the General Terms and Conditions and its Annexes and the EFET General Agreement, Version 2.1(a)/September 21, 2007.

### 3.2. Evaluation of Bidder

After receiving the Expression of Interest form (Annex 1) from a Bidder, APG will request a certain set of documents which are necessary for the evaluation of the solvency of a potential Bidder. These documents are:

- Annual business reports of the last three (3) years;
- Official documents of rating agency (if available);
- Registration documents of Power Exchanges and traded volumes (if available).

Furthermore the following factors will be taken into account for the evaluation of the solvency of a potential Bidder:

- Press reports from national and international information agencies (such as Reuters, Dow Jones, Platts, etc.);
- Evaluation of interim reports (quarterly or semi-annual reports);
- Information of external credit rating agencies (e.g. KSV, Schufa, etc.).

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### **3.3. Trading limit**

After receiving the necessary documents APG will perform, within a period of four (4) weeks after reception of the documents, the internal evaluation and allocate the respective trading limits to each individual Bidder according to standard market procedures. Those trading limits define the maximum financial volumes APG is going to accept by an individual Bidder for purchasing energy for grid losses. Hence, after awarding a Bid to a Bidder, the associated trading limits are updated (decreased) after each Tendering Process. After the physical delivery, the associated trading limits are updated (increased) on a monthly basis. The current market value will also be considered by APG (mark-to-market process). If the amount of the trading limit is not sufficient or zero (no limit), the Bidder is entitled to provide bank guarantees. After the evaluation of solvency has been performed by APG, the Bidder will receive via E-Mail the associated trading limit, which the Bidder is bound to accept. Furthermore the Bidder shall deliver its Membership to the Austrian Balance Group Form (Annex 3), if necessary, according to Article 3.6.

### **3.4. EFET General Agreement Version 2.1(a)/September 21, 2007**

Along with the signing and delivering the Expression of Interest (Annex 1) the Bidder shall also sign the Election Sheet to the EFET General Agreement, Version 2.1(a)/September 21, 2007, Concerning the Delivery and Acceptance of Electricity for Grid Losses in Austria (Annex 4) and shall submit it to APG via fax (the original shall be sent to APG via registered letter). As long as the Bidder is entitled to take part in the Tendering Process set out in these General Terms and Conditions and its Annexes APG and the Bidder agree to perform the delivery and acceptance of electricity for grid losses in Austria according to the rules set out in these General Terms and Conditions and its Annexes and the EFET General Agreement, Version 2.1(a)/September 21, 2007. The EFET General Agreement, Version 2.1(a)/September 21, 2007 can be downloaded under [efet.org](http://efet.org).

### **3.5. Confirmation**

After successful registration and receiving the documents according to Art 3.3. and 3.4. the Bidder will receive a confirmation from APG via E-Mail. The username and password needed to gain access to the Electronic Auction Platform will be delivered via registered letter. The successfully registered Bidder is then obliged to change the preliminary password, which was delivered via registered letter.

### **3.6. Balance group**

The Bidder shall either be recognised by Energie-Control GmbH as a representative of an Austrian Balance Group or be a member of a recognized Austrian Balance Group (Annex 3) to be allowed to participate in the Tendering Process for covering the grid losses. The registration of Balance Groups is performed by an independent market operator ([www.APCS.at](http://www.APCS.at)). If the Bidder is a member of an Austrian Balance Group, he shall submit the written acknowledgement of the representative of the balance group wherein the representative of its balance group commits himself to handle the corresponding schedules (Annex 3). The membership to an Austrian Balance Group can be changed according to the Sonstige Marktregeln, Kapitel (Chapter) 5. The Bidder shall deliver the new Annex 3 five (5) Working Days (12:00 a.m. at the latest) before the first day when the change of Balance Group becomes effective.

