

EFET

European Federation of Energy Traders

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WAIVER: THE FOLLOWING GENERAL AGREEMENT WAS PREPARED BY EFET'S MEMBERS EXERCISING ALL REASONABLE CARE. HOWEVER, EFET, THE EFET MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY INDIVIDUAL CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS GENERAL AGREEMENT TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTEREST. USERS OF THIS GENERAL AGREEMENT ARE URGED TO CONSULT RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AS WELL AS THEIR OWN COUNSEL.

General Agreement

Concerning the Delivery and Acceptance of Electricity

Between

[REDACTED],

a company incorporated under the laws of [REDACTED], having its registered office at [REDACTED], and is registered at [REDACTED] under number [REDACTED];

("[REDACTED]")

and

Mark-E Aktiengesellschaft,

a company incorporated under the laws of Germany, having its registered office at Platz der Impulse 1, 58093 Hagen, Germany, and is registered at the commercial register of the district court of Hagen under number HRB10;

("Mark-E")

(referred to jointly as the "**Parties**" and individually as a "**Party**")

entered into on [REDACTED] (the "**Effective Date**").

shall be delivered by letter (overnight mail or courier, postage prepaid) or facsimile as provided in the Election Sheet. Each Party may change its notice information by written notice to the other. Written notices, declarations and invoices shall be deemed received and effective:

- (a) if delivered by hand, on the Business Day delivered or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
- (b) if sent by first class post, on the 2nd Business Day after the date of posting, or if sent from one country to another, on the 5th Business Day after the day of posting; or
- (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission.

2. Amendments: Except as provided in § 3 (*Concluding and Confirming Individual Contracts*) with respect to Confirmations, any amendments or additions to this General Agreement shall be made only in writing signed by both Parties.

3. Partial Invalidity: If, at any time, any provision of this General Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this General Agreement or of any Individual Contract, 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.

4. Third Party Rights: The Parties do not intend that any third party shall have any rights under or be able to enforce the Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

Executed by the duly authorised representative of each Party effective as of the Effective Date.

[Name of Party]

Mark-E Aktiengesellschaft

[Name of Signatory]
[Title of Signatory]

Javier Flores
Head of Trading

[Name of Signatory]
[Title of Signatory]

Heinrich Bohlmann
Head of Finance

EFET

European Federation of Energy Traders

Election Sheet to the General Agreement

with an Effective Date of []

between [] and Mark-E Aktiengesellschaft
“Party A” “Party B”

PART I: CUSTOMISATION OF PROVISIONS IN THE GENERAL AGREEMENT

§ 1 – Subject of Agreement

§ 1.2 Pre-Existing Contracts: [X] § 1.2 shall apply as written in the General Agreement.

§ 2 – Definitions and Construction

§ 2.4 References to Time: Time references shall be:
[X] as provided in the General Agreement (CET).

§ 3 – Concluding and Confirming Individual Contracts

§ 3.4 Authorised Persons: [X] § 3.4 shall not apply to Party A,
[X] § 3.4 shall not apply to Party B.

§ 7 – Non-Performance Due to Force Majeure

§ 7.1 Definition of Force Majeure: [X] § 7.1 shall apply as written in the General Agreement.

§ 7.4 Effects of Force Majeure on Other Party:

[X] § 7.4 shall be amended as follows: At the end of § 7.4 the following shall be inserted as last sentence: “For the avoidance of doubt, this § 7.4 shall apply only if the Party which is not the Claiming Party is not responsible for the occurrence of the Force Majeure.”

§ 10 – Term and Termination Rights

§ 10.2 Expiration Date: [X] § 10.2 shall apply, but no Expiration Date shall be specified.

§ 10.4 Automatic Termination: [X] § 10.4 shall apply to Party A and Party B only upon the occurrence of a Material Reason described in 10.5(c)(iv) (aa) and (bb), as stated further below in this Election Sheet, with termination effective on the previous day.

