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## **Annex Settlement of Accounts, Billing**

**(T&C – BO)**

V 0.1



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## **1 Scope of settlement of accounts**

Settlement of accounts and billing includes, but is not limited to, the following:

- a) determination and billing of imbalance energy quantities at imbalance energy prices per balance group, broken down by input and withdrawal;
- b) determination and billing of cost contribution for intraday structuring;
- c) billing of neutrality charge determined by the Balancing Operator (BO);
- d) determination and billing of imbalance energy quantities supplied by balancing energy suppliers, broken down by input and withdrawal as well as market maker services;
- e) billing of clearing fee defined by the regulatory authority;
- f) taxes.

## **2 Billing, reverse charge and payments**

- a) Payments are executed by direct debits or credit transfers. Invoices are sent to market participants by the dates specified by the Balancing Operator. Market participants must provide their VAT ID number to the Balancing Operator.  
All invoices are issued in euro plus value added tax if the revenue is subject to taxation and to value added tax under Austrian law. This tax and any future taxes or duties payable as a result of or in connection with the activities of the Balancing Operator shall be charged by the Balancing Operator in addition to fees and must be paid by market participants.
- b) If a foreign market participant does not operate a permanent establishment in Austria, the invoices for energy withdrawals by foreign market participants are issued without value added tax, because this revenue is not taxable in Austria. Market participants are responsible for proper taxation in their countries of domicile and will hold the Balancing Operator nonactionable and harmless in this respect.
- c) In the case of credit balances issued by the Balancing Operator for the supply of energy by a foreign market participant without a permanent establishment in Austria, the Balancing Operator shall apply the reverse charge mechanism pursuant to § 19 (1c) in conjunction with § 3 (13) Value Added Tax Act (VAT Act) 1994, as amended: The Balancing Operator retains the value added tax and pays it to the tax authorities.
- d) All market participants must notify the Balancing Operator in writing immediately, i.e. within 14 days at the latest, of the establishment or dissolution of a permanent establishment or of the registration or discontinuation of a registered office in Austria.

Should a market participant fail to make this notification, it shall hold the Balancing Operator nonactionable and harmless should the tax authorities make claims against the Balancing Operator.

- e) Invoice amounts are payable on the due date stated on the invoice and will be collected by a SEPA direct debit (SEPA business-to-business direct debit). Credit and debit balances are invoiced by the Balancing Operator with a value date t+3. Invoices may also be issued for payments on account in the amount of the estimated final invoice amount.
- f) Market participants must notify the Balancing Operator of an account at a credit institution within the EU or in Switzerland to be used for payment transactions and which is technically capable of executing SEPA business-to-business direct debits, taking into account the due dates and payment periods pursuant to the T&C - BO, including Annexes. A market participant may refuse to open an account with certain banks only for objectively justified reasons. Every market participant must grant the Balancing Operator (BO) or the party the BO has charged to act on its behalf, the authorization to carry out a SEPA business-to-business direct debits from this account in favour of the Balancing Operator or the party the BO has charged to act on its behalf; the market participant must also ensure that the account has sufficient funds on the due date. Credit balances are transferred from the account of the BO to the account of the market participant.

### **3 Right to raise objections**

Market participants have the right to send a written objection to the BO with respect to the invoice within 30 days. This right does not release the market participant from the obligation to pay the invoice, although it believes the invoice be incorrect and is still subject to clarification. If the objection is not sent within the defined period, the invoice shall be deemed binding. The Balancing Operator must remedy incorrect invoices within 6 months. The costs of subsequent invoicing are charged on an expense basis by the BO to the party having triggered the subsequent invoicing. These fees are published on the website of the BO.

## **4 Payments on account**

The Balancing Operator reserves the right to determine the estimated billing amount based on available and estimated billing data for the balance group, and may issue an invoice for payment on account to the balance group representative.

## **5 Offsetting of counterclaims**

Generally, netting against counterclaims is ruled out. The Balancing Operator is only permitted to do this in the event of imminent insolvency of a market participant. Furthermore, offsetting against claims of the contractual parties is permitted if these claims are legally connected to the liabilities subject to offsetting and have been either determined by a court of law or recognized by the Balancing Operator.

## **6 Changes to the legal situation**

Should there be changes to the underlying legal framework, in particular, with respect to value added tax law in Austria, invoices are issued in accordance with currently valid legal provisions until the Annex Settlement of Accounts, Billing has been adapted to the new legal situation.

