

**2009 REGULATIONS FOR THE AUCTIONING OF CROSS-BORDER ELECTRICITY
TRANSFER CAPACITY ON THE EXTRA HIGH-VOLTAGE BELGIUM-NETHERLANDS, GERMANY-
NETHERLANDS INTERCONNECTORS**

Section 0	Introduction	3
Article 0.1	Status of this Introduction	3
Article 0.2	General context	3
Article 0.3	The Auction Office	3
Article 0.4	Auction Regulations (general aspects).....	3
Article 0.5	Legal qualification of the awarding of Capacity pursuant to an Auction.....	4
Article 0.6	Collection of debts / Waiver of right to compensate	4
Section I	General.....	5
Article I.1	Definitions	5
Article I.2	The Auction Office	7
Article I.3	The Auctions.....	7
Article I.4	Capacities auctioned / Year, Month and Day Auctions	7
Article I.5	Quantities available for auctioning.....	7
Article I.6	Basis on which Capacity is offered.....	7
Article I.7	Modalities of Capacity Offered Firm	8
Article I.8	Priority and allocation of Capacity reductions	8
Article I.8A	Capacity reductions in connection with power system safety: compensation.....	8
Article I.8B	Capacity reductions in connection with Force Majeure: reimbursement.....	8
Article I.9	Auction Web-site.....	8
Article I.10	Currency	9
Section II	Requirements for participation in the Auctions	9
Article II.1	Registration and solvency requirements	9
Article II.2	Requirements in respect of grid access rights for Day Auctions	9
Article II.3	The Notification of Use Day Capacity (N.U.D.C.).....	9
Article II.4	Prior security requirement in respect of Day Auctions	10
Section III	Auction proceedings	10
Article III.1A	Conditions for suspension of participation by Auction Office	10
Article III.1B	Conditions for termination of participation by Auction Office.....	10
Article III.1C	Conditions for termination of participation by the Bidder or Transferee	10
Article III.2	Time-schedule Year Auctions.....	10
Article III.3	Time-schedule Month Auctions	11
Article III.4	Time schedule Day Auctions	11
Article III.5	Filing of Bids	11
Article III.6	Emergency back-up procedure	11
Article III.7	Number of Bids.....	12
Section IV	Determination of Auction results.....	12

Article IV.1	Awarding of Capacity.....	12
Section V	Payment of the Capacity Price / Furnishing of security.....	12
Article V.1	Security requirement and automatic collection Year and Month Auctions	12
Article V.2	Payment (Year Auction).....	12
Article V.3	Payment (Month Auction)	13
Article V.4	Payment (Day Auction).....	13
Article V.5	Waiver of right to compensate.....	13
Article V.6	Default	13
Section VI	Returning of Capacity.....	13
Article VI.1	Returning Year and Month Capacity to the Auction Office.....	13
Section VII	Transfer of Capacity	13
Article VII.1	Transfer of Year and Month Capacity.....	14
Article VII.2	Notification of Transfer.....	14
Article VII.3	Appointing Transporting Parties	14
Article VII.4	Acceptance by the Auction Office.....	14
Section VIII	Use of Year and Month Capacity.....	14
Article VIII.1	Obligation to appoint Transporting Parties for use of Capacity	14
Article VIII.2	The Notification of Use Year Capacity (N.U.Y.C.) and Notification of Use Month ..	14
Article VIII.3	Replacement of Transporting Parties in the N.U.Y.C. / N.U.M.C.....	15
Section IX	Use it or lose it / Misuse.....	15
Article IX.1	Use it or lose it (Year and Month Auctions).....	15
Article IX.2	Misuse	15
Section X	Miscellaneous.....	15
Article X.1	Information / Notices.....	15
Article X.2	Responsibility.....	15
Article X.3	Confidentiality	16
Article X.4	Severability	16
Article X.5	Applicable law and disputes	16
Article X.6.	Force Majeure.....	16
Section XI	Entry into Force and Transitory Provision	17
Article XI.1	Entry into force.....	17

Section 0 Introduction

Article 0.1 Status of this Introduction

This introductory Section is an integral and binding part of these Regulations.

Article 0.2 General context

The Auction Regulations contain the terms and conditions for the auctioning of available cross-border electricity transfer capacity which is jointly offered by the Belgian, Dutch and German Transmission System Operators (ELIA, TenneT, E.ON Netz and RWE TSO) with regard to the extra high-voltage connections between Belgium and the Netherlands and Germany and the Netherlands. As for the amount of available capacity to be auctioned the mutual influence of the allocated capacity in the entirety of the European extra high-voltage grid must and will be taken into consideration.

The auctioning of Capacity is not a commercially motivated activity but one aimed at providing a transparent method of congestion management. The importance of the Interconnectors for the liberalisation of the EU electricity market requires a strict policy with regard to the collection of payments and default consequences. Electricity transfer Capacity is an essential precondition for cross-border energy transactions and must not remain too long in the possession of those who do not pay the price for which it had been made available to them in an Auction. Invoices in respect of the Capacity Price will therefore be collected automatically and non-payment, in addition to having financial consequences for the debtor, may lead to suspension of the participation of the debtor for future Auctions and/or to a release to future Auctions of capacity which had been awarded to the debtor, without prior default notice and without compensation.

For the avoidance of doubt, it is noted that the Auction Regulations which have applied to the Auctions carried out in 2008 (the 2008 Regulations) continue to apply in 2009 to the extent necessary to settle any outstanding rights or obligations pursuant to Auctions which have been held under the 2008 Regulations.