§ 10.5 Definition of Material Reason:

§ 10.5(a) Non Performance: [X] § 10.5(a) and § 10.5(a) (i) shall not apply as written but instead shall be as follows:

5. Definition of Material Reason: The Agreement may be terminated at any time for one or more of the following reasons (each, a “**Material Reason**”):

- (a) **Non Performance:** The failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Performance Assurance or to perform any other material obligation other than when such obligation is released pursuant to § 7 (*Non-Performance Due to Force Majeure*) or suspended pursuant to § 9 (*Suspension of Delivery*):
- (i) under the Agreement; provided, that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, in the case of a Performance Assurance such Performance Assurance is not delivered within the time period according to § 17.1, or, in the case of any other failure of performance, such failure is not cured within ten (10) days of a written demand;

§ 10.5(b) Cross Default and Acceleration:

[X] § 10.5(b) (i) and (ii) shall be deleted and replaced by the following wording that shall apply to Party A and Party B:

- (i) any default, event of default or other similar condition or event (however described) in respect of a Party, such Party's Credit Support Provider (if such Party has a Credit Support Provider) or such Party's Controlling Party (if such Party does not have a Credit Support Provider but has a Controlling Party) under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (as specified below) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable before it would otherwise have been due and payable, or
- (ii) any default by a Party, such Party's Credit Support Provider or such Party's Controlling Party (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount (as specified below) under one or more agreements or instruments relating to Specified Indebtedness (after giving effect to any applicable notice requirement or grace period).
- (iii) For the purposes of the above, the Threshold Amount shall be
- for Party A: the lower of **3 %** of the Tangible Net Worth of Party A and **€ 5,000,000** (five million euros),
- for Party B: **€ 5,000,000** (five million euros).

§ 10.5(c) Winding-up/Insolvency/Attachment:

[X] § 10.5(c)(iv) shall apply and the applicable time period is:

- (aa) **zero** (0) days, when a petition according to § 10.5(c) (iv) is filed by a Party itself, by an Affiliate of the Party or its Credit Support Provider,
- (bb) **zero** (0) days, when such a petition is filed against a Party or its Credit Support Provider and this Party or its Credit Support Provider is unable to pay its respective debts as they fall due, or is otherwise in a position which justifies the commencement of

insolvency proceedings; thereby obviously inadmissible or unfounded petitions may not be considered,

(cc) **fourteen** (14) days in all other cases.

§ 10.5(d) Failure to Deliver or Accept:

[X] § 10.5(d) shall apply to Party A and to Party B.

§ 10.5(e) Force Majeure:

[X] § 10.5(e) shall only apply to the Individual Contracts whose obligations are affected by Force Majeure, and provided that in case of an Early Termination of such an Individual Contract (§ 10.3) no Termination Amount shall need to be paid.

§ 10.5 Other Material Reason:

The following Material Reason shall apply in addition to those set out in the General Agreement:

“(g) **Default under Specified Transaction:** The failure of a Party to make one or more payments (after giving effect to any applicable notice requirement or grace period) under any Specified Transaction with an aggregate amount due of at least € **100,000** (one hundred thousand euros).

For the purposes of this clause: the wording “**Specified Transaction**” means

(i) any transaction (including any agreements relating thereto) not covered by this General Agreement now existing or hereafter entered into between the Parties to this General Agreement that is a Commodity swap, Commodity option, cap, floor, collar, agreement for the purchase, sale or transfer of any Commodity or any other Commodity trading or Commodity derivative transaction or any other similar transaction including any option and

(ii) any combination of these transactions.

For the purposes of this clause: The word “**Commodity**” means any tangible or intangible commodity of any type or description (including, without limitation, electric power, electric power capacity, natural gas, natural gas capacity, natural gas storage capacity, natural gas liquids, coal, heating oil, oil and other petroleum by-products or fuels, greenhouse gas emissions allowances and tradable renewable energy).”

§ 12 – Limitation of Liability

§ 12.1 Application of Limitation:

[X] § 12 shall apply as written in the General Agreement.

§ 13 – Invoicing and Payment

§ 13.2 Payment:

Initial billing and payment information for each Party is set out in § 23.2 of this Election Sheet.