### **3.7. Place of performance; control area for energy delivery**

The place of delivery shall be the control area of APG. All deliveries must take place to the balancing group named by APG (Sonder-Netzverlustbilanzgruppe, EIC code: 14XAPG-SBG-LOSS3).

### **3.8. Permanent monitoring of financial soundness**

The successfully registered Bidder is obliged to submit to APG at least once a year and as soon as available the updated set of documents as listed in Article 3.2. In the event of any material adverse change in the credit rating and financial soundness, APG is entitled to require, by written notice, that the Bidder provides bank guarantees, in a form and amount reasonably acceptable to APG. Upon receipt of such notice, the Bidder is obliged to provide the Performance Assurance without delay. At any case APG is entitled to exclude bidders from the Tendering Process and to terminate any contractual relations to the Bidder in the event of a material adverse change in the credit rating and financial soundness.

### **3.9. Exclusion of Tendering Process**

In case of any breach and/or the Bidder does not comply in any another form with all requirements and rules set out in these General Terms and Conditions and its Annexes and the EFET General Agreement, Version 2.1(a)/September 21, 2007, especially if the Bidder does not fulfil the requirements for his financial soundness, APG is entitled to exclude the Bidder without any delay from any further Tendering Processes. In this case Bidder is still bound to accepted bids and already concluded electricity supply contracts according to Article 5. APG shall inform the Bidder from his exclusion without delay. Bidder is entitled to renew its interest in the participation according to the provisions of Article 3. There shall be no automatic readmission to new Tendering Processes.

## **4. Submission of Bids**

### **4.1. Bid submission**

For each ex-ante defined tender date, all successfully registered Bidders will be informed via Mail to submit the Bids via the Electronic Auction Platform. This invitation will be sent at least one (1) Working Day before the opening of auction (gate opening). The invitation for the submission of Bids does not oblige a Bidder to submit a Bid. Delivery of the Bids takes place during the time interval between the opening and the closing of the gate, as defined on the Electronic Auction Platform.

In case of a Bid re-submission, a new Time Stamp is attached to a Bid, which is one of the decisive criteria for the acceptance/rejection of a particular Bid according to Article 4.3.

Each Bid shall contain the following data:

- price requested for the energy delivery, i.e. Bid Price (rounded on two decimals - in EUR/MWh) and
- power offered for the energy delivery, i.e. Bid Amount (integer number - in MW).

Minimum amount of a single Bid is 1 MW. All submitted Bids are treated as divisible Bids. VAT (Value Added Tax) shall not be included in the Bid Price.

### **4.2. Costs and/or expenses**

Any costs and/or expenses for the preparation of a Bid, the participation in and/or the cancellation of a Tendering Process shall exclusively be borne by the Bidder.

### **4.3. Criteria for allocation of Bids**

The awarding of Bids is done in a market-based, transparent and non-discriminatory manner. Based on all submitted Bids for each tender date and Tendering Products, a merit order list will be created starting with the cheapest offer. APG will accept the offers for supply of the grid losses, taking into account that:

- cheapest Bids are awarded first, up to the requested amount defined per auction;
- in case that several Bidders have submitted a Bid with an identical price, the earlier Time-Stamp of a Bid shall be the decisive criteria.

The applied mechanism for the calculation of the clearing price is “pay-as-bid”. Hence, each successful Bidder will be paid his bidding price.

### **4.4. Cancellation**

APG is entitled to cancel auctions without having to give any reasons. In case of cancellation APG is not liable to Bidders for any loss, expenses and/or any damages (including without limitation any consequential and/or indirect damages, loss of profit, goodwill, business opportunities, anticipated saving, costs and/or expenses for the preparation of a Bid, the participation in the Tendering Processes).

### **4.5. Acceptance of Bids**

After gate closure APG shall award/reject Bids according to Article 4.3. The award/rejection of Bids shall be made no later than fifteen (15) minutes after gate closure of the respective auction. With acceptance of a Bid, APG and the Bidder automatically conclude an Electricity Supply Contract according to Article 5 with regard to

the Tendered Products. Successful Bidders are informed about the acceptance of their Bids (Awarded Bids). If a Bidder is not informed about the acceptance of his Bid within fifteen (15) minutes after gate closure of the respective tender, his Bid shall be considered to be rejected.