Article 0.3 The Auction Office

The aforementioned Transmission System Operators have commissioned the carrying out of the Auctions to the Dutch private company with limited liability TSO Auction BV (the Auction Office), a wholly owned subsidiary of the Dutch national grid operator TenneT TSO B.V.. If, for whatever reason, the agreement(s) whereby the Transmission System Operators have commissioned the organisation of the Auctions to the Auction Office is (are) terminated or suspended during the year, the Auction Office will no longer have a title to organise the (relevant) Auctions. These Auctions will then cease to take place. Such an event will not affect the rights and obligations which have come into existence as a consequence of Auctions which had already taken place.

The Auction Office is not responsible and cannot be held accountable for making Capacity available. The Auction Office prepares and conducts the Auctions and provides all relevant information to the market parties. However, it does not deal with any aspect which pertains to making or keeping capacity available whether prior to or following an Auction.

Article 0.4 Auction Regulations (general aspects)

The Auction Regulations describe (among other aspects) the various types of Auctions, the requirements which Bidders in the Auctions must fulfill to participate, the Auction proceedings, the awarding of Capacity as a result of the Auction and the utilization of Capacity after the Auction. They also stipulate a limitation of liability for the benefit of the Transmission System Operators (see Article X.2 of these 2009 Regulations).

In these 2009 Regulations, prepared in the context of the regional harmonisation, were no major changes adapted compared to the 2008 Regulations.

The Auction Regulation may be amended unilaterally pursuant to a change of the regulatory framework or in order to improve or clarify provisions and procedures or to fill gaps.

Article 0.5 Legal qualification of the awarding of Capacity pursuant to an Auction

The auctioning is in respect of Capacity only. The auctioning and awarding of Capacity and the financial settlement of the Auction results do not involve energy transports or any rights, liabilities or financial aspects (such as transportation costs) pertaining to energy transports. Successful Bidders in the Auctions can invoke vis-à-vis the Transmission System Operators no other right than that Capacity is made available to them subject to the provisions in the Auction Regulations, complemented with such related rights (as in respect of the return or transfer of Capacity) as have been set forth in the Auction Regulations. Notably, the awarding of Capacity cannot be considered or construed to mean or imply that a successful Bidder is entitled to have electricity transports carried out or that transport failures or restrictions are a failure to comply with the terms of the Auction Regulations or with the Auction results. It is the responsibility of the Bidder who has obtained Capacity to take the necessary steps to have transports carried out and to take into account in that respect, for example, possibly different priority rules on different borders.

A successful Bid for Capacity creates a contract between the Transmission System Operators who operate the particular Interconnector on the one hand and the Bidder on the other. The contract obliges the Transmission System Operators to make Capacity for electric energy transfer available to the Bidder while the Bidder is under the obligation to pay the Bid price. In fact, therefore, Capacity is not a physical good which can be bought and transferred but is a contractual right to be exerted vis-à-vis the Transmission System Operators to make Capacity for electric energy transfer on the Interconnector available. This aspect is important, inter alia, when considering possibilities to transfer Capacity to third parties. Since what is called Capacity in the Auction Regulations is actually a contractual right to be excised against the Transmission System Operators, a 'transfer of Capacity', i.e. a transfer of that contractual right, is subject to the consent of the Transmission System Operators who operate the particular Interconnector (and who will act also in this respect through the Auction Office). The consent procedure is part of the Auction Regulations (see Article VII.4 of these 2009 Regulations).

The Auction Regulations constitute the terms and conditions of the aforementioned contract. At the same time the Auction Regulations set forth the terms and conditions on which the Auction Office (on behalf of the Transmission System Operators) is willing to allow companies to enter Bids for these contracts and the terms and conditions on which the Auction Office (on behalf of the Transmission System Operators) is willing to consider these Bids. It is noted in this respect that the contracts are governed exclusively by Dutch law (Article X.5 of these 2009 Regulations).

Article 0.6 Collection of debts / Waiver of right to compensate

The Transmission System Operators have commissioned to the Auction Office the collection of all debts payable to them in connection with an Auction. Hence, the Auction Office is entitled to collect all payments which become due under the Auction Regulations. Although the Auction Office collects these payments on behalf and in the name of Transmission System Operators, Bidders accept by participating in the Auctions that they can only be discharged of their debts through payment to the Auction Office and that payment of a debt to a Transmission System Operator will not release them from their obligation to pay the same debt to the Auction Office. Moreover, as payment by compensation would thwart the administrative structure of the co-operation between the Transmission System Operators and the Auction Office, Bidders waive the right to offset any debts that arise in connection with an Auction to claims that Bidder has on a Transmission System Operator, whether or not arising out of an Auction (see Article V.5 of these 2009 Regulations).

