

DB Energie GmbH's General Terms of Business for Access to the 110 kV /16.7 Hz Traction Power Distribution Network according to § 14 of AEG - Status January 2010

1 General

- 1.1 These General Terms of Business are deemed an element of the Supplier Skeleton, Network Access and Consumer Contract, which needs to be entered into for access to the railway infrastructure in the form of the 110 kV/16.7 Hz rail power distribution network, insofar as it does not contain any provisions to the contrary.
- 1.2 All declarations of intent on the part of DB Energie GmbH ("DB Energie"), made in conjunction with a supplier skeleton, network access or consumer contract are subject to the resolutive condition of a decision to the contrary by the authorities or in accordance with a court decision to the contrary even if they affect another contractual relationship regarding the use of the 16.7 Hz traction power network entered into in accordance with these, the previous or the following conditions.
- 1.3 The General Terms of Business and amendments shall be published on the internet. The internet address shall be disclosed in the German Federal Gazette (Bundesanzeiger). At the request of the Network User (supplier or consumer), DB Energie shall send the General Terms of Business to the supplier or consumer. DB Energie shall inform the consumer of amendments by way of reference to the respective publication.

2 Definition of terms

- 2.1 "Rail Power Distribution Network" means the railway undertaking infrastructure in the form of railway power supply lines or the 110 kV network operated by DB Energie with a frequency of 16.7 Hz to supply electrical traction units. Substations are attached to the network on the secondary side (power side). The substations transform the electrical energy to the voltage required for train operations.
- 2.2 "Supplier" is the party that has entered into a power supply contract for the supply of electrical energy with the consumer and a supply skeleton contract with DB Energie.
- 2.3 "Consumer" is the railway undertaking that procures electrical energy from the DB Energie network for electrical traction.
- 2.4 Depending on the agreement the "Network User" is, either the Supplier or the consumer. If the Supplier commissions network utilisation to supply the Consumer, it is the Network User within the meaning of the provisions. Otherwise it is the Consumer.
- 2.5 "Load cycle" describes a time sequence that states a metered mean effective power value for each measuring period (¼ h).
- 2.6 The "Supplier Skeleton Contract" provides for the questions associated with the network use by the Supplier.
- 2.7 The "Consumer Contract" provides for the relations between DB Energie and the Consumer who is not the Network User.
- 2.8 The "Network Access Contract" provides for network use by the Consumer. A separate consumer contract has not been entered into in this case.

3 Subject matter

- 3.1 DB Energie makes available to the Network User the railway power distribution network to supply consumers with electrical energy in accordance with the respective contracts at the conditions set out below. Solely these conditions of DB Energie are applicable. Conditions to the contrary, supplementary conditions or such that vary from these conditions shall only be deemed an element of the contract if DB Energie expressly acknowledges these in writing. This also applies to terms of business stated in the Supplier's or Consumer's confirmation of order or other confirmation. The acceptance of services does not constitute any acceptance of such conditions. DB Energie's conditions shall also apply if the contract entered into with the Supplier or the Consumer is executed without reservations with knowledge of the Supplier's or Consumer's conditions to the contrary, supplementary conditions or conditions that vary from DB Energie's conditions.
- 3.2 These General Terms of Business of DB Energie apply to the entire business association, including all rights and obligations that result from use of the 16.7 Hz traction power supply network by the Supplier and the Consumer.