## **7 Billing components and obligation to submit a statement on the tax situation**

### **7.1 Introduction**

Pursuant to § 1 in conjunction with § 2 no 2 of the Decree on Combating VAT Fraud<sup>i</sup> in the case of transactions relating to the supply of gas and electricity to an entrepreneur whose main activity in connection with the acquisition of these goods consists of their resupply and whose own consumption of these goods is of minor importance, the VAT shall be paid by the recipient of the service if the recipient is an entrepreneur. In connection with the aforementioned Decree on Combating VAT Fraud, the Federal Ministry of Finance has published information on its website regarding a provision on doubtful circumstances recognized by the Ministry, according to which, in the event of doubt as to whether a service within the meaning of § 2 Decree on Combating VAT Fraud is given in specific cases, the service provider and the service recipient mutually agree that the tax liability is transferred to the service recipient, whereby a written declaration by the service recipient shall be

deemed sufficient proof. Below is a presentation of the invoicing components used by the Balancing Operator as well as the provisions of relevance for implementation of the Decree on Combating VAT Fraud to help invoice recipients understand the invoices issued.

## 7.2 Obligation to submit a statement on the circumstances of the tax situation

Every contractual party must make a statement as to whether it falls within the scope of § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud or is subject to § 3 (13) and (14) as well as § 19 (1) lit c or § 3a (6) and (7) Value Added Tax Act (VAT Act). This statement shall be sent to the Balancing Operator using the appropriate form within 14 days of the request to this effect, with the postmark being decisive for compliance with the deadline. If the contractual partner does not comply with this obligation, the Balancing Operator will generally assume that a balance group representative with a permanent establishment in Austria falls within the scope of § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud. This provision does not apply to companies without a permanent establishment in Austria.

## 7.3 General presentation of invoice types

The following is an overview of the types of invoices issued by the Balancing Operator (BO) to provide contractual partners with an understanding of how the invoices are prepared, thus making it easier to verify them.

### 7.3.1 Invoice type: Delivery of BGR imbalance energy to BO (ELF)

Item per balance group of the BGR; imbalance energy quantity (AE) must be stated on the invoice in kWh.

The item contains imbalance energy per settlement period supplied by the BGR, and, in the case of a **positive clearing price (CLP) per hour (hourly balancing) or per day (daily balancing)** means revenues for BGR and costs for the Balancing Operator.

The item contains imbalance energy per settlement period supplied by the BGR, and, in the case of a **negative clearing price (CLP) per hour (hourly balancing) or per day (daily balancing)**, means costs for the BGR and revenues for the Balancing Operator. (Explanation: the service performed is a "disposal services" and thus a so-called other service in the meaning of § 3a VAT Act and for this reason, there is no energy supply in the meaning of § 2 no 2 Decree on Combating VAT Fraud.

### **7.3.2 Invoice type: Imbalance energy received, BGR from BO" (EBZ)**

Contains imbalance energy per settlement period received from the BGR, and, in the case of a **positive CLP per hour (hourly balancing) or per day (daily balancing)** means costs for the BGR and revenues for the BO.

Contains imbalance energy per settlement period received from the BGR and, in the case of **negative CLP per hour (hourly balancing) or per day (daily balancing)**, means revenues for the BGR and costs for the BO. (Explanation: the service performed is a "disposal services" and thus a so-called other service in the meaning of § 3a VAT Act and for this reason, no energy is supplied in the meaning of § 2 no 2 Decree on Combating VAT Fraud.

### **7.3.3 Invoice type: Cost contribution for intraday structuring**

This price is used to invoice contributions to intraday structuring in the event of offsetting bids for the withdrawal of imbalance energy. This type of invoicing applies when the tolerance quantities are exceeded, which are set at 4% of the daily consumption quantity for each balance group with end consumer quantities, otherwise at 0%. (Explanation: this is classified as other services in the meaning of § 3a VAT Act, and therefore, it is not an energy supply in the meaning of § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud.

### **7.3.4 Invoice type: Neutrality charge**

If the item includes a neutrality charge, this means costs for the BGR at a positive price and revenues for the balancing account maintained by the BO in the system. If the price is negative, the balancing account is returned to the market participants. The neutrality charge is invoiced for all withdrawal allocation components of the balance group for one gas day

### **7.3.5 Invoice type: Clearing fee pursuant to § 89 Natural Gas Act<sup>ii</sup> 2011 (Federal Law Gazette I No 107/2011) in conjunction with the Natural Gas Clearing Fee Decree<sup>iii</sup> (Federal Law Gazette II No 479/2012)**

Item per balance group of the BGR; quantity for the allocation quantities on the invoice is given in kWh.