§ 13.3 Payment Netting:

[X] § 13.3 shall apply as written in the General Agreement.

§ 13.5 Interest Rate:

The Interest Rate shall be the one month EURIBOR interest rate for 11:00 a.m. on the Due Date, plus **three** (3) percentage points per annum.

§ 13.6 Disputed Amounts:

[X] § 13.6 (b) shall apply.

§ 14 – VAT and Other Taxes

§ 14.8 Termination for New Tax: Unless otherwise specified in the terms of an Individual Contract the provisions of § 14.8 shall apply to such Individual Contract only in the circumstances specified in the first paragraph of § 14.8.

§ 14.9 Withholding Tax: § 14.9 shall apply.

§ 15 – Floating Prices and Fallback Procedure for Market Disruption

§ 15.5 Calculation Agent: The Calculation Agent shall be the Seller, provided that in case of an Early Termination due to a Material Reason the Terminating Party shall be the Calculation Agent.

§ 16 – Guarantees and Credit Support

§ 16 Credit Support Documents: Party A shall provide Party B the following Credit Support Documents:
None.

Party B shall provide Party A the following Credit Support Documents:
None.

§ 16 Credit Support Provider: Credit Support Provider(s) of Party A shall be:
N/A
Credit Support Provider(s) of Party B shall be:
N/A

§ 17 – Performance Assurance

§ 17.2 Material Adverse Change: The following categories of Material Adverse Change shall apply to Party A:

§ 17.2(a) (**Credit Rating**), and the minimum rating shall be: **BBB-** (in the case of Standard & Poor's) or **Baa3** (in the case of Moody's), the lower of which shall apply;

§ 17.2(b) (**Credit Rating of a Credit Support Provider that is a Bank**) and the minimum rating shall be: **BBB** (in the case of Standard & Poor's) or **Baa2** (in the case of Moody's), the lower of which shall apply;

§ 17.2(d) (**Decline in Tangible Net Worth**), and the relevant figure is: a decline of more than twenty-five percent (25 %) within the previous fiscal year;

§ 17.2(e) (**Expiry of Performance Assurance or Credit Support Document**), and

the relevant time period shall be **thirty** (30) days;

§ 17.2(f) (**Failure of Performance Assurance or Credit Support Document**);

§ 17.2(g) (**Failure of Control and Profit Transfer Agreement**);

§ 17.2(h) (**Impaired Ability to Perform**); and

§ 17.2(i) (**Amalgamation/Merger**)

The following categories of Material Adverse Change shall apply to Party B:

[X] § 17.2(b) (**Credit Rating of a Credit Support Provider that is a Bank**) and the minimum rating shall be: **BBB** (in the case of Standard & Poor's) or **Baa2** (in the case of Moody's), the lower of which shall apply;

[X] § 17.2(d) (**Decline in Tangible Net Worth**), and the relevant figure is: a decline of more than twenty-five percent (25 %) within the previous fiscal year;

[X] § 17.2(e) (**Expiry of Performance Assurance or Credit Support Document**), and

[X] the relevant time period shall be **thirty (30) days**;

[X] § 17.2(f) (**Failure of Performance Assurance or Credit Support Document**);

[] § 17.2(g) (**Failure of Control and Profit Transfer Agreement**);

[X] § 17.2(h) (**Impaired Ability to Perform**); and

[X] § 17.2(i) (**Amalgamation/Merger**)

§ 18 – Provision of Financial Statements and Tangible Net Worth

§ 18.1(a) Annual Reports: [X] Party A shall deliver annual reports within 180 days after the end of a fiscal year save to the extent the same are available on the internet at .

[X] Party B shall deliver annual reports within 180 days after the end of a fiscal year save to the extent the same are available on the internet at www.mark-e.de.

§ 18.1(b) Quarterly Reports: [X] Party A need not deliver quarterly reports,

[X] Party B need not deliver quarterly reports.

§ 18.2 Decline in Tangible Net Worth:

[X] Party A shall have no duty to notify as provided in § 18.2,

[X] Party B shall have no duty to notify as provided in § 18.2.