Section I General

Article I.1 Definitions

Access Responsible Party	A market party in Belgium which has obtained recognition as an Access Responsible Party in accordance with the provisions which apply thereto.
Auction	A Year, Month and/or Day Auction held under these Regulations.
Auction Office	The Auction Office referred to in Article I.2 of these Regulations, incorporated as a wholly owned subsidiary of TenneT, Transmission System Operator B.V.
Auction Web-site	The web-site referred to in Article I.9 of these Regulations.
Bid	A bid, in Euro (€) per MW, for Capacity on an Interconnector, submitted in a Year, Month or Day Auction, which complies with the requirements of these Regulations.
Bidder	A legal person which participates, intends to participate or has participated in an Auction by submitting one or more Bids and which has been registered for that purpose in accordance with the procedures and requirements set forth in Article II.1 of these Regulations.
Bilanzkreisvertrag	The agreement between a market party on the one hand and E.ON Netz or RWE TSO on the other, containing, inter alia, a mechanism for settling imbalance between energy introduction into and energy extraction out of the electricity grid.
Capacity	Cross-border electric energy transfer capacity on an Interconnector.
Capacity Offered Firm	Capacity of which the availability will be maintained under normal and adverse circumstances, if need be through measures by the Transmission System Operators aimed at keeping the Capacity available, subject to the provisions in these Regulations.
Capacity Owner	The legal entity which has obtained Capacity in an Auction or as a result of a transfer of Capacity.
Capacity Price	The price payable by a Bidder in an Auction, being the product of the Clearing Price and the awarded Capacity quantity.
Certified Program Responsible Party	A market party who has concluded a Programmaverantwoordelijkheidsovereenkomst with TenneT TSO BV, by which it has obtained recognition as a Certified Program Responsible Party in accordance with applicable regulations which contain, inter alia, a mechanism for settling imbalance between energy introduction into and energy extraction out of the electricity grid.
Clearing Price	The price per MW of available Capacity resulting from an Auction.
Day Auction	The Auction in which Capacity for daily electricity transports during at least one hour and at most all hours of one calendar day is auctioned.
Day Capacity	Capacity obtained in a Day Auction.
Day of Execution	The day on which electricity transports using the Capacity obtained in an Auction are to take place.
EAN Code	European Numbering Code, being a code, issued by the national EAN organisations, by which the Auction Office identifies Bidders and Transferees in its electronic system.
Force Majeure	"Force Majeure" means any not foreseeable event or situation beyond the reasonable control of a Party, and not due to a fault of such Party, which cannot reasonably be avoided or

	overcome, and which makes it impossible for such Party to fulfil temporarily or definitively, its obligations hereunder in accordance with the terms of the Regulations.
Interconnector	Each of the following connections or set of connections connecting the extra high-voltage grids of the Transmission System Operators: <ul style="list-style-type: none"> a. the Interconnector ELIA – TenneT (two connections); b. the Interconnector E.ON Netz – TenneT (one connection); c. the Interconnector RWE TSO – TenneT (two connections)
Month Auction	The Auction in which Capacity for monthly electricity transports from the first through the last day of one calendar month is auctioned.
Month Capacity N.U.D.C.	Capacity obtained in a Month Auction. The Notification of Use of Day Capacity, being a notification to the Auction Office, compliant with <u>Schedule A</u> , in which a Bidder in a Day Auction appoints Transporting Parties, one of whom must be the Bidder itself, who will nominate transports using Day Capacity.
N.U.M.C.	The Notification of Use of Month Capacity, being a notification to the Auction Office, compliant with <u>Schedule B</u> , in which the Capacity Owner appoints Transporting Parties who will nominate transports using the Month Capacity.
N.U.Y.C.	The Notification of Use of Year Capacity, being a notification to the Auction Office, compliant with <u>Schedule C</u> , in which the Capacity Owner appoints Transporting Parties who will nominate transports using the Year Capacity.
Party	A Bidder, Transmission System Operator, Transferee, Transferor, Transporting Party or the Auction Office, as the case may be, and the word "Parties" is to be construed accordingly.
Regulations	These 2009 Auction Regulations.
Transferee	A party to whom Capacity has been transferred in accordance with Section VII of these Regulations.
Transferor	A party who has transferred Capacity to a Transferee in accordance with Section VII of these Regulations
Transmission System Operator	A transmission system operators who offers Interconnector Capacity for auctioning under these Regulations, being: <ul style="list-style-type: none"> • (Belgium) ELIA S.A. ("ELIA") • (Germany) E.ON Netz GmbH ("E.ON Netz") • (Germany) RWE Transportnetz Strom GmbH ("RWE TSO") • (Netherlands) TenneT TSO B.V. ("TenneT") or their legal successors.
Transporting Party	A party who nominates transports on an Interconnector using the Capacity which has been obtained in an Auction for that purpose and who <ul style="list-style-type: none"> • when acting on the Belgian end of an Interconnector must possess a recognition as Access Responsible Party • when acting on the Dutch end of an Interconnector must be a Certified Program Responsible Party • when acting on the German end of an Interconnector must have entered into a Bilanzkreisvertrag with: <ul style="list-style-type: none"> - E.ON Netz for the Interconnector which on the German side of the border is operated by E.ON Netz - RWE TSO for the Interconnector which on the German side of the border is operated by RWE TSO.
Working Day	Every day which is not a Saturday, Sunday or a generally recognised festive day (algemeen erkende feestdag) within the meaning of the Dutch General Act on Terms (Algemene Termijnenwet)

Year Auction	Auction in which Capacity for annual electricity transports from 1 January through 31 December of a calendar year is auctioned.
Year Capacity	Capacity obtained in a Year Auction.

Article I.2 The Auction Office

The Auctions are conducted by the Auction Office, located in the Netherlands at Utrechtseweg 310, 6812 AR (P.O. box 718, NL-6800 AS), Arnhem.

Article I.3 The Auctions

Capacity is auctioned by the Auction Office on behalf of:

- a. TenneT and ELIA in respect of the Dutch/Belgian Interconnector,
- b. TenneT and E.ON Netz in respect of the Dutch/German Interconnector which is operated on the German side by E.ON Netz,
- c. TenneT and RWE TSO in respect of the Dutch/German Interconnector which is operated on the German side by RWE TSO.

Article I.4 Capacities auctioned / Year, Month and Day Auctions

(1) Separate Auctions are held for Capacity in each of both directions of each of the Interconnectors mentioned in Article 1.3:

- a. Capacity for transports from the extra high-voltage grid of ELIA to the extra high-voltage grid of TenneT
- b. Capacity for transports from the extra high-voltage grid of TenneT to the extra high-voltage grid of ELIA
- c. Capacity for transports from the extra high-voltage grid of E.ON Netz to the extra high-voltage grid of TenneT
- d. Capacity for transports from the extra high-voltage grid of TenneT to the extra high-voltage grid of E.ON Netz
- e. Capacity for transports from the extra high-voltage grid of RWE TSO to the extra high-voltage grid of TenneT
- f. Capacity for transports from the extra high-voltage grid of TenneT to the extra high-voltage grid of RWE TSO.