The assessment basis is the allocation revenue of the balance group in accordance with the Clearing Fee Decree of the regulatory authority.

#### **7.4 Invoice BGR (Explanation: with energy supply as principal activity)**

##### **7.4.1 Resident for taxation purposes in cases governed by § 1 in conjunction § 2 no 2 Decree on Combating VAT Fraud**

The following applies to contractual partners who have declared in writing to the Balancing Operator that they are subject to § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud.

###### **a. Supply and other services for payment, BO supplies energy to BGR (CLP):**

- i. In the case of a positive price, the reverse charge mechanism pursuant to § 19 (1d) VAT Act<sup>iv</sup> in conjunction with § 2 no 2 Decree on Combating VAT Fraud applies; in this case, the recipient of the service (BGR) bears the tax liability (reverse charge)
- ii. In the event of a disposal service (negative energy price), 20% value added tax is charged.

###### **b. Neutrality charge (other service for payment), BGR delivers service to BO:**

- i. In the event of a positive price, 20% VAT is charged (explanation: this is an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
- ii. In the event of a negative price, 20% VAT will be charged (explanation: it is an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).

###### **c. Supplies and other services for payment, BGR supplies energy to BO (CLP):**

- i. In the case of a positive price, the reverse charge mechanism pursuant to § 19 (1d) VAT Act in conjunction with § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud shall apply; in this case, the recipient of the service (BO) bears the tax liability (reverse charge).
- ii. In case of a negative price, 20% VAT will be charged (explanation: it is an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).

###### **d. Clearing fee pursuant to § 89 Natural Gas Act 2011<sup>v</sup> (Federal Law Gazette I No 107/2011) in conjunction with the Natural Gas Clearing Fee Decree<sup>vi</sup> (Federal Law Gazette II No 479/2012):**

This is an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act.

##### **7.4.2 Residents for taxation purposes outside the scope of application of § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud**

The following applies to contractual partners who have declared in writing to the BO that they are not subject to § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud.

- a. **Supply and other services for payment, BO supplies energy to BGR (CLP):**
  - i. In the case of a positive price (CLP), 20% VAT is charged pursuant to § 3 VAT Act; in this case, 20% VAT is charged, because a secondary activity is not covered by the Decree on Combating VAT Fraud
  - ii. In the case of a negative price (CLP), 20% VAT is charged pursuant to § 3a VAT Act; in this case, 20% VAT is charged, because it is an "other service".
- b. **Neutrality charge (other service for payment), BGR pays BO:**
  - i. In the case of a positive price, 20% VAT is charged (explanation: this is an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
  - ii. In the case of a negative price, 20% VAT is charged (explanation: it is an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
- c. **Supplies and other services for payment, BGR supplies energy to BO (CLP):**
  - i. In the event of a positive price (CLP), 0% VAT is charged and the reverse charge mechanism pursuant to § 19 (1d) VAT Act in conjunction with § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud applies; in this case, the recipient of the service (BO) bears the tax liability (reverse charge).
  - ii. In the event of a negative price (CLP), 20% VAT is charged (explanation: it is an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act).
- d. **Clearing fee pursuant to § 89 Natural Gas Act 2011 (Federal Law Gazette I No 107/2011) in conjunction with the Natural Gas Clearing Fee Decree (Federal Law Gazette II No 479/2012):**

This is an "other service" and NOT A DELIVERY pursuant to § 3a VAT Act.

#### **8.1.1. Foreigners for taxation purposes (explanation: contractual partners from other EU countries and CH do are not subject to the Decree on Combating VAT Fraud)**

- a. **Supplies and other services for payment, BO supplies energy to BGR (CLP):**
  - i. In the case of a positive price (CLP), 0% VAT is charged, because the reverse charge mechanism pursuant to § 19 (1c) Value Added Tax Act applies; provided there is NO permanent establishment in Austria and the tax liability is transferred to recipient of the service.
  - ii. In the event of a negative price (CLP), 0% VAT is charged, because the reverse charge mechanism pursuant to § 3a paras 6 and 7 VAT Act applies (explanation: this is a "disposal service", because the withdrawal of energy by

the BGR also includes a fee for the BGR – 0% RC, because the recipient of the service has its registered office outside of Austria).

