

**Terms for the  
pre-qualification and tendering procedure  
of Thyssengas GmbH  
for the procurement of gas trading products**

**version as of 16.05.2022**

(This English version of these terms for the  
pre-qualification and tendering procedure is merely a non-binding translation.)

## **Part 1: Introduction**

### **Section 1 Object of these procedural terms**

These terms for the pre-qualification and tendering procedure ("**Procedural Terms**") govern the prerequisites for the conclusion of contracts of Thyssengas GmbH ("**Thyssengas**") for the procurement of gas trading products (particularly load flow commitments and fuel gas, "**Gas Trading Products**") that are necessary for the operation of Thyssengas' network.

### **Section 2 Parties to the process**

1. Parties to the pre-qualification procedure and the tendering procedure are suppliers of gas trading products ("**Tenderers**") and Thyssengas.
2. Bidding consortia are permitted, in which case only one of which may function as the responsible contact and contractual partner, i.e. a Tenderer within the definition of these Procedural Terms.

### **Section 3 Fees and procedural costs**

1. Thyssengas does not charge any fees for the Tenderer to participate in the pre-qualification and tendering procedure.
2. Each party to the proceedings will bear its own costs incurred in connection with the pre-qualification and tendering procedure.

## **Part 2: Pre-qualification procedure**

### **Section 4 Availability and validity of the pre-qualification procedure**

1. The pre-qualification procedure may be performed at any time.
2. Subject to Section 9 and 17, a successful pre-qualification remains valid for an unlimited period.

## Section 5 Pre-qualification requirements

1. Pre-qualification is conditional on the Tenderer
  - a. completing and legally signing the form available from [www.thyssengas.com](http://www.thyssengas.com) for the Thyssengas pre-qualification procedure plus annexes ("**Pre-qualification Form**"), and electronically returning this to the mailbox [Ausschreibung@thyssengas.com](mailto:Ausschreibung@thyssengas.com) to Thyssengas in a PDF-format,
  - b. presenting the requested proof in an electronic PDF-format towards Thyssengas (in accordance with No. 2),
  - c. possessing adequate credit rating (in accordance with No. 3) and
  - d. fulfilling the fundamental communication requirements (in accordance with No. 4).
2. The Tenderer must produce proof in the form of a current extract from the companies register or, in the case of foreign-based Tenderers, in the form of corresponding documentation according to Article 58 Section 2 of the Directive 2014/24/EU, in German or English and dated within the last three months.
3. As part of the credit assessment, Thyssengas will analyse publicly accessible information, such as that available from credit rating agencies. The Tenderer will be deemed to have an adequate credit rating if the rating published by one of the following credit rating agencies shows at least the following index for the Tenderer:
  - Moodys (Baa2)
  - Standards & Poors (BBB)
  - Creditreform (250 risk points)
4. To guarantee the fundamental communication requirements, the Tenderer must have a central, German or English-speaking contact point (contact person) that can be contacted 24 hours a day. The contact point must be available by telephone (under one telephone number only), by fax and by e-mail. Thyssengas may perform an availability test as part of the pre-qualification procedure. Through this availability test, Thyssengas will check if its fundamental communication requirements are fulfilled, and if the named contact point

is able to receive, process and respond to Thyssengas' messages and notifications concerning the call-off of Gas Trading Products.

## **Section 6 Sequence of the pre-qualification procedure and definition of the working day**

1. The Tenderer electronically sends Thyssengas the completed and legally signed Pre-qualification Form plus proofs in a PDF-format.
2. If the documents or the publicly available information are incomplete, unclear or contradictory, Thyssengas will request the Tenderer to clarify the issue. The Tenderer may complete or clarify its details or information within ten working days from the time of the notification. If the Tenderer does not complete or clarify the information, the pre-qualification requirements are deemed not to have been fulfilled.
3. Thyssengas will notify the Tenderer, no later than 20 working days following the receipt of the complete, unambiguous and consistent pre-qualification documents, of the result of the pre-qualification according to Section 7.
4. Working days for the purpose of these Procedural Terms are the days from Monday to Friday, not including official, national public holidays as well as the 24 and 31 of December, in which context a public holiday officially recognised in one federal state of Germany is deemed to be a national public holiday.

## **Section 7 Result of the pre-qualification procedure**

1. If the Tenderer fulfils the pre-qualification conditions, Thyssengas shall textually notify the Tenderer that it has successfully passed the pre-qualification procedure, and enter it into the directory of Tenderers eligible for the tendering procedure ("**Eligible Tenderers**").
2. If the Tenderer does not fulfil the pre-qualification conditions, Thyssengas shall textually notify the Tenderer of the result.