#### **4.6. Publication of results**

The results of a Tendering Process shall be published on the Electronic Auction Platform and contain the following information per Tendering Product:

- total number of Bidders;
- number of successful Bidders;
- average price of accepted offers (EUR/MWh);
- total Bid Amount (MW);
- accepted Bid Amount (MW);
- anonymous Bidding curve.

### **5. Electricity Supply Contract**

#### **5.1. EFET General Agreement and the Election Sheet**

With the acceptance of a Bid APG and the accepted Bidder automatically conclude an electricity supply contract with regard to the Tendered Product according to the EFET General Agreement, Version 2.1(a)/September 21, 2007 and the Election Sheet to the EFET General Agreement, Version 2.1(a)/September 21, 2007, Concerning the Delivery and Acceptance of Electricity for Grid Losses in Austria (Annex 4). Subject matter of this electricity supply contract is the delivery and acceptance of electricity according to the successful Bid. The single contract terminates automatically after the fulfilment of the respective delivery and acceptance of electricity. Modifications of Annex 4 and/or the EFET General Agreement, Version 2.1(a)/September 21, 2007 are not permitted. Annex 4 may be downloaded in PDF-form on the website: <http://www.apg.at/de/markt/netzverluste/verlustenergiebeschaffung/teilnahmebedingungen>. The EFET General Agreement, Version 2.1(a)/September 21, 2007 can be downloaded in PDF-form on the website: <http://www.efet.org>. Additional provisions to the EFET General Agreement can be found and are laid down in these General Terms and Conditions and constitute an integral part of the EFET General Agreement and the Election Sheet to the EFET General Agreement, Version 2.1(a)/September 21, 2007, Concerning the Delivery and Acceptance of Electricity for Grid Losses in Austria (Annex 4).

The rules and regulations for the transactions set out in the EFET General Agreement only apply within the limited and specific scope of these General Terms and Conditions and do not apply on any other business relation between the parties.

There is no conclusion of Individual Contracts according to the EFET General Agreement, Version 2.1(a)/September 21, 2007.

If necessary, the parties will agree from case to case the convenient form of the conclusion and/or confirmation of contracts.

#### **5.2. Prohibition of set-off and rights of retention**

Bidders are not entitled to offset and/or withhold any debts and/or claims that arise in connection with the delivery and acceptance of electricity according to these General Terms and Conditions and/or its Annexes to any debt and/or claim against APG whether or not arising out of the delivery and acceptance of electricity according to these General Terms and Conditions and/or its Annexes.

#### **5.3. Termination rights**

APG is entitled to terminate the electricity supply contracts with regard to Tendered Products and the EFET General Agreement, Version 2.1(a)/September 21, 2007 according to the provisions set out in Annex 4 and the EFET General Agreement, Version 2.1(a)/September 21, 2007. If possible APG will conduct a new Tendering Process for the affected energy delivery. In case of termination § 11 and corresponding provisions of the EFET General Agreement, Version 2.1(a)/September 21, 2007 shall apply mutatis mutandis. Beyond that APG is not liable to Bidders for any loss, expenses and/or any damages (including without limitation any consequential

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and/or indirect damages, costs and/or expenses for the preparation of a Bid, the participation in the bidding processes).

## **6. Scheduling**

The scheduling shall be performed according to the Sonstige Marktregeln.

## **7. Amendments and termination rights for bidders**

### **7.1. Amendments**

APG is entitled to amend/alter these General Terms and Conditions and its Annexes, especially in case of changes in the legal requirements.