4 Prerequisite conditions for network access

- 4.1 DB Energie shall permit the Consumer to use electrical energy as part of the network access on the basis of the following prerequisite conditions:
 - The Consumer is a railway undertaking within the meaning of the German Railway Law, as stated in the respective valid version.
 - The Consumer maintains an infrastructure utilisation contract with DB Netz AG or another infrastructure operator as the operator of the rail line, including the overhead contact wire, for each train/metering point, effective for the intended period of network access in accordance with the valid conditions of use in that respect, and furnishes DB Energie with appropriate proof of such a contract. This contract specifies, in particular, the technical equipment used by the Consumer to procure traction power. In addition, agreements have been reached therein such that the Consumer shall pay a route utilisation fee to cover the cost of providing the overhead contact wire connection.
 - The Consumer has entered into a written contract with a supplier on the procurement of electricity and furnishes DB Energies with appropriate proof of such a contract.
 - DB Energie and the Consumer's Supplier have entered into a written contract on supplying the Consumer via DB Energie's traction power network (Supplier Skeleton Contract).
 - DB Energie and the Consumer have entered into a written contract on supplying the Consumer in DB Energie's traction power network (Consumer contract).
 - Either the Supplier or the Consumer has entered into a written network utilisation agreement with DB Energie. If the network utilisation agreement is entered into with the Supplier, such an agreement shall be deemed the subject matter of the Supplier Skeleton Contract. Otherwise, the Consumer shall enter into a Network Access Contract with DB Energie.
 - The above-mentioned contracts are normally entered into 21 days prior to the assumption of transport operations and are usually entered into for a minimum term of one month.
- 4.2 The Supplier or the Consumer shall furnish DB Energie with proof of the stated prerequisite conditions in good time prior to the start of the supply operations.

5 Replacement delivery

- 5.1 If the prerequisite conditions specified in sub-section 4 are not honoured, or if the Supplier Skeleton Contract between DB Energie and the Supplier ends or the Network Access Contract entered into between DB Energie and the Consumer ends, without the start of the provision of energy by another supplier at that time and if the Consumer nonetheless draws electrical energy from the DB Energie's traction power network, DB Energie shall provide the energy and deal with the remuneration in the form of replacement deliveries. DB Energie shall inform the Consumer without delay of such replacement deliveries.
- 5.2 By way of the drawing of electrical energy from DB Energie's traction power network, a contract for the supply of electricity is brought about in the above-mentioned form with DB Energie in accordance with the conditions of Skeleton Electricity Supply Contract on the delivery and procurement of 16.7 Hz traction power (Traction Power All Inclusive Contract) for the Consumer's electrical train operations in DB Energie's supply territory, as stated in the respective valid version, in addition to all Annexes. The Consumer undertakes to inform DB Energie without delay of the drawing of electrical energy.
- 5.3 In the event of nonpayment irrespective of a reminder by the Supplier and in the case of insolvency, over-indebtedness, evidently unjustified applications for the provision of an affirmation in lieu of oath or for the institution of insolvency proceedings regarding the Supplier's assets, DB Energie shall be entitled to supply the Consumer by way of replacement deliveries "Ersatzbelieferung" in accordance with the above-mentioned provisions.
- 5.4 The network customer shall pay to DB Energie for the replacement delivery the remuneration stated in the