(2) The following Auctions take place:

- a. Year Auctions in respect of Capacity for transports mentioned in article I.4 (1), a –f, such transports executed from 1 January through 31 December of a calendar year, and it being understood that the total Capacity available for these transports is divided over two Year Auctions;
- b. Month Auctions in respect of Capacity for transports mentioned in article I.4 (1), a-f, such transports executed from the first through the last day of a calendar month;
- c. Day Auctions in respect of Capacity for transports mentioned in article I.4 (1), c-f, such transports executed during at least one hour and at most 24 hours of a calendar day.

Article I.5 Quantities available for auctioning

(1) The Capacity available for auctioning on an Interconnector is determined jointly by the Transmission System Operators in accordance with applicable laws and regulations.

(2) The Capacities allocated at Year and Month Auctions, which are not nominated, are put at the disposal of daily allocations, without any refund or compensation.

(3) Bidders will be timely informed on the Auction Web-site of the Capacity available for each Auction.

Article I.6 Basis on which Capacity is offered

(1) Capacity is offered in units of 1 MW with a minimum of 1 unit.

(2) Capacity for year and month transports is offered for every day of the year and the month respectively.

(3) Capacity for day transports is offered on an hour-by-hour basis.

Article I.7 Modalities of Capacity Offered Firm

(1) Unless reductions are induced by circumstances which constitute Force Majeure or are required for reasons linked to the safety of the power system, in particular the maintenance of grid security, subject to applicable laws and regulations in Belgium, the Netherlands and Germany, Year Capacity is Capacity Offered Firm.

(2) Unless reductions are induced by circumstances which constitute Force Majeure or are required for reasons linked to the safety of the power system, in particular the maintenance of grid security, subject to applicable laws and regulations in Belgium, the Netherlands and Germany, Month Capacity is Capacity Offered Firm.

(3) Unless reductions are induced by circumstances which constitute Force Majeure or are required for reasons linked to the safety of the power system, in particular the maintenance of grid security, subject to applicable laws and regulations in Belgium, the Netherlands and Germany, Day Capacity is Capacity Offered Firm.

Article I.8 Priority and allocation of Capacity reductions

(1) In case of Capacity reductions as referred to in Article I.7 of these Regulations, reductions take place in the following priority order:

- a. first, the Capacity for next day's Day Auction is reduced or, in case the next day's Day Auction has taken place, the Day Capacity is reduced;
- b. in case the Capacity has been reduced and further reductions are required the Month Capacity is reduced;
- c. In case the Capacity must be reduced still further the Year Capacity is reduced.

(2) In applying paragraph (1) (a) of this article TenneT shall take into account the applicable provisions in the Dutch Grid Code (*Netcode*).

(3) The reductions of Day Capacity, Month Capacity and Year Capacity, referred to in paragraph (1) of this Article, are allocated to the Capacity Owners in proportion to the Capacity each Capacity Owner has available for nomination regardless of whether or not it has nominated or procured to nominate such Capacity.

Article I.8A Capacity reductions in connection with power system safety: compensation

(1) If Capacity is reduced for reasons linked to the safety of the power system, in particular the maintenance of grid security, subject to applicable laws and regulations in Belgium, the Netherlands and Germany (and, for the avoidance of doubt, not if Capacity is reduced due to circumstances which constitute Force Majeure as referred to in Article I.7 of these Regulations), the Auction Office compensates the Capacity Owner according to the formula: $C \times P \times \lambda \times 1,10$ where:

- C means the quantity of Capacity during each full clock hour of the reduction thereof;
- P means the auction price paid for such Capacity; and
- λ means the ratio between the total reduction time and the total time for which the Capacity has been awarded (year for Year Capacity, month for Month Capacity and hour for Day Capacity), both expressed in full clock hours.

Article I.8B Capacity reductions in connection with Force Majeure: reimbursement

(1) If Capacity is reduced due to circumstances which constitute Force Majeure as referred to in Article I.7 of these Regulations, the Auction Office reimburses the Capacity Owner according to the formula:

$C \times P \times \lambda \times 1,0$ where:

- C means the quantity of Capacity during each full clock hour of the reduction thereof;
- P means the auction price paid for such Capacity; and
- λ means the ratio between the total reduction time and the total time for which the Capacity has been awarded (year for Year Capacity, month for Month Capacity and hour for Day Capacity), both expressed in full clock hours.

Article I.9 Auction Web-site

The Auction Office maintains a web-site. It will publish on this web-site:

- a. these Regulations together with its Schedules, and any alterations thereof
- b. announcements pursuant to these Regulations
- c. the Dutch bank holidays in a calendar year
- d. information on the Auction proceedings
- e. names, fax and telephone number(s) and e-mail address(es) of contact persons of the Auction Office
- f. formats of documents to be used by Bidders
- g. the Capacity available for each Auction
- h. the results of an Auction
- i. other relevant information

Article I.10 Currency

Financial securities, price settlement and payments with respect to an Auction as well as financial information are in Euro (€).

Section II Requirements for participation in the Auctions

Article II.1 Registration and solvency requirements

(1) Prior to an Auction the Bidder must register with the Auction Office, submitting the following documents:

- a. name, address, EAN Code, telephone number, fax number, e-mail address and contact person(s) of the Bidder;
- b. a list of authorised representatives who are entitled to submit Bids as well as documents proving their authorisation;
- c. a statement by an authorised functionary to the effect that the Bidder has received, read and accepted these regulations as well as documents proving his or her authorisation;
- d. An legal opinion from a lawyer who has been admitted to practice under the laws of the State of domicile of the company, confirming that
 - the Bidder has been incorporated and is existing as a [mention legal form of the company] under [mention applicable jurisdiction] law;
 - the Bidder has the corporate power to enter into and perform the transaction;
 - there is nothing under the laws of the State of [mention name of State] which prevents the Bidder from entering into the transaction and meeting its obligations in respect thereof.