### **7.2. Termination rights for bidders**

Bidders are entitled to inform APG after every finished Tendering Process via registered letter signed by a company authorised person, that they do not want to participate in any forthcoming Tendering Process on the basis of these General Terms and Conditions. In case of such information APG shall exclude these Bidders without delay from any further Tendering Processes and there shall be no access to the Electronic Auction Platform anymore.

Notwithstanding the exclusion of further Tendering Processes the Bidders shall still be bound to accepted bids and to already concluded electricity supply contracts with regard to Article 5. Therefore the provisions set out in these General Terms and Conditions and/or in its Annexes shall still apply with regard to accepted bids and already concluded electricity supply contracts pursuant to Article 5.

Bidders are entitled to renew their interest in the participation only according to the provisions of these General Terms and Conditions. There shall be no automatic readmission to new Tendering Processes.

## **8. Miscellaneous**

### **8.1. Interpretation**

Headings of sections and paragraphs in these General Terms and Conditions and/or in its Annexes are for convenience only and do not affect the interpretation of its provisions. Any reference to legal provisions shall be a reference to any statutory modification or re-enactment thereof.

### **8.2. Severability**

If, at any time, any provision of these General Terms and Conditions and/or its Annexes are or become illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, nor the validity, or the enforceability of the remaining provisions shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

### **8.3. Exclusion of third party rights**

Third parties shall have no rights under or be able to enforce these General Terms and Conditions and/or its Annexes, furthermore, the Parties expressly exclude any third party rights, which may arise from or be implied under any otherwise applicable statutory law.

### **8.4. Applicable law**

These General Terms and Conditions and all its Annexes and the EFET General Agreement, Version 2.1(a)/September 21, 2007 shall be construed and governed exclusively by the substantive laws of the Republic of Austria, excluding the conflict of law rules of Austrian international private law and excluding the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980.

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## **8.5. Jurisdiction**

Any disputes, disagreements or claims which may arise in connection with these General Terms and Conditions and/or its Annexes and the EFET General Agreement, Version 2.1(a)/September 21, 2007 and/or relating to these documents, or the violation, dissolution or invalidity thereof shall be exclusively referred to and settled by the competent Court at the place of business of APG in Vienna, Austria (Handelsgericht Wien).

## **9. Annexes**

### **9.1. Integral parts**

All Annexes of the General Terms and Conditions,

- Annex 1: Expression of Interest (Form)
- Annex 2: Contact data
- Annex 3: Membership of an Austrian Balance Group (Form)
- Annex 4: Election Sheet to the EFET General Agreement Version 2.1(a)/September 21, 2007 Concerning the Delivery and Acceptance of Electricity for Grid Losses in Austria

and the EFET General Agreement, Version 2.1(a)/September 21, 2007 constitute an integral part of the General Terms and Conditions. The General Terms and Conditions and its Annexes and the EFET General Agreement, Version 2.1(a)/September 21, 2007 shall comprise the entire understanding between the Parties regarding the transaction contemplated therein, and there do not exist any other agreements, representations and warranties or obligations between the Parties except for those expressly provided for herein.

### **9.2. Conflict of provisions**

In case of conflict of provisions between these General Terms and Conditions and provisions of its Annexes and/or the EFET General Agreement, Version 2.1(a)/September 21, 2007, the provisions of these General Terms and Conditions shall prevail.



## Annex 1: Expression of Interest

Ship to:  
Austrian Power Grid AG  
Market Management  
Wagramer Straße 19 (IZD-Tower)  
1220 Wien  
Austria

Telephone: +43 (0) 50320 56477  
Fax: +43 (0) 50320 1 56477  
E-Mail: [frontoffice.sdl@apg.at](mailto:frontoffice.sdl@apg.at)  
[www.apg.at](http://www.apg.at)

## Expression of Interest

Dear Sirs,

Herewith we would like to express our interest for participation in the Tendering Process, organised by APG, for the procurement of the energy for covering the grid losses.