- respective, valid, price lists for the Skeleton Electricity Supply Contract on the supply and procurement of 16.7 Hz traction power for the network customer's electrical train operations in the DB Energie supply territory subject to an increase of 15%.
- 6. Ordering**
- 6.1 The Network User is obliged to forward the data stated in the contract. The data shall be forwarded per e-mail to the address specified in the contract. DB Energie is entitled to amend the requirements for the data formats or forwarding by way of giving one month's notice following the announcement to amend insofar as there is a justified reason for the amendment.
- 6.2 The Network User has to forward to DB Energie the necessary data in each case at the latest by way of one month's notice to take effect at the end of a month prior to the execution of the planned delivery. DB Energie shall, insofar as the documents required for an offer are enclosed with the inquiry, make an appropriate contractual offer within 7 workdays following receipt of a network utilisation inquiry (exceptions: the respective consumer cannot be identified or the Consumer's traction units are not equipped with the necessary measuring devices).
- 6.3 In the event that the above-mentioned obligations are not fulfilled, DB Energie shall supply the Consumer by way of a replacement delivery. Subsection 5.4 is deemed applicable in respect of the price regulation.
- 6.4 The Consumer's traction units are to be designed such that the electrical work is not tapped by way of a factor less favourable than $\cos \varphi = 0.9$, inductive or capacitive. If the Consumer's traction units do not meet these requirements, DB Energie may demand the installation of additional devices in respect of idle current compensation at the Consumer's cost. If this is not possible, a price surcharge of 25 percent for each procured kilowatt-hour shall be payable.
- 7 Measuring the procured electrical energy and work**
- 7.1 The scope of the procured electrical energy at the pantograph (electrical power and electrical work) shall be determined via metering using energy meters and transformers (metering devices).
- 7.2 The following devices are required to measure the energy consumption or the energy that is fed back (recuperation energy):
- Class 0.5 primary current and primary voltage transformers licensed for settlement metering and licensed by the German Federal Physical Technical Office (PTB) and by the government licensed testing department;
 - TEMA Box (Appendix to Annex 2 to the Supplier Skeleton Contract or the Network Customer Contract) or a measuring device that corresponds with this standard, i.e. a calibrated class 1.0 energy meter for load profile metering in accordance with VDEW (Verband der Elektrizitätswirtschaft e.V., German Electricity Association) specification requirements 2.0 (the interpretation is to be co-ordinated on a case-by-case basis with DB Energie), with an interface to a GSM radio modem, licensed by the German Federal Physical Technical Office (PTB) and by a government licensed testing department;
 - GSM radio modem and antenna for radio data transmission to DB Energie's network control system.
- 7.3 The metering device must enable a remote read-out by the DB Energie's network control system. The Consumer shall ensure that appropriate access is granted. DB Energie shall furnish proof of the cost of adjusting the network control system in view of reading-out the metering device used by the Supplier or the Consumer. The Supplier or the Consumer shall carry such costs.
- 7.4 Energy that is regenerated and fed back into the traction power network shall be remunerated if it is recorded by way of metering devices in accordance with sub-section 7.2. The remuneration shall be based on the "Price list for using the 110 kV/16.7 Hz traction power distribution network (traction power network)" as stated in the respective valid version (Annex 4 of the Supplier Skeleton Contract).
- 7.5 The metered or calculated electrical energy is based on the pantograph connection point to the traction power network.