(2) The registration and documents mentioned in paragraph (1) are valid for an indefinite number of Auctions, notwithstanding the obligation for the bidding company to inform the Auction Office forth-with of any changes and notwithstanding the right of the Auction Office to request a renewal of the registration and/or the documents to be submitted.

(3) The Bidder may not have been declared bankrupt or insolvent or granted suspension of payment nor may a petition for bankruptcy, insolvency or suspension of payment have been filed against the Bidder.

Article II.2 Requirements in respect of grid access rights for Day Auctions

(1) To be admitted in a Day Auction a Bidder must in a N.U.D.C. appoint Transporting Parties in respect of both ends of the Interconnector to which the Auction relates.

(2) The Bidder must itself be a Transporting Party in respect of at least one of both ends of the Interconnector.

(3) The N.U.D.C. for a Day Auction is valid for all remaining Day Auctions in the calendar month in which the Bidder has filed the N.U.D.C.

(4) In case the Bidder has in respect of one end of the Interconnector appointed a Transporting Party which is not the Bidder itself it may in respect of the remaining Day Auctions in the calendar month in which it has filed the N.U.D.C. replace that Transporting Party by a subsequent N.U.D.C.

Article II.3 The Notification of Use of Day Capacity (N.U.D.C.)

(1) The N.U.D.C must be signed by the Bidder and, if it has appointed a Transporting Party

which is not the Bidder itself with respect of one end of the Interconnector, by that Transporting Party as well.

(2) The N.U.D.C must have been received by the Auction Office

- a. in the case of Article II.2, paragraph (1) no later than 08.00 hours on the third working day before the first Day Auction in a calendar month in which the Bidder participates takes place;
- b. In the case of Article II.2, paragraph (4) no later than 08.00 hours on the seventh working day before the first of the remaining Day Auctions in the calendar month takes place.

(3) In case the Bidder has appointed a Transporting Party in respect of one end of the Interconnector which is not the Bidder itself, the Bidder and that Transporting Party are jointly and severally liable for the performance of the Transporting Party's contractual and non-contractual obligations towards the Transmission System Operator concerned in respect of grid access.

Article II.4 Prior security requirement in respect of Day Auctions

(1) Ultimately on the day preceding the day of the Auction the Bidder shall have enabled the Auction Office to open a dedicated business account (inzake-rekening) for the Bidder and to effectuate automatic collection of the invoice in respect of the Capacity Price.

(2) The Auction Office shall inform the Bidder forthwith of the account number.

(3) The business account shall contain a positive disposable balance, the disposable balance being the funds in the business account minus the aggregate amount of debts payable to the Auction Office whether or not these debts have been invoiced at the time the Auction takes place.

Section III Auction proceedings

Article III.1 Conduct of Bidders, Transferees and Transporting Parties

Prior to, during and after an Auction Bidders, Transferees and Transporting Parties must refrain from any action or behaviour which adversely affects or threatens to adversely affect competition in the bidding proceedings or which aims at gaming or which in any other way disrupts or threatens to disrupt the Auction proceedings, or the transparency, cost-effectiveness or fairness thereof.

Article III.1A Conditions for suspension of participation by Auction Office

In the case of a payment incident or breach of any obligations under these Regulations, the Auction Office may suspend the Bidder, Transferee or Transporting Party as long as the situation has not been solved.

Article III.1B Conditions for termination of participation by Auction Office

Participation, in respect of the Regulations, can be definitively suppressed:

- in the case of bankruptcy, liquidation or dissolution of the Bidder, Transferee or Transporting Party; or
- following receipt by the Auction Office of a decision by a competition or regulatory authority stating that the Bidder, Transferee or Transporting Party has committed a misusing or fraudulent act with regard to the allocation of Capacities on one of the Interconnectors and requesting for this suppression.

Article III.1C Conditions for termination of participation by the Bidder or Transferee

A Bidder or Transferee may ask to suppress its participation in respect of the Regulations by making a request by registered mail. This does not exonerate the Parties from their financial and other obligations resulting from the contracts during their enforcement.

Article III.2 Time-schedule Year Auctions

(1) A Year Auction is held on 28 September or if this is not a Working Day, on the first Working Day following that date. A second Year Auction in respect of the remaining Year Capacity is held on 28 November or, if this is not a Working Day, on the first Working Day following that date.

- (2) The Capacity available for each of both Year Auctions is published on the Auction Web-site on 15 September or, if this is not a Working Day, on the first Working Day following that date. An update of the Capacity available for the second Year Auction is published on 15 November or, if this is not a Working Day, on the first Working Day following that date.
- (3) Bids must have been received by the Auction Office before noon on the day of the Auction.
- (4) Bids which have been submitted by Bidders meeting the requirements of Section II and which comply with Article III.5 or, in the case occurring, Article III.6, are considered on the day of the Auction.
- (5) Each Bidder is informed of the outcome of its Bid(s) no later than 3 (three) hours after the Year Auction has closed. The results of the Auction are announced on the Auction Web-site not later than 3 (three) hours after the Year Auction has closed.
- (6) The Auction Office may announce on the Auction Web-site a time-schedule which deviates from the preceding paragraphs.