### COMPANY DATA:

<b>Company Name:</b>			
<b>Postal Address:</b>			
<b>Post code and city:</b>		<b>Country:</b>	
<b>EIC-Code:</b>			
<b>E-Mail (functional address):</b>			

### COMPANY BANK DETAILS:

<b>Name of Bank:</b>	
<b>IBAN</b>	
<b>S.W.I.F.T. code</b>	

### CONTACT PERSON/REPRESENTATIVE:

<b>Name:</b>	<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs.		
<b>Telephone:</b>		<b>Mobile:</b>	
<b>Fax:</b>			
<b>E-Mail:</b>			

We hereby irrevocably declare our intention to participate in the procurement procedures for the grid losses energy for Austria within the control area of Austrian Power Grid AG according to the Austrian Electricity Market Rules, Chapter 8 (“*Sonstige Marktregeln, Kapitel 8*”) in the centrally-organised procurement of grid losses over a special grid losses balance group (“*Sonder-Netzverlustbilanzgruppe*”) of Austrian Power Grid AG and the rules and regulations set out by the General Terms and Conditions for the Tendering Procedures for Covering Grid Losses in Austria of Austrian Power Grid AG and all its Annexes and the EFET General Agreement, Version 2.1(a)/September 21, 2007. We fully and irrevocably accept to abide and to be bound by these rules and regulations.

Furthermore, we irrevocably accept the limits set out for the participation in the procurement procedures within the control area of Austrian Power Grid AG.

We give our consent that Austrian Power Grid AG is entitled to process our personal data, such as company name and authorized person, contact information (telephone and facsimile number, e-mail address), EIC-Code, registration code and IP address for the purpose of performing the electronic procurement procedures and statistical evaluation in personal form/and to inform us of forthcoming procurement procedures and additional services. We consent to the storage of our personal data as long as this is necessary for the aforementioned purposes according to the General Terms and Conditions for the Tendering Procedures for Covering Grid Losses in Austria and all its Annexes. Austrian Power Grid AG will utilize established cryptographic protocols, such as encryption, to prevent personal data from being disclosed.

\_\_\_\_\_  
(Place, Date)

\_\_\_\_\_  
Signature of company authorised person

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**Annex 2: Contact data**

For questions regarding the Tendering Process, please contact APGs front office.

**FRONT OFFICE**

<b>E-Mail</b>	<b>Telefon</b>	<b>Fax</b>
<a href="mailto:frontoffice.sdl@apg.at">frontoffice.sdl@apg.at</a>	+43 (0) 50320 56477	+43 (0) 50320 1 56477

**Annex 3: Membership of an Austrian Balance Group**

Ship to:  
 Austrian Power Grid AG  
 Market Management  
 Wagramer Straße 19 (IZD-Tower)  
 1220 Wien  
 Austria

Telephone: +43 (0) 50320 56477  
 Fax: +43 (0) 50320 1 56477  
 E-Mail: [frontoffice.sdl@apg.at](mailto:frontoffice.sdl@apg.at)  
[www.apg.at](http://www.apg.at)

**Membership of an Austrian Balance Group**

	BIDDER	AUSTRIAN BALANCE GROUP
<b>Company name:</b>		
<b>Address:</b>		
<b>EIC-Code:</b>		
<b>Contact Person/ Representative:</b>		
<b>Telephone:</b>		
<b>Mobile:</b>		
<b>Fax:</b>		
<b>E-Mail (functional address):</b>		

By signing this acknowledgement the representative of the Austrian Balance Group confirms that the Bidder is a member of its balance group and commits itself to handle the corresponding schedule.

<b>CONFIRMATION</b>		
	BIDDER	AUSTRIAN BALANCE GROUP
Company name/ company stamp		
Date:		
Signature:		

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**Annex 4:**

**Election Sheet to the EFET General Agreement Version 2.1(a)/September 21, 2007 Concerning the Delivery and Acceptance of Electricity for Grid Losses in Austria**