

part of eex group



# EEX OTF Terms and Conditions

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The English version is for information purposes only. Only the German version is legally binding.

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## I. General Provisions

### § 1 Organised Trading Facility at EEX

The EEX Organised Trading Facility ("**EEX OTF**") at the European Energy Exchange ("**EEX**") is a multilateral system approved and supervised in accordance with section 48b BörsG [German Exchange Act] by the competent exchange supervisory authority in which multiple third-party buying and selling interests in derivatives and futures on wholesale energy products that must be physically settled ("**products**") are able to interact in the system in a way that results in a contract in accordance with section 48b sub-section 7 BörsG ("**discretion**").

### § 2 Operator of the EEX OTF

- (1) The EEX OTF is operated by the European Energy Exchange AG ("**EEX AG**"), which is in charge of the organisation and administration of the EEX OTF and provides the required financial, personnel and material resources for its operation and adequate further development.
- (2) EEX AG has commissioned the EEX Management Board of the Exchange ("**Management Board of the Exchange**") to manage the business of the EEX OTF.

### § 3 Elements of the Terms and Conditions

- (1) These OTF terms and conditions ("**Terms and Conditions**") are provided by EEX AG and were approved by the Management Board of the Exchange.
- (2) The OTF Contract Specifications are part of these Terms and Conditions.

### § 4 Scope of application

- (1) These Terms and Conditions govern access to trading and the inclusion of products in trading at the EEX OTF. The course of trading at the EEX OTF, including the settlement of trades, is governed by the Trading Rules for the EEX OTF ("**Trading Rules**").
- (2) The rules below exclusively apply to business relations between EEX AG as the operator and the Trading Participants or Non-Trading Brokers of the EEX OTF. Other relationships between the Trading Participants and Non-Trading Brokers and EEX AG or EEX are not affected by these Terms and Conditions.

## II. Access to the EEX OTF

### § 5 Trading Participants and Non-Trading-Brokers

- (1) EEX AG grants legal entities or natural persons having the legal form of a sole proprietorship ("**Companies**") access to the EEX OTF as Trading Participants or as Non-Trading Brokers. Access is only granted if the general preconditions for access and – in as far as required – the special preconditions for access are fulfilled. Access can include individual or all products which can be traded at the OTF.
- (2) Non-Trading Brokers are not Trading Participants and cannot conclude transactions of their own. They are only entitled to use the Trade Registration functionality in the name and on behalf of a Trading Participant; further details are established in § 38 of the EEX Exchange Rules ("**EEX Exchange Rules**") and the EEX Trade Registration Rules.
- (3) Upon entering of an order regarding an OTF product in the T7 trading system of EEX AG or the registration of a trade, a company recognises the validity of these terms and condition; as a result, it is obliged to comply with these Terms and Conditions, the Trading Rules and the rules and regulations of the exchange – in as far as reference is made to these – as well as the instructions of the Management Board of the Exchange.

### § 6 General preconditions for access

- (1) A company is granted access to the EEX OTF as a Trading Participant if it is licensed as an EEX Trading Participant and approved by EEC AG as a trading participant for the products tradable at the OTF. For the access to the EEX OTF to trading in products that must be physically settled, in accordance with the ECC Clearing Conditions in particular a corresponding balancing group contract is required.
- (2) Only persons admitted to EEX as exchange traders are authorised to conclude trades for a Trading Participant.
- (3) A company is granted access to the EEX OTF as a Non-Trading Broker if it is recognised as a Non-Trading Broker at EEX.
- (4) Trading Participants are obliged to inform EEX AG forthwith of events that might affect their ability to ensure physical settlement of products.

### § 7 Currently not available

## § 8 Suspension

- (1) Upon a justified request by ECC or the supporting Clearing Member, EEX AG can suspend a Trading Participant from trading without a prior announcement according to its best judgment under consideration of the justified interests of the Trading Participant. § 27 EEX Exchange Rules (Emergency Member Stop) and §§ 28, 29 EEX Exchange Rules (Exclusion from trading) shall apply accordingly.
- (2) Furthermore, EEX AG can suspend a Trading Participant without a prior announcement according to its best judgment under consideration of the justified interests of the Trading Participants in the event that
  - a) the general or product-specific access conditions are not fulfilled,
  - b) there is justified reason to suspect that the Trading Participant violates essential legal provisions,
  - c) the Trading Participant is the subject of a court or official order or investigation on grounds of a violation of a law or an infringement of instructions by a supervisory authority,
  - d) that Trading Participants violates contractual obligations under these Terms and Conditions or the Trading Rules or the EEX rules and regulations,
  - e) the Trading Participant does not provide the collateral or the daily settlement payments or other deliveries or payments and fees owed according to the Terms and Conditions, the Trading Rules or the ECC Clearing Conditions in due time,
  - f) the Trading Participant's capacity for effective delivery of the positions in physical products it has entered into is impaired,
  - g) the Trading Participant is involved in an activity or conduct which impairs or is likely to impair the function, speed or reliability of the EEX OTF or of EEX, or in the event that such is suspected,
  - h) the Trading Participant has been fully or partly suspended from trading at EEX.
- (3) Throughout the term of the suspension, EEX AG partly or fully suspends the Trading Participant from trading at the EEX OTF until the reason for the suspension ceases to apply. Orders, quotes and positions initiated by a Trading Participant remain inactive for that period. EEX AG can cancel the active orders and quotes concerned on behalf and at the expense of the Trading Participant and close open positions of the Trading Participant.