Article III.3 Time-schedule Month Auctions

- (1) The Capacity available for a Month Auction is published on the Auction Web-site on the first Working Day of the month in which the Auction takes place.
- (2) Month Auctions, which comprise a single round, are held on the 10th Working Day of the month preceding the month in which the transports in respect of which Capacity is offered take place.
- (3) Bids must have been received by the Auction Office before noon on the day of the Auction.
- (4) Bids which have been submitted by Bidders meeting the requirements of Section II and which comply with Article III.5 or, in the case occurring, Article III.6 are considered on the day of the Auction.
- (5) Each Bidder is informed of the outcome of its Bid(s) no later than 3 (three) hours after the Month Auction has closed. The results of the Auction are announced on the Auction Web-site no later than 3 (three) hours after the Month Auction has closed.

Article III.4 Time schedule Day Auctions

- (1) The Capacity available for a Day Auction is published on the Auction Web-site before 8h30 on the day of the Auction.
- (2) Day Auctions are held on the day preceding the day on which the transport in respect of which capacity is offered takes place.
- (3) Bids must have been received by the Auction Office before 09h00 on the day of the Auction.
- (4) Bids which have been submitted by Bidders meeting the requirements of Article II and which comply with Article III.5 or, in the case occurring, Article III.6 are considered on the day of the Auction.
- (5) Each Bidder is informed of the outcome of its Bid(s) at 9h30 on the day of the Auction. The results of the Auction are announced on the Auction Web-site immediately after the Bidders have been informed individually.

Article III.5 Filing of Bids

- (1) Bids must be submitted by electronic mail in accordance with the procedures for the Year, Month and Day Auctions respectively, which have been set forth in Schedules D, E and F respectively.
- (2) The procedures referred to in the preceding paragraph shall include provisions (i) that Bids must be filed with a request for electronic acknowledgement of receipt and (ii) within which term the receipt of a Bid must have been acknowledged by the Auction Office.
- (3) When receipt of a Bid has not been acknowledged by the Auction Office within the term meant in the preceding paragraph sub (ii) the Bid is deemed not to have been submitted, unless the situation has been remedied in accordance with the rules set forth for that purpose in the procedures referred to in paragraph (1).
- (4) Only Bids which are unconditional and irrevocable will be considered.

Article III.6 Emergency back-up procedure

- (1) In the event of a breakdown or any other cause of non-availability of the electronic bidding system, Bids must be submitted in accordance with the emergency back-up procedure set forth in Schedule G. Bids which at the time of the electronic bidding system becoming non-available

had already been submitted electronically are considered invalid and must be re-submitted in accordance with the emergency back-up procedure.

(2) In a case where the emergency back-up procedure cannot be executed in time for an Auction that Auction is cancelled and Bids which had already been submitted are automatically annulled.

(3) The Auction Office will notify by telephone and/or facsimile registered Bidders of the emergency back-up procedure being activated. If the Auction Web-site is functioning the Auction Office will in addition publish an announcement on the Auction Web-site. The Auction Office does not assume any responsibility for not having reached Bidders by telephone or facsimile or for not being able to publish an announcement on the Auction Web-site.

(4) Paragraph (4) of Article III.5 applies equally to Bids submitted in the emergency back-up procedure.

Article III.7 Number of Bids

(1) A Bidder in a Year Auction or a Month Auction may submit more than one Bid.

(2) A Bid in a Day Auction may only relate to one hour on the clock. To compete for Capacity in respect of more than one hour on the clock the Bidder must submit separate Bids for each envisaged hour on the clock. A Bidder may submit more than one Bid relating to each hour on the clock.

Section IV Determination of Auction results

Article IV.1 Awarding of Capacity

The results of the Auction are determined in accordance with the following principles:

a. If the sum of the Capacity for which valid Bids have been submitted is equal to or less than the amount of the Capacity available for the Auction, the Clearing Price is nil.

b. If the total amount of Capacity for which valid Bids have been submitted exceeds the available Capacity for the Auction in question, the highest Bid(s) for Capacity in an amount that does not exceed the available Capacity is (are) accepted. The then remaining Capacity is awarded to the Bidder(s) which has (have) submitted the next highest Bid(s) for Capacity in an amount that does not exceed the remaining Capacity; and so on for Capacity remaining after that.

c. In case two or more Bidders have submitted Bids of the same price, that qualify according to the provision sub b and which relate to Capacity in an amount that exceeds the available or the remaining Capacity, the available or the remaining Capacity will be awarded in proportion to the Capacity involved in the Bids of these Bidders, in units of at least one MW.

d. Capacity is provided at the price of the lowest Bid that is accepted or, where the lowest Bid relates to Capacity in an amount that falls partially within the remaining Capacity, partially accepted.

e. Capacity is considered to have been awarded to a successful Bidder at the moment that Bidder has been informed.

Section V Payment of the Capacity Price / Furnishing of security

Article V.1 Security requirement and automatic collection Year and Month Auctions

To secure payment of the Capacity Price the Bidder who has obtained Capacity in a Year or Month Auction shall within ten or five Working Days respectively following that Auction:

a. (if such an account does not already exist:) have enabled the Auction Office to open a dedicated business account (inzake-rekening) re the Bidder, of which the number is forthwith confirmed by the Auction Office to the Bidder

b. remit into that business account the funds necessary to secure payment of the full Capacity Price;

c. have enabled the Auction Office to effectuate automatic collection of the invoices in respect of the Capacity Price from that business account.

Article V.2 Payment (Year Auction)

(1) The Capacity Price is invoiced to the Bidder in the Year Auctions in equal parts during twelve

consecutive calendar months following the Auction, starting with December of the year which precedes the year in respect of which the Year Auctions take place. Each part is invoiced in the second half of a calendar month.

(2) The invoices are collected automatically in the last week of the calendar month in which they have been issued.

Article V.3 Payment (Month Auction)

(1) The Capacity Price is invoiced to the Bidder in a Month Auction in the last week of the calendar month in which the Auction takes place.