§ 19 – Assignment

§ 19.2 Assignment to Affiliates: [X] Party A and Party B may assign all (and not only a part of) its rights and obligations in accordance with § 19.2, provided, that in either case the respective Affiliate does not have its registered office in a jurisdiction different from the assigning party and that the credit standing of the Affiliate is not weaker than of the assignor.

§ 20 – Confidentiality

§ 20.1 Confidentiality Obligation: [X] § 20 shall apply as written in the General Agreement.

§ 21 – Representations and Warranties

The following Representations and Warranties are made:

	by Party A:	by Party B:
§ 21(a)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(b)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(c)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(d)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(e)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(f)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(g)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(h)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(i)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(j)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(k)	deleted	deleted
§ 21(l)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§ 21(m)	<input checked="" type="checkbox"/> yes [] no	not applicable
§ 21(n)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no

§ 22 – Governing Law and Arbitration

§ 22.1 Governing Law:

§ 22.1 shall apply as written in the General Agreement.

§ 22.2 Arbitration:

§ 22.2 shall apply as written in the General Agreement and the language of the arbitration shall be German; the venue for arbitration shall be Dusseldorf, Germany.

§ 23 – Miscellaneous

§ 23.2 Notices, Invoices and Payments:

(a) **TO PARTY A:**

[REDACTED]

Notices & Correspondence

Address
Telephone
Fax
Attention

Invoices

Fax
Attention

Payments

Bank name
Bank code
Account No.
IBAN
SWIFT-BIC

VAT Registration No.

(b) **TO PARTY B:** **Mark-E Aktiengesellschaft**

Notices & Correspondence

Address	Platz der Impulse 1 58093 Hagen Germany
Telephone	+49 (0) 2331 123-23004
Fax	+49 (0) 2331 123-23077
E-mail	backoffice.energiehandel@enervie-gruppe.de
Attention	Backoffice Energiehandel

Invoices

Telephone	+49 (0) 2331 123-22758
Fax	+49 (0) 2331 123-22760
E-mail	zahlungsverkehr.energiehandel@enervie-gruppe.de
Attention	Zahlungsverkehr Energiehandel

Payments

Bank name	Commerzbank AG, Hagen
Bank code	450 800 60
Account No.	950 636 600
IBAN	DE75 4508 0060 0950 6366 00
SWIFT-BIC	DRES DE FF 450

PART II: ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

A. The Parties agree to amend the following provisions in the General Agreement:

§ 5.3 Exercise of Option and Deadline:

§ 5.3 is amended as follows:

In the last line, between the words “be” and “CET”, the term “10:00 am” shall be replaced by “3:00 pm”.

§ 11.3 Set-Off:

§ 11 is amended by the addition of the following new § 11.3:

“3. Set-Off:

- (a) The Terminating Party may, at its option, set off the Termination Amount against any or all other amounts owing (whether or not matured, contingent or invoiced) between the Parties under this Agreement or under any other agreements, instruments or undertakings between the Parties. The right of set off shall be without prejudice and in addition to any right of set off, combination of accounts, lien, charge or other right to which any Party is at any time otherwise entitled (whether by operation of law, by contract or otherwise).
- (b) If the amount of a claim to be set-off is unascertained, the Terminating Party may reasonably determine the amount of the relevant claim by a fair estimation taking into consideration all information available, including all relevant market data (e.g. interest rates) and developments (the amount so determined referred to as the “**Estimate Amount**”). For the purpose of the set-off, the Estimate Amount shall become binding between the Parties. However, such set-off shall be without prejudice to any compensation payments to be made according to § 11.3 (c) below.
- (c) The Terminating Party shall be obliged to ascertain and notify to the other Party the actual value of the relevant claim without undue delay. Where the Estimate Amount deviates from the actual value of the relevant claim so ascertained, the Parties shall make any compensation payment (amounting to the difference between the ascertained actual value of the relevant claim and the Estimate Amount) within 3 (three) Business Days after the actual value of the relevant claim has been ascertained and notified accordingly. The Party being obliged to make such compensation payment shall pay interest at the one month EURIBOR interest rate for 11:00 a.m. on the effective date of the set-off plus three percent (3%) per annum on the compensation payment

amount for the period between the effective date of the set-off and receipt of the compensation payment by the other party.