- 7.6 Each contracting party may at any time request a examination of the metering devices by a Standards Department or a government licensed testing department within the meaning of Section 2, subsection 4 of the German Gauging Act. If the Consumer does not file an application for a review with DB Energie, the Consumer is to inform DB Energie of such action prior to filing the application elsewhere. The review costs shall be borne by the owner of the measuring device if the variation exceeds the statutory operational error limits. Otherwise the party that applied for the examination shall bear such costs.
- 7.7 If the review of the metering devices shows that the admitted error in measurement is exceeded or if an error in measurement is identified in respect of determining the invoice amount, the overpaid or shortfall amount is to be reimbursed or subsequently paid. If the scope of the error in measurement cannot be clearly identified, or if the metering devices fail to provide data, DB Energie shall determine the consumption for the period since the last error-free read-out from the average of the consumption periods preceding and following the period in which the error has been identified, or on the basis of the previous year's consumption by way of an estimate. The actual circumstances are to be taken into account accordingly.
- 7.8 Claims in accordance with the aforementioned subsection are restricted to the current reading period and the one preceding the identification of the error unless the effects of the error can be identified over a longer period. In such case the claim is restricted at most to three years.
- 7.9 The Consumer is liable for the loss of and damage to the metering devices and control equipment owned by DB Energie insofar as the Consumer is culpable in that respect. The Consumer is to inform DB Energie without delay of the loss of, damage and disruptions to such devices and equipment.
- 8 Reading/settlement/taxes and levies**
- 8.1 As a general rule, the settlement year corresponds with the calendar year. However, on the basis of the read-out dates of the metering devices and/or other consumption metering devices, it may vary slightly from the calendar year. If the start and/or end of the term of contract varies from the start and/or end of the calendar year (incomplete calendar year), amounts shall be settled on a pro rata basis.
- 8.2 During the settlement year the Network User is to effect advance payments in accordance with an instalment plan, which shall be forwarded to the Network User. The amount shall be determined on the basis of the Network User fees in the last settled period. If such calculations are impossible, the advance payments shall be based on the average network access fee of comparable customers, or DB Energie shall determine it at its own reasonable discretion with due regard to the actual circumstances. DB Energie may increase or reduce the advance payment in the event that the take up circumstances change considerably during the settlement year.
- 8.3 The advance payments shall fall due on the 15th day of each month for the current month (in the event that the contract commences in the current month, payment shall fall due for the rest of the month) of the delivery. The Network User shall be deemed to have defaulted in the event that the payment dates are not honoured.
- 8.4 Network access fees shall be settled monthly. An annual final settlement shall be drawn up at the end of each settlement year (final invoice).
- 8.5 Reimbursements and subsequent calculations regarding the services rendered as per agreement shall only be taken into consideration for the settlement year or the year preceding the settlement year.
- 9 Price adjustment, economic clause**
- 9.1 Insofar a future coal tax, energy tax or other levies that have an effect on the procurement, transfer or distribution of electrical energy, or obligations that need to be honoured as part of laws, orders, official measures or civil law legal relationships (e.g. follow-up or amendment laws in respect of the German Renewable Energies Act, the Combined Heat and Power Generation Act or regulations on emissions trading) or public legal conditions of a financial manner should come into force or are amended, this shall be the