**b. Neutrality charge (other service for payment), BGR pays BO:**

- i. In the case of a positive price (CLP), 0% VAT is charged, because the reverse charge mechanism pursuant to § 3a (13) and (14) VAT Act applies (explanation: this is an “other service”, and NOT A DELIVERY of energy – 0% RC, because the recipient of the service has its registered office outside of Austria).
- ii. In the case of a negative price, 0% VAT is charged, the reverse charge mechanism pursuant to § 3 (6), (7) VAT Act applies (explanation: this is an “other service” and NOT A DELIVERY of energy - 0% RC, because the recipient of the service has its registered office outside of Austria).

**c. Delivery and other services for payment, BGR supplies energy to BO (CLP):**

- i. In the case of a positive price (CLP), 0% VAT is charged, the reverse charge mechanism pursuant to § 19 (1c) VAT Act applies; provided there is NO permanent establishment in Austria, the tax liability is also transferred to the recipient of the service (BS) and is to be charged at 0%.
- ii. In the case of a negative price (CLP), 0% VAT is charged, the reverse charge mechanism pursuant to § 3a (6), (7) VAT Act applies; in this special case, it is a "disposal service", since this withdrawal of energy by the BO additionally includes a fee for the BO, therefore 0% reverse charge is invoiced pursuant to § 3a (6), (7) VAT Act.

**d. Clearing fee pursuant to § 89 Natural Gas Act 2011 (Federal Law Gazette I No 107/2011) in conjunction with the Natural Gas Clearing Fee Decree (Federal Law Gazette II No 479/2012):**

This is an “other service” and NOT A DELIVERY of energy, therefore, the reverse charge mechanism pursuant to § 3a (6), (7) VAT Act applies.

## **7.5 Invoicing grid operator**

Generally, it is assumed that grid operators (GO) in Austria are subject to § 1 in conjunction with § 2 no. 2 Decree on Combating VAT Fraud; any deviation from this must be notified by the grid operator to the BO in a written statement.

Grid operators are therefore deemed residents for tax purposes and are subject to § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud.

#### **7.5.1 Integrated network operator**

An integrated grid operator (GO) is deemed given if the supplier and the grid operator are the same legal entity; therefore, the “principal business” is assumed (in this context, a reference is made to the published letter of Austria’s energy industry to the Federal Ministry of Finance dated 2 December 2013 regarding the interpretation of the Decree on Combating VAT Fraud by the energy industry in Austria).

#### **7.5.2 Unbundled grid operator**

An unbundled grid operator shall be deemed given when the supplier and the grid operator are independent/autonomous legal entities; therefore, the assumption of “principal business” applies (in this context, a reference is made to the statement published by the energy industry in Austria to the Federal Ministry of Finance of 2 December 2013 regarding the interpretation of the Decree on Combating VAT Fraud by the energy industry in Austria).

#### **7.5.3 Grid operator with special agreement NOT in accordance with § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud**

If the GO explicitly wishes a divergent settlement, this divergence must be notified in a written statement to the BO by the grid operator.

In this case, the grid operator is classified as a resident for tax purposes not subject to § 1 in conjunction with § 2 no 2 Decree on Combating VAT Fraud.

### **8 Transitional provisions**

Any overhang or shortfall effective on 1 October 2022 from the settlement of imbalances pursuant to § 26 (6) Gas Market Model Decree 2012 and any settlement of accounts done afterwards shall be transferred to the balancing account under § 25 (2) Gas Market Model Decree 2020.

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- <sup>i</sup> Umsatzsteuerbetrugsbekämpfungsverordnung (UStBBKV – BGBl. II Nr. 369/2013)
  - <sup>ii</sup> Gaswirtschaftsgesetz (BGBl. I Nr. 107/2011)
  - <sup>iii</sup> Erdgas-Clearingentgelt-Verordnung (BGBl. II Nr. 479/2012)
  - <sup>iv</sup> Umsatzsteuergesetz, VAT Act
  - <sup>v</sup> Gaswirtschaftsgesetz 2011 (BGBl. I 107/2011)
  - <sup>vi</sup> Erdgas-Clearingentgelt-Verordnung (BGBl. II Nr. 479/2012):

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