(2) The invoice is collected automatically on the last Working Day of the calendar month in which the Auction takes place.

Article V.4 Payment (Day Auction)

(1) The Capacity Price is invoiced on a weekly basis (the period of Saturday through Friday) to a Bidder who has obtained Capacity in a Day Auction.

(2) The invoice is collected automatically on the first Working Day following Tuesday.

Article V.5 Waiver of right to compensate

A Bidder is not entitled to offset any debts that arise in connection with an Auction to any claim on a Transmission System Operator, whether or not arising out of an Auction.

Article V.6 Default

(1) If for any reason, including reasons which may qualify as Force Majeure, the requirements set forth in Article V.1 have not both been met within the terms set in that provision or, following a Year, Month or Day Auction, collecting the Capacity Price is not or not to the full extent possible, the Auction Office has power to release the Capacity obtained to future Auctions without giving prior notice and without having to pay compensation of any sort.

(2) In addition to a measure pursuant to paragraph (1) the Auction Office has power to exclude the debtor without prior notice from participating in further Auctions for a minimum of 30 Working Days following the Auction, or 90 Working Days following the Year Auction. In such case the Auction Office is under no obligation to pay compensation.

(3) Application of a measure pursuant to paragraph (1) and/or (2) does not release the debtor from its obligation to pay the Capacity Price. The Auction Office is entitled, without prejudice to any other claim, to charge default interest in the amount of seven percentage points above the interest rate applied by the European Central Bank to its most recent main refinancing operation ("the reference rate"), starting from the date when the payment period expires. The default interest is payable without prior default notice at a rate per annum.

(4) If for any reason the Auction Office debts money to a Bidder, the same interest rate shall be applied in case of belated payment.

Section VI Returning of Capacity

Article VI.1 Returning Year and Month Capacity to the Auction Office

(1) A Capacity Owner is allowed to return Year Capacity and Month Capacity, or a part thereof with a minimum of 1 MW and only in units of 1 MW, to the Auction Office, which has the obligation to accept this Capacity unless the requirement of the next paragraph is not met.

(2) The Auction Office must be notified in writing or by electronic mail of a return of Capacity (the "Notification of Return"). The Notification of Return must have been received by the Auction Office no later than 08.00 hours on the third working day before the Day of Execution.

(3) The Auction Office releases the returned year or month Capacity to the appropriate Month Auction or daily allocation respectively.

(4) The proceeds of the re-auctioning of returned Capacity are refunded to the Capacity Owner who has returned this Capacity.

Section VII Transfer of Capacity

Article VII.1 Transfer of Year and Month Capacity

Subject to the provisions of this Section Year Capacity or Month Capacity may be transferred wholly or partially to third parties who meet the requirements of Article II.1.

Article VII.2 Notification of Transfer

- (1) Capacity may not be transferred to a third party without prior joint notification (the "Notification of Transfer") by both parties involved of the intended transaction to the Auction Office.
- (2) The Notification of Transfer is in writing or by electronic mail and must have been received by the Auction Office no later than 08.00 hours on the third working day before the Day of Execution.
- (3) The Notification of Transfer shall contain the following information:
 - a. the amount of the Capacity to be transferred;
 - b. the identity of the Transferee;
 - c. in regard to which period the Capacity is transferred.

Article VII.3 Appointing Transporting Parties

In case of a transfer of Capacity in accordance with this Section, Section VIII applies to the Transferee in respect of the transferred Capacity even when, prior to the transfer,

- a. the Transferor had appointed Transporting Parties in respect of the transferred Capacity, and/or
- b. the Transferee has appointed Transporting Parties in respect of Month Capacity of Year Capacity it already possessed.

Article VII.4 Acceptance by the Auction Office

- (1) A transfer of Capacity is subject to acceptance by the Auction Office.
- (2) The Auction Office, acting for the Transmission System Operators concerned, refuses to accept a transfer of Capacity and hence the intended Transferee cannot invoke a right vis-à-vis the Transmission System Operators to make Capacity available in any of the following cases:
 - a. national laws or regulations do not allow for Capacity to be transferred
 - b. the Transferee does not meet all of the requirements of Article II.1.
 - c. the Notification of Transfer as meant in Article VII.2 has not or in time been submitted to the Auction Office
 - d. the Transferor has not settled or secured any of its financial obligations vis-à-vis the Auction Office and/or the Transmission System Operators

Section VIII Use of Year and Month Capacity

Article VIII.1 Obligation to appoint Transporting Parties for use of Capacity

- (1) For Year Capacity or Month Capacity to be used the Capacity Owner must in a N.U.Y.C. or N.U.M.C., respectively, appoint Transporting Parties for both ends of the Interconnector on which it has obtained the Capacity.
- (2) One Transporting Party may be appointed for both ends of an Interconnector. The Capacity Owner may appoint itself as a Transporting Party.
- (3) The appointment of Transporting Parties in a N.U.Y.C. or N.U.M.C. is binding for all days of the year or month, respectively, starting from the Day of Execution (inclusive) in respect of which the Capacity Owner has first filed a valid notification, without prejudice however to the right of a Capacity Owner to replace appointed Transporting Parties in accordance with Article VIII.3.

Article VIII.2 The Notification of Use of Year Capacity (N.U.Y.C.) and Notification of Use of Month Capacity (N.U.M.C.)

- (1) The N.U.Y.C. and the N.U.M.C. must have been received by the Auction Office no later than 08.00 hours on the third working day before the Day of Execution.
- (2) The N.U.Y.C. or the N.U.M.C. must be signed by the Capacity Owner and the Transporting Parties or, if the Capacity Owner is one of the Transporting Parties, by the Capacity Owner and the other Transporting Party.