- (4) The above suspension rules apply to Non-Trading Brokers accordingly. Non-Trading Brokers may not use the Trade Registration functionality of the EEX OTF throughout the term of the suspension.

## **§ 9 Termination**

- (1) Access to the OTF can be properly terminated by the parties with a period of notice of four weeks as of the end of the month.
- (2) Regardless of section 1, EEX AG can terminate the access to the OTF at any time for cause without observing a period of notice. An important cause applies if the continuation of the business relationship becomes unacceptable for EEX AG even under consideration of the justified interests of the Trading Participant or Non-Trading Broker. An important cause applies, in particular, if the Trading Participant or the Non-Trading Broker
  - a) violates essential legal provisions or instructions by supervisory authorities,
  - b) violates essential contractual obligations under these Terms and Conditions or the Trading Rules or the EEX rules and regulations after a fruitless warning,
  - c) defaults on collateral or daily settlement payments or other deliveries, payments or fees owed according to these Terms and Conditions, the Trading Rules or the ECC Clearing Conditions even after a fruitless warning,
  - d) the preconditions for admission are not fulfilled even after a deadline has been set and a suspension been effected, if applicable.
- (3) Upon the effectiveness of the termination, EEX AG can cancel active orders and quotes in the name and at the expense of the Trading Participant and close open positions of the Trading Participant.
- (4) The Trading Participant's or Non-Trading Broker's right to terminate for cause remains unaffected.

## **§ 10 Fees**

The fees resulting from participation in trading at the EEX OTF are based on the List of Services and Prices of EEX AG provided at [www.eex.com](http://www.eex.com).

### III. Products

#### § 11 Products admitted to trading

- (1) The products offered for trading at the EEX OTF are listed in the EEX OTF Contract Specifications.
- (2) The Contract Specifications are an element of these Terms and Conditions and form the basis of all transactions at the EEX OTF. Amendments of the Contract Specifications are effected in accordance with § 14 section 2 of these Terms and Conditions.
- (3) Trading and pricing in products traded at the EEX OTF are effected in accordance with the Trading Rules in conjunction with the provisions of the EEX rules and regulations to be applied accordingly pursuant to these.

#### § 12 Inclusion of new products in trading at the EEX OTF; Delisting

- (1) Products can be included in trading at the EEX OTF if proper trading in these products can be expected and trading in these products is not precluded by any official bans or prohibitions.
- (2) The Management Board of the Exchange decides on the inclusion of products in trading at the EEX OTF as well as their delisting.

#### § 13 Suspension of trading of products

- (1) The Management Board of the Exchange can withdraw the inclusion of products in trading at the EEX OTF if proper trading or the proper execution of trades is jeopardised or if this appears appropriate to protect the audience. This applies, in particular, if EEX AG is no longer authorised to refer to an underlying.
- (2) Regardless of the provisions contained in section 1, the Management Board of the Exchange can suspend or interrupt trading in individual products or issue instructions with regard to trading or the trade settlement of individual products according to § 4 section 1 Trading Rules in connection with § 42 of the EEX Exchange Rules, which applies accordingly.

### IV. Final provisions

#### § 14 Entry into force, amendments of the EEX OTF Terms and Conditions

- (1) These Terms and Conditions take effect on 3<sup>rd</sup> January 2018.

- (2) Amendments of these Terms and Conditions and additions hereto shall be electronically communicated to the Trading Participants and the Non-Trading Brokers through a customer newsletter and publication on the EEX AG website at [www.eex.de](http://www.eex.de), at least, ten (10) business days before they take binding effect. Such amendments and additions are considered approved unless the Trading Participant or the Non-Trading Broker submits an objection to EEX AG in writing within a period of ten (10) business days after their announcement. EEX AG shall specifically point out this consequence in the announcement of the amendments.
- (3) In the event of an objection, EEX AG can terminate the access to the EEX OTF with a period of notice of four weeks. Terminations for cause shall not be affected.