## **Section 8 Material changes to the pre-qualification conditions**

1. The Tenderer is obliged to textually notify Thyssengas, without delay, of every change to the circumstances concerning it and of relevance to the pre-qualification procedure in accordance with these Procedural Terms. This applies to ongoing pre-qualification procedures and to Eligible Tenderers.
2. Following the receipt of the notice according to No. 1, Thyssengas shall review the new information in accordance with Section 6 No.'s 2 - 3. Thyssengas may temporarily exclude the Eligible Tenderer from participating in a tender pursuant to Section 10 ff. during the period.
3. Following the review in accordance with No. 2, Thyssengas will notify the Tenderer of the result of the pre-qualification according to Section 7. Thyssengas will either notify the Eligible Tenderer that it continues to hold this status, or it will withdraw the pre-qualification status in accordance with Section 9.

## **Section 9 Withdrawal of pre-qualification, exclusion from the procedure**

If a material reason exists, without notice the Tenderer may be immediately excluded from the pre-qualification procedure, or the pre-qualification status may be withdrawn from the Eligible Tenderer. A material reason is established particularly if the Tenderer provides false information, inaccurate documents or has not complied with his obligation according to Section 8. The same applies if the Tenderer no longer fulfils the pre-qualification conditions according to Section 5. The withdrawal of the pre-qualification entitles Thyssengas to terminate existing master agreements and individual contracts for good cause.

## **Part 3: Tendering procedure**

### **Section 10 Conditions for participation**

1. Participation in the Thyssengas tendering procedure is conditional on successful pre-qualification of the Tenderer and the transmission of a master agreement given by Thyssengas for the particular product within the definition of Section 11 No. 1 within the time limit laid down in the tender.

2. The Tenderer must send the master agreement in a PDF-format, completed and signed by the Tenderer, electronically by e-mail to the mailbox [Ausschreibung@thyssengas.com](mailto:Ausschreibung@thyssengas.com). Thyssengas will return the countersigned master agreement electronically in a PDF-format to the respective Eligible Tenderer, at the latest after the specific tendering process has ended. The Tenderer shall confirm receipt of the countersigned master agreement to Thyssengas in text form.
3. Contrary to No. 1, it is not necessary to send a master agreement if a master agreement between the Tenderer and Thyssengas has already been concluded for the product in question.

### **Section 11 Products, announcement and tendering period**

1. The tendered products ("**Products**") consist in each case of a master agreement and an associated individual contract.
2. Thyssengas provides information on the Products and the tendering periods by publishing the details on its website and/or through a notice simultaneously issued to all Eligible Tenderers ("**Announcement**").
3. The tender submission end is the point in time at which the Eligible Tenderer's offer to conclude an individual contract must be received by Thyssengas, in order to be considered within the tendering procedure in question ("**Tender Submission End**"). The Tender Submission End will be published together with the Announcement of the Product in question.
4. The tendering period commences with the Announcement of the Product in question, and ends with the Tender Submission End.

### **Section 12 Process of the tendering procedure**

1. During the tendering period, the Eligible Tenderer is entitled to submit offers for the conclusion of an individual contract electronically in a PDF-format, sent by e-mail to the mailbox [Ausschreibung@thyssengas.com](mailto:Ausschreibung@thyssengas.com).

2. The bid submission constitutes a binding offer on the part of the Eligible Tenderer to conclude an individual contract with Thyssengas, based on the exemplary offer text specified by Thyssengas for the Product in question. Depending on the particular tender, the Eligible Tenderer shall be bound to its bid for a period following the end of the relevant tendering period ("**Commitment Period**"). The Commitment Period will be published together with the tender in question.
3. Bids can only be submitted up to the relevant Tender Submission End. The Tender Submission End is an exclusion period. Bids submitted out-of-time will be deemed not to have been submitted, and will not be considered.
4. The bid must be complete. Deviations from the exemplary offer text are not permitted. All requested information must be provided. The Eligible Tenderer is responsible for the accuracy and completeness of its information. Incomplete bids or ones that deviate from the exemplary offer text will be deemed not to have been submitted, and will not be considered.