- Network User's responsibility insofar as the law does not specify anything to the contrary from the time at which the detrimental effect comes into force. The Network User shall be the beneficiary of fiscal or other relief.
- 9.2 DB Energie shall regularly review the network utilisation fees, and DB Energie may adjust these in the case of amending the costs to be stated for calculating the network utilisation fees. The same applies to the price of settlement energy, replacement delivery and other terms of contract. DB Energie shall inform the Network User of this in writing at least six weeks before the adjustment comes into force. In the event of an economically disadvantageous amendment for the Network User, the Network User shall be entitled to terminate the contract by serving four weeks' notice to take effect at the time at which the amendment is to come into force.
- Adjustments within the current year are possible if preceding network operators for their part verifiably increase or reduce the network utilisation fees and such action gives rise to an increase or reduction in costs for DB Energie.
- 9.3 If the prices are amended during the settlement period, the consumption that is relevant to the new prices shall be taken into account from that time on.
- 9.4 If the technical, economic or legal prerequisite conditions under which the terms of contract (prices and conditions) of the Supplier Skeleton Consumer or other contracts entered into between DB Energie and the Supplier or the Consumer are fundamentally amended, and if it is no longer acceptable for one party to subsequently honour the terms of contract because the parties' intentions geared towards a just balance of both parties' economic interests within the meaning of safeguarding the equivalence ratio are no longer honoured, such a party may demand that the terms of contract be amended accordingly in line with the changed circumstances. This applies, in particular, in the case of amending the concept that forms the basis for the network use or amending legal, economic and technical prerequisite conditions such as the German railway law regulations. This shall not affect sub-section 9.2.
- 10 Refusal to pay, setting off, right of retention**
- 10.1 Objections against invoices and advance payments shall only entitle a party to postpone payment or refuse to effect payment insofar as the circumstances show that obvious errors apply postponing payment or refusing to pay is asserted within four weeks following receipt of the faulty invoice or advance payment invoice. Objections that refer to inaccuracies in invoices and which the objecting party could not identify in good time without culpability may also be asserted once the period has lapsed. However, these are to be asserted without delay once the inaccuracy is identified.
- 10.2 The failure to raise objections in good time shall be deemed an acceptance. Legal claims on the part of the Network User following the end of the period shall not be affected in the case of justified objections.
- 10.3 The Network User is not entitled to set off a payment claim or a payment liability resulting from another legal relationship between the parties unless the claim has been acknowledged or has become res judicata.
- 10.4 The Network User shall only enjoy a right to retain in the case of claims that are based on the same legal relationship or if the claim is based on the right to retain, is not disputed or has become res judicata.
- 11 Creditworthiness check, advance payments, provision of security**
- 11.1 In respect of its services DB Energie is entitled to demand the provision of appropriate securities proportionate to the scope of the services that are to be rendered by DB Energie if doubts about the Network User's creditworthiness arise. Doubts in this respect may, in particular, be raised:
- if the Network User does not effect any payments whatsoever for one month in respect of due claims,
 - in the case of payment arrears in the sum of one average monthly invoice amount payable in the last three months,
 - in the case of a negative creditworthiness rating by a recognised credit rating agency,
- in the event that an application is filed for the institution of insolvency proceedings regarding the Network User's assets,
 - in the case of other circumstances that suggest poor creditworthiness such as filing applications for legal aid, declared unwillingness to pay (does not apply if a DB Energie claim is disputed and therefore paid with reservations) or insolvency, the lack of an address to which a summons may be sent or the permanent inability (longer than two weeks) to be contacted at such a stated address.
- 11.2 A security in the sum of three monthly invoice amounts to be paid on average in advance over the coming six months is deemed appropriate. The monthly invoice amounts paid on average over the past six months may be used to determine the figure in the above sentence.
- 11.3 The security may be furnished by way of customary means of security, in particular by way of a directly enforceable guarantee or a bank guarantee, in each case at the first request by a major bank located in the European Union. In this respect, the insolvency security is a prerequisite condition for acceptance of such a security by DB Energie.
- 11.4 If the Network User does not honour a written request that is justified in accordance with subsection 11.1 for the provision of security within ten calendar days following receipt of the written request, DB Energie shall be entitled without further announcement to refuse to render services up until the security has been furnished.
- 11.5 The Network User may avoid the provision of a security by effecting monthly advance payments. In the event that the advance payments are not effected in good time, DB Energie shall be entitled without further announcement to refuse to render services up until the advance payments have been furnished.
- 11.6 Advance payments are at all times to be effected in the full amount of the monthly invoice (including the cost of settlement energy) or in the sum of a probable monthly invoice amount. In this respect subsection 11.2 shall apply accordingly for determining the amount of the probable monthly invoice amount. They are to be effected at least five workdays prior to the due date of the respective counter performance, and shall be set off with the next invoice. This shall not affect the obligation to effect advance payments that may have been agreed.
- 11.7 Cash securities shall be subject to the respective base lending rate of the European Central Bank (Section 247 of Bürgerliches Gesetzbuch BGB, German Civil Code). On request securities are to be returned insofar as the requisite conditions for granting them are no longer applicable.
- 11.8 On request securities are to be returned if their prerequisite conditions no longer apply.
- 11.9 DB Energie is entitled prior to the conclusion of contract and during the course of the contractual relationship to carry out creditworthiness checks. The same applies in respect of replacement deliveries.
- 12 Payment and default**
- 12.1 Invoices and advances payments shall fall due on the date specified by DB Energie, at the earliest, however, 10 workdays following receipt of the invoice. Payments are to be effected free of charge for DB Energie, without any deduction and are to be transferred to the respective account that has been disclosed. The value date on the DB Energie account is deemed the time of payment.
- 12.2 If the Supplier or the Consumer defaults in respect of invoice amounts, DB Energie may charge interest on arrears at the statutory rate and charge reminding costs for every written reminder. DB Energie is entitled to lodge claims for greater damage.
- 12.3 If the Network User continues to default in payment after the security has been provided (Section 286 of BGB) and if it does not honour its payment obligations without delay resulting from the contractual relationship following a renewed reminder, DB Energies may satisfy its financial requirements via the security and assert its rights for provision of an additional security insofar as the claim is not disputed in terms of amount and reason. Further announcements are not required. Otherwise, DB Energie