- (d) Amounts owing, not matured or due (in German: *fällig*) shall become due on the earlier of the Early Termination Date or the effective Date of the Automatic Termination.”

§ 14.1 VAT:

§ 14.1 is amended as follows:

- 1) § 14.1, subsection one, shall be amended in line two by adding the words “or related services” after the words “Electricity”; and
- 2) § 14.1, subsection two, shall be amended in line two by deleting, after the figure “39” the word “or” and replacing it by “, 44,” and by adding after the figure “195” the words “196 or 199a” and in line three by adding after the words “Council Directive 2006/112/EC” the words “(as amended by any subsequent Directives) and in accordance with any associated national legislation “, so that the full part of this subsection now reads:

“Where, in accordance with EU and/or national legislation, any supplies under an Individual Contract may be Zero-Rated and/or subject to the reverse charge in accordance with Articles 38, 39, 44, 195, 196 or 199a of Council Directive 2006/112/EC (as amended by any subsequent Directives) and in accordance with any associated national legislation, the following shall apply:”

§ 14.10 Additional Payer Tax Representations:

A new § 14.10 is added as follows:

“**10. Additional Payer Tax Representations:** Each Party represents, warrants and undertakes to the other Party (which representation will be deemed to be repeated at all times until termination of this General Agreement and constitutes a representation for the purpose of § 10.5(e)) in relation to each Individual Contract that, for the purposes of Article 38 of Council Directive 2006/112/EC (the “Directive”), when acting as a Buyer under an Individual Contract, it is a “Taxable Dealer” as defined in the Directive. Both Parties further represent that, as at the Effective Date, the establishment for VAT purposes to which the Electricity delivered under each Individual Contracts is made, is as follows:

	Jurisdiction	VAT Registration Number
Party A:	Germany	DE 814732662
Party B:	[REDACTED]	[REDACTED]

Both Parties undertake to inform the other Party within thirty (30) days the representations given under this § 14.10 have failed or ceased to be true and accurate at any time after the Effective Date. In the event that a Party fails to inform the other pursuant to this paragraph, that Party shall indemnify, defend and hold the other Party harmless and indemnified in respect of any and all VAT, penalties and interest incurred by the other Party as a result of that Party's failure to comply with the above undertaking.”

B. The Parties agree to amend the following provisions of Annex 1 to the General Agreement (Defined Terms):

The definition of “**Affiliate**” shall be amended by replacing the wording “under the common Control of a Party” with “under common Control with a Party”.

The definition of “**Credit Rating**” shall be amended by deleting the words “Standard and Poor’s Rating Group (a division of McGraw-Hill Inc.)” and substituting it with the words “Standard & Poor’s Financial Services LLC, a division of S&P Global, Inc. and any successor thereto” and further by deleting the words “Moody’s Investor Services Inc.” and by substituting in with the words “Moody’s Investors Service, Inc. and any successor thereto”.

The definition of “**Specified Indebtedness**” is amended so that it now reads as follows:

“**Specified Indebtedness**” means any financial indebtedness (whether present or future, contingent or otherwise, as principal or surety or otherwise) for borrowed money (which includes debts and debt instruments payable to financial institutions, but which excludes debts payable to Affiliates);

The definition of “**Tangible Net Worth**” shall be amended by the replacement of the words “*but limited to, goodwill*”, with the words “*but not limited to, goodwill*”.

Executed by the duly authorised representative of each Party effective as of the Effective Date.

“Party A”

[Name of Party]

“Party B”

Mark-E Aktiengesellschaft

[Name of Signatory]

[Title of Signatory]

Javier Flores

Head of Trading

[Name of Signatory]

[Title of Signatory]

Heinrich Bohlmann

Head of Finance