### **Section 13 Completion of the tendering procedure**

1. After the Tender Submission End of the relevant tender, all the bids will be listed in ascending order according to the total price (list of bids). The determination of the total price is described in the relevant tender terms.
2. Contracts are awarded, starting from the lowest total price until the demand is covered. If the total price of two or more bids is equal, the earlier received bid will be preferred. Thyssengas will textually notify the relevant Eligible Tenderers of the award of contract, and this constitutes its declaration of acceptance of the offer to conclude an individual contract ("**Declaration of Acceptance**"). At the time the Declaration of Acceptance from Thyssengas is received by the Eligible Tenderer, the individual contract will be concluded between the Eligible Tenderer and Thyssengas. The Eligible Tenderer confirms to Thyssengas the receipt of the Declaration of Acceptance in text form.
3. In justified cases, such as in the event of prices economically untenable to the grid users, Thyssengas has the right to decline bids even if the demand is not covered. The Federal Network Agency ("Bundesnetzagentur") will be consulted to the extent necessary in reconciling the economic viability of prices.

4. Regarding bids that could not be considered for the conclusion of an individual contract the relevant Tenderers will receive a notification in text form following the end of the tender.
5. After completion of the tender, Thyssengas publishes an overview of the successful bids, i.e. at least an overview of the contracted quantities, without naming the suppliers.

## **Part 4: General provisions**

### **Section 14 Force majeure**

1. In the event that force majeure impedes Thyssengas from conducting the pre-qualification respectively the tendering procedure, the procedure in question will be suspended until these circumstances and their consequences have been eliminated. In such case, Thyssengas will use its best efforts to continue the relevant procedure as soon as possible. Thyssengas is entitled, in case of force majeure, to extend a tendering procedure by a maximum of the period which the respective procedure has rested, or to abort the ongoing tendering procedure.
2. Force majeure is an unforeseeable, external event, that cannot be averted or averted in time, even through the application of reasonable due care and technically and economically reasonable means. Such events include natural disasters, effects of pandemics (even if the pandemic was already known before the start of the respective process, such as Covid-19), terrorist attacks, power failures, the failure of telecommunications lines, strikes and lock-outs insofar as the lock-out is lawful, and statutory regulations or measures imposed by governments or the courts or by public authorities (regardless of lawfulness).

### **Section 15 Liability**

Thyssengas shall be liable for death and personal injury in accordance with the statutory provisions. Thyssengas shall only be liable for all other damage or loss if this was caused intentionally or through the gross negligence of Thyssengas, one of its statutory representatives or vicarious agent or if a culpable breach of material procedural rules exists. With the infringement of material procedural rules, liability shall be limited to foreseeable damages typical for this type of contract.



## **Section 16 Data transfer and data processing**

1. Thyssengas, or a subcontractor commissioned by it, is entitled, within the limits of the data protection laws, in particular EU GDPR, to process the Tenderer's data received during the course of the pre-qualification and tendering procedure, and it may pass such data onto third parties, insofar as this is necessary for properly conducting the procedure in question. In addition, the data protection information in Annex 3 of the form for the pre-qualification procedure applies.
2. Otherwise, the parties to the procedure are obliged to treat as confidential, all that information they receive in connection with the performance of the pre-qualification and tendering procedure. This does not apply to that information, which is either in the public domain, or which is bound to be disclosed by way of a legal regulation or an order issued by a court of law or public authority.
3. The obligation to maintain confidentiality shall end 5 years after the expiry of the pre-qualification or tendering procedure.

## **Section 17 Validity of and amendments to these Procedural Terms**

1. These Procedural Terms enter into force as of 16.05.2022 and shall remain valid for an unlimited period, and replace the previously valid terms.
2. The English version of these Procedural Terms serves only for informational purposes, in case of any discrepancies between the German and the English version hereof, the German version shall prevail.
3. Thyssengas is, at any time, entitled to amend these Procedural Terms, effective for the future.
4. Thyssengas is entitled to amend these Procedural Terms with immediate effect insofar as an amendment is necessary in order to satisfy applicable laws or legal decree and/or the binding legal stipulations of national or international courts and authorities, especially the determinations of the German Federal Network Agency ("Bundesnetzagentur") and/or the generally accepted technological standards. In such a case, Thyssengas will inform the Tenderer immediately about the new Procedural Terms. If the amendment to a current pre-qualification or tendering procedure results in material economic detriment

to the Tenderer, it shall be entitled to unilaterally terminate the relevant procedure. In order to terminate the procedure, the Tenderer must issue a written declaration to Thyssengas and describe the material economic detriment within 10 working days following the information by Thyssengas about the amended Procedural Terms. The Tenderer shall not be entitled to compensation.

#### **Section 18 Severability clause**

If any of the individual provisions of these Procedural Terms are or become ineffective or unenforceable, this shall not affect the remaining Procedural Terms.