- shall be entitled to demand advance payments in accordance with sub-section 11.6.
- 13 Conventional penalty**
- 13.1 If the Consumer uses electricity by way of bypassing or influencing the metering devices or once the supply of energy has been discontinued, DB Energie shall be entitled to impose a conventional penalty.
- 13.2 A conventional penalty may also be imposed if the Consumer violates the obligation, irrespective of several requests, to provide the details required to create the calculation parameters as per agreement or for the settlement as per agreement.
- 13.3 In the cases specified in sub-sections 13.1 und 13.2, the conventional penalty shall be twice the amount the Consumer would have been required to pay in the case of honouring its obligation in accordance with the valid price rules of the "Skeleton Power Supply Contract on the Supply and Procurement of 16.7 Hz Traction Power (Traction Power All Inclusive Contract)" for the Consumer's electrical train operations in DB Energie's supply territory.
- 13.4 If the period of use or the start of the obligation to notify cannot be specified, the conventional penalty may be imposed in accordance with the above principles beyond a specified period, at most for one year.
- 14 Right to access and support**
- After having made a statement in good time, DB Energie shall be entitled to gain access to and/or control the Consumer's traction units and other metering points insofar as the systems it owns are contained therein or such action is called for to properly honour the contract, in particular to read and control the metering devices. Prior announcement is not required in cases of imminent danger and disruptions. Access to the metering devices must be guaranteed at all time with due regard to the respective, valid, accident prevention measures.
- 15 Restriction on and discontinuation of traction power supply**
- 15.1 DB Energie undertakes to supply the Consumer with 16.7 Hz electricity in accordance with the regulations specified in the Consumer and Supplier Skeleton Contract with due regard to the recognised engineering standards.
- 15.2 In the case of disruptions in the electricity supply in the 110 kV traction network or the 15 kV overhead contact wire, DB Energies shall be entitled, at any time, to suspend or restrict the supply for the duration and scope of the disruption.
- 15.3 Furthermore, the supply may be suspended or discontinued if and insofar as such action is necessary to perform operational work, to ward off a threat to life and limb or to maintain uninterrupted service in the 110 kV traction power network or in the 15 kV overhead contact wire. DB Energie shall rectify any interruption or irregularity as quickly as possible. In the case of restrictions in respect of the delivery in accordance with the above-mentioned sub-sections, DB Energie's obligation to supply electrical energy shall be reduced in accordance with the reduced availability of the systems.
- 15.4 DB Energie is further entitled, by way of calling on the services of DB Netz AG or another infrastructure operator, to discontinue the supply if the Supplier or the Consumer has acted in breach of the contract or if discontinuation is necessary to ward off imminent danger to the security of persons or the systems or to ensure that disruptive counter-effects on equipment of DB Energie or DB Netz AG or equipment owned by another infrastructure operator is ruled out. The Consumer shall carry the cost of suitable measures for reducing the hourly imbalance and the harmonic content. Disruptions are to be rectified without delay.
- 15.5 In the case of other violations, in particular in the case of the failure to honour a payment obligation irrespective of a reminder and in the case of violating other obligations that are incumbent upon the Supplier or the Consumer in dealings with DB Energie, DB Energie shall be entitled to discontinue the supply of electrical energy, where applicable by way of calling on the services of DB Netz AG or another infrastructure operator to block the line 14 days following the threat to discontinue the supply. DB Energy may issue a threat to discontinue the supply in conjunction with a reminder.
- 15.6 DB Energie is to restore the supply without delay as soon as the reasons for discontinuing the supply no longer apply and the Network User has reimbursed the cost of the discontinuation and restoration measures. Costs may be charged on a flat rate basis. The valid value added tax shall be charged in addition.
- 15.7 Supply obstructions due to natural disasters, wars, strikes, lacking raw material suppliers, delivery obstacles on the procurement side of DB Energie or other cases of force majeure suffered by the companies of the parties or subcontractors and as a result of sovereign orders or due to other circumstances that extend above and beyond the parties' powers to ward off such circumstances or they cannot be warded off or sorted out by way of reasonable technical and economic means, shall release the parties from honouring the primary contractual obligations for the duration and scope of the event. The same applies in the case of rectifying disruptions, maintenance and repair work or other measures that are necessary. The contracting party that is prevented from honouring its obligations undertakes to inform the respective other party without delay by way of illustrating the circumstances that are preventing it from honouring the contract.
- 16 Termination**
- 16.1 A contract entered into between DB Energie and the Supplier or the Consumer may be terminated without notice for good cause if action is repeatedly taken, irrespective of a warning, which seriously breaches the contract provisions. Termination is subject to the written form.
- 16.2 In the event of a failure to honour a payment obligation irrespective of a warning, DB Energie shall be entitled to terminate the respective contractual relationship without notice one month following the announcement to terminate. This shall not apply if the Supplier or the Consumer states that the consequences of the termination are disproportionate to the severity of the violation and it is likely that the Supplier or the Consumer will honour their contractual obligations. DB Energie may threaten to terminate in conjunction with a warning.
- 16.3 In the case of insolvency, over-indebtedness, not evidently unjustified applications for the provision of an affirmation in lieu of oath or the institution of insolvency proceedings regarding the Network Users assets, DB Energie shall be entitled to terminate the respective contract in writing without notice. This shall not affect sub-section 5.3.
- 16.4 DB Energie is entitled to terminate the contract without notice if the feed/supply in the balancing group required to provide the electrical energy on average is less than 80% of the tapping/supply from the balancing group over a period of one week, or the feed/supply in the balancing group on average is less than 50% of the tapping/supply from the balancing group over a period of two days. Likewise, the same applies if the feed/supply in the balancing group exceeds the tapping/supply in the balancing group by more than 20% over a period of one week, or by more than 50% over a period of two days. In such cases, the Network User's entitlement to remuneration for the additional feed shall be inapplicable.
- 16.5 If the 110 kV traction power network is jeopardised by the Consumer's metering points or in the case of violation of an obligation to notify on the part of the Network User, DB Energie reserves the right to terminate the respective contract without notice.
- 16.6 DB Energie may terminate the respective contract without notice if the Network User holds out the prospect of, offers or grants advantages of any kind to an employee or authorised representative of DB Energie entrusted with the preparation, conclusion or implementation of this contract, or a third party connected to such an employee.
- 16.7 In the event that the prerequisite conditions in accordance with subsection 4.1 no longer apply, DB Energie shall be entitled to terminate the contract without notice.