## **§ 15 Liability of EEX AG; contributory negligence**

- (1) EEX AG is liable for cases of damage which it has culpably caused through a violation of an essential contractual obligation of which EEX AG is in charge. However, in cases of simple negligence, the amount of the liability of EEX AG is limited to the foreseeable damage typical of the contract. Apart from this, any liability of EEX AG is excluded in case EEX AG has not caused the damage through premeditation or gross negligence. Moreover, the mandatory statutory liability, in particular, in cases of culpable injury to life, limb or health shall also not be affected.
- (2) In the event that the Trading Participant or Non-Trading Broker has contributed to the damage through culpable conduct and, in particular, a violation of obligations under these Terms and Conditions, the extent to which EEX AG and the Trading Participant or Non-Trading Broker have to assume the damage shall be determined in accordance with the principles of contributory fault.
- (3) EEX AG is not liable for cases of damage resulting from force majeure, riots, acts of war or natural phenomena or from other incidents for which it is not responsible (e.g. strikes, lock-outs, traffic disruptions or orders by public authorities) or which are due to technical problems which have not been culpably caused.

## **§ 16 Data protection and confidentiality**

- (1) In order to fulfil its task of monitoring proper trading and the settlement of trades, the Management Board of the Exchange records incoming and outgoing phone calls on the Market Supervision telephone lines. These recordings are deleted, at the latest, after the end of a period of one year after the month during which the recording was made provided the Management Board of the Exchange no longer needs to know the data recorded for the performance of its tasks.



- (2) The telephone recordings according to section (1) can be forwarded to the authorities specified in § 10 German Exchange Act ("**Exchange Act**") in as far as these authorities need to know such data for the performance of their tasks.
- (3) Data gathered according to section 1 whose secrecy lies within the interest of the Trading Participants or Non-Trading Brokers or of a third party and, in particular, personal data as well as trade and business secrets are exclusively used for the purposes specified in section (1) and only if the investigation of matters relevant for this is not possible or not reasonably possible with the help of other findings or evidence.
- (4) Throughout the term of their business relationship and beyond, the parties hereto undertake to keep confidential information provided to them by the respective other party, its affiliated companies, consultants or by other third parties on its behalf or obtained by them in connection with their business relationship confidential and to protect such against unauthorised access.
- (5) Every party also imposes the confidentiality obligations entered into by it on all persons or companies entrusted by it with the performance of services under these Terms and Conditions. Every party is authorised to disclose information to third parties and, in particular, public authorities in as far as such disclosure is required on the basis of applicable law or orders by public authorities. Such a disclosure shall be communicated to the other party in writing in advance; in far as this is not legally permitted, the communication shall be effected as soon as the obstacle ceases to apply. § 10 Exchange Act shall not be affected by this. Information
  - a) which is publicly accessible and was already known to the receiving party at the time of receipt or which was subsequently published by the forwarding party or
  - b) which was independently and autonomously developed by the receiving party without knowing or using similar information of the respective other party or
  - c) which was disclosed to the receiving party by a third party that is entitled to effect such disclosure according to the knowledge of the receiving party and not subject to any confidentiality obligation or
  - d) which may be published according to these Terms and Conditionsshall be exempt from the confidentiality obligation.
- (6) The parties are entitled to disclose the information to companies affiliated with them within the meaning of § 15 German Companies Act ("**Companies Act**") as well as their service providers in as far as this is necessary for operational reasons and the

recipients are required to maintain the strict confidentiality of the information. Companies affiliated with EEX AG according to § 15 Companies Act are only permitted to record, process and use the information if

- a) they are obliged to maintain the confidentiality of the information,
- b) this is effected for the performance of the contract, the analysis or improvement of the quality of their services or service portfolio or for customer information and
- c) this information concerns personal data, the companies to which such personal data relates are based in a member state of the European Union or another signatory state of the Agreement on the European Economic Area or ensure compliance with an adequate data protection level and that the principles of the processing of personal data pursuant to Art. 5 of Regulation (EU) 1011/2016 (General Data Protection Regulation) are respected.

## **§ 17 Ineffective or unenforceable provisions**

- (1) In the event that individual provisions of these Terms and Conditions are or should become ineffective or unenforceable, this shall not affect the validity of the remaining provisions.
- (2) The ineffective contractual provision shall either be replaced with the statutory provision or, in the event that such a provision does not exist, a rule which the parties would in good faith have permissibly established if they had been aware of the ineffectiveness or invalidity.
- (3) Section 1 and 2 shall apply accordingly if a regulatory gap is found.

## **§ 18 Applicable law and legal venue**

These Terms and Conditions are governed by the laws of the Federal Republic of Germany. EEX AG is entitled to sue the Trading Participant or Non-Trading Broker also at its general legal venue. Only the German wording of these Terms and Conditions is legally binding.

Annex: EEX OTF Contract Specifications