17 Other obligations on the part of the supplier or the consumer

- 17.1 The traction units are to be operated such that disruptions to other consumers and disruptive counter-effects on the equipment of DB Energie or third parties are ruled out.
- 17.2 For safety reasons involving the 110 kV traction power network, the Consumer undertakes merely to use the electrical energy to supply the traction units stated in his order.
- 17.3 Only materials and equipment may be used that are manufactured in accordance with the security system level of the European Community. The seal of an officially recognised testing department (e.g. the VDE mark, GS mark) certifies that such prerequisite conditions have been met.
- 17.4 All conversions or modifications to the Consumer's metering points that may have an effect on DB Energie's 110 kV traction power network are subject to prior approval by DB Energie.
- 17.5 If the Consumer feeds regenerated electrical energy back into the traction network, the respective valid VDE norms and the European (EN) and international (IEC) norms are to be adhered to insofar as these have been harmonised in accordance with the German norms.
- 17.6 The Supplier or the Consumer shall inform DB Energie without delay of the withdrawal of licenses, in particular authorisation to operate railway undertaking infrastructure and the license as a railway undertaking.

18 Liability

- 18.1 DB Energie's area of responsibility in dealings with the Supplier or the Consumer extends beyond the 110 kV traction power network and includes the substations (including 15 kV output). In addition, the Consumer has entered into an infrastructure utilisation contract with DB Netz AG or another infrastructure operator that provides authorisation to use the railway line and the track-congruent 15 kV overhead contact wire owned by DB Netz AG. DB Energie shall merely be liable for disruptions that occur within the area of responsibility described in sentence 1.
- 18.2 Insofar as DB Energie is liable as per agreement or due to unlawful act for damage sustained by the Supplier or the Consumer due to suspension of the supply or due to irregularities in respect of the delivery of electrical energy,
 - (1) in view of the property damage it shall be refutably assumed that intent or gross negligence applies,
 - (2) in view of damage to an item it shall be refutably assumed that intent or gross negligence applies.
 Liability for other negligence is excluded in the case of property damage in accordance with (1).
- 18.3 In the case of material damage that is neither caused by intent nor gross negligence, DB Energie's liability in dealings with the Supplier or the Consumer shall be limited to € 5,000.00 for each case of damage. Liability for material damage that is not caused by intent shall be restricted in each case of damage to a total amount of € 2.5 million on condition that the quantity of Network Users on the Traction Power Distribution Network does not exceed the number of 25,000. If this is the case, the total amount shall be increased to € 10 million.
- 18.4 Sub-sections 18.2 and 18.3 are to be applied to claims from Suppliers and Consumers who lodge such claims against a third-party Network User within the meaning of Section 3, no. 27, of the Energy Act (Energiewirtschaftsgesetz) on the basis of unlawful acts. The liability of third-party network operators within the meaning of Section 3, no. 27 of the Energy Act (Energiewirtschaftsgesetz) is, in each case of damage, restricted in total to three times the maximum amount for which they are liable in accordance with sub-section 2, sentence 2 to their own connection users. If the third-party network operator within the meaning of Section 3, no. 27 of the Energy Act (Energiewirtschaftsgesetz) does not have any own connection users linked to the network within the meaning of this regulation, the liability shall, in total, be restricted to € 200 million. Compensatory damages of customers that are not subject to this regulation may be incorporated in the maximum amount in accordance with sentences 2 and 3 whereby such customers lodge claims against the third-party company due to unlawful actions if

their claims in individual cases are limited in accordance with sub-section 2, sentence 1. The network operator undertakes on request to provide its connection users of the facts associated with the cause of damage by a third-party network operator within the meaning of Section 3, no. 27 of the Energy Act (Energiewirtschaftsgesetz) as it is aware of them or in a manner that it can reasonably clarify, and whose knowledge is required to assert such claims for damages

- 18.5 In the case of property damage caused by gross negligence, DB Energie's liability, or that of a third-party network operator, against whom the Supplier or the Consumer lodges claims, are in each case restricted to € 5,000 and for each case of damage a total of 20 percent of the maximum amount specified in 18.3. Sub-section 18.4, sentences 4 and 5, applies accordingly.
- 18.6 If the total individual damage exceeds the respective maximum amount, compensatory damages shall be reduced in the proportion of the total of all claims for damages to that of the maximum limit.
- 18.7 The obligation to compensate does not apply to damage below € 30 that is caused neither by intent nor gross negligence.
- 18.8 The aggrieved Supplier or Consumer is to inform DB Energie of the damage without delay or, if this has been specified, it is to inform the company under obligation to provide compensation.

19 Secrecy

- 19.1 The Network User undertakes to maintain secrecy for an unlimited period of time regarding all information that becomes known in conjunction with the contract, i.e. information that is described as confidential or is identifiable as business or company secrets due to other reasons. Such information may only be forwarded to third parties following written approval by DB Energie. The obligation to maintain secrecy shall apply following the termination or rescission of a contract.
- 19.2 The obligation to maintain secrecy shall not apply if and insofar as the information is in the public domain; becomes generally known without culpability on the part of the contracting parties; was legally acquired by a third party or was known to the receiving party beforehand. Subcontractors, employees entrusted with executing the contract and other commissioned parties are to be placed under the obligation to maintain secrecy accordingly.
- 19.3 DB Energie is entitled to state the Supplier or the Consumer as a reference insofar as such parties agree to such action.
- 19.4 DB Energie is entitled to gather, store, amend personal data required to process the network use in accordance with the regulations of the German Data Protection Act (Bundesdatenschutzgesetz), and forward such data to third parties (e.g. other network operators or the Supplier) to an extent in which this is required for the proper technical and economic processing in respect of the network use.

20 Severability clause

- 20.1 In the event that provisions of the Supplier Skeleton Contract, the Consumer Contract or another contract entered into between DB Energie and the Supplier or the Consumer, these General Terms of Business, a contract entered into on the basis of the aforementioned or subsequent supplements to these General Terms of Business, or supplements to a concluded contract are or become wholly or partially invalid or impracticable, or if they prove to contain a loophole, this shall not affect the validity of the other conditions or other contractual conditions. In the place of the invalid or impracticable conditions, or to fill a loophole, it is envisaged that an appropriate regulation apply that is legally permissible and economically acceptable equals what the parties intended or what the parties would have intended in accordance with the essence and purpose of this contract had they considered the issue.
- 20.2 If the invalidity of a provision is attributable to a specified measure of electrical power or time (terms or deadline), it is envisaged that a measure that is best possible equivalent to the provision and is legally permissible and economically acceptable is to take the place of the inapplicable measure.

21 Legal succession

- 21.1 In the case of legal succession on the part of the parties, the former party undertakes to assign the rights and obligations

- resulting from a concluded contract to the legal successor. Any company-law change, leasing or surrender of business operations is deemed a legal successor.
- 21.2 Each of the parties is entitled to assign in full or in part to a third party the rights and obligations resulting from a concluded contract. This shall be subject to the prior approval by the respective other party. Approval may only be refused if honouring the contractual obligations appears to be in danger.
- 21.3 A full assignment of the rights and obligations of DB Energie to a company affiliated with DB Energie in accordance with Sections 15 et seq. of AktG (German Company Law), i.e. a company that also operates as an infrastructure operator, is permitted without approval by the Supplier or the Consumer.
- 22 Venue, place of performance, applicable law**
- 22.1 Frankfurt am Main is deemed the sole place of jurisdiction. However, DB Energie is entitled to bring an action at the court with jurisdiction for the supplier's or consumer's registered office.
- 22.2 Solely German law is deemed applicable - by way of exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11.04.1980.
- 22.3 German is deemed the contract language.