(3) In case the Capacity Owner has appointed a Transporting Party in respect of one or both ends of the Interconnector which is not the Capacity Owner itself, the Capacity Owner and the Transporting Party or Transporting Parties are jointly and severally liable for the performance of the Transporting Party's or Transporting Parties' contractual and non-contractual obligations towards the Transmission System Operator(s) concerned in respect of grid access.

Article VIII.3 Replacement of Transporting Parties in the N.U.Y.C. / N.U.M.C.

(1) The Capacity Owner is entitled, until the fourth day (inclusive) before each Day of Execution, or, if that day is not a working day, the last working day before that day, to replace Transporting Parties it has appointed in the N.U.Y.C. or N.U.M.C.

(2) To effectuate replacement the Capacity Owner must execute the Capacity transfer procedure, laid down in Section VII (as if the Capacity Owner were both the Transferor who wholly or partially transfers the Capacity and the Transferee to whom the Capacity is wholly or partially transferred), followed by the appointment of Transporting Parties in accordance with Articles VIII.1 and VIII.2 of this Section.

(3) Sections VII (Transfer of Capacity) applies in full to the Capacity transfer procedure mentioned in the preceding paragraph.

Section IX Use it or lose it / Misuse

Article IX.1 Use it or lose it (Year and Month Auctions)

(1) Year and Month Capacity which has not been returned in accordance with Section VI and in respect of which:

- a. no valid N.U.Y.C. or N.U.M.C., respectively, has been submitted on the fourth day (inclusive) before the Day of Execution at the latest, or, if that day is not a working day, the last working day before that day at the latest, or
- b. no transports have been nominated in accordance with applicable nomination rules and procedures,

is forfeited without compensation.

(2) Day Capacity in respect of which no transports have been nominated in accordance with applicable nomination rules and procedures is forfeited without compensation.

Article IX.2 Misuse

(1) A Capacity Owner who misuses its rights under Sections VI, VII or VIII or whose nomination pattern amounts to misuse may be demanded by the Auction Office to return any Capacity it still holds or part thereof, regardless of the Auction in which it had obtained the Capacity it still holds.

(2) The Capacity Owner shall notify the Auction Office within two days after a demand for the return of Capacity has been sent that it has released the Capacity to the Auction Office.

(3) For each day after the due date on which the Auction Office has not received a notification mentioned in the preceding paragraph the Bidder shall pay an amount equal to the product of the Capacity which is to be returned, in Megawatts, and the price per Megawatt for which Capacity has been awarded in the Day Auction on that day.

(4) Article VI.1 does not apply to Capacity which has been returned pursuant to the preceding paragraphs.

Section X Miscellaneous

Article X.1 Information / Notices

Any notice given under these Regulations is to be in writing and must be addressed to the Auction Office at the address mentioned in Article I.2, except where these Regulations provide otherwise.

Article X.2 Responsibility

(1) The Parties are liable for direct damages (excluding loss of profits or indirect, incidental, special consequential damages) suffered by the other Party. The liability of the Parties shall be

limited to cases of wilful misconduct or gross negligence and to the direct damages typical and foreseeable. The Parties shall not be liable for damages, which exceed an aggregate amount of EUR 100.000 (one hundred thousand) per claim (connected to one incident or related incidents).

(2) In no way shall the awarding of Capacity pursuant to these Regulations be considered or construed to mean or imply that the Bidder is entitled to have electricity transports carried out, either for its own account or for the account of Transporting Parties it has appointed or for the account of Transferees to whom it has transferred Capacity, or that transport failures or restrictions are or imply a failure to supply Capacity which has been awarded in an Auction.

(3) The Transmission System Operators and the Auction Office, either jointly or severally, shall not be liable for Bids and/or Notifications of Transfer and/or Notifications of Return that are not compliant with these Regulations nor do they warrant – although they will try to prevent to the best of their abilities – that the information contained therein, despite being treated as confidential, will not come to the knowledge of third parties.

Article X.3 Confidentiality

(1) The Transmission System Operators and the Auction Office shall treat all information disclosed to them pursuant to these Regulations as confidential and they will refrain from disclosing such information to any third party without the prior consent of the Bidder, Transferee or Transporting Party concerned.

(2) Paragraph (1) shall not apply to disclosure of information to :

- governmental, administrative and regulatory authorities insofar as such disclosure is mandatory,
- a court-of-law or an arbitrator insofar as such disclosure is ordered by the court or the arbitrator or is necessary for supporting a claim or defending against a claim,
- Transmission System Operators and/or Auction Office,
- consultants to the ones assigned by Transmission System Operators, Auction Office or one of the above institution who are subject to confidentiality undertakings or professional confidentiality obligations.

Article X.4 Severability

If any part of these Regulations is by a public authority or court found to be invalid, illegal or unenforceable, the remaining part shall continue to be valid and enforceable to the extent permitted by law.

Article X.5 Applicable law and disputes

(1) These Regulations and Auctions that take place thereunder are governed exclusively by Dutch law.

(2) Any disputes will be brought before the competent courts in the Netherlands.

Article X.6. Force Majeure

The Party, which invokes Force Majeure, shall send the other Party notification describing the nature of Force Majeure and its probable duration.

The obligations of a Party subject to Force Majeure, with the exception of confidentiality obligations defined in Article X.3 “Confidentiality” shall be suspended from the date of beginning of Force Majeure.

Allocated Capacities that have been paid for and which become subject to a Force Majeure are reimbursed for the period of that Force Majeure in accordance with Article 1.8B.

The Party can in no circumstances be held responsible or held liable to pay any compensation for damage suffered, due to the non-performance or faulty performance of all or part of their obligations, when such non-performance or faulty performance is due to Force Majeure.

The Party, which invokes Force Majeure, shall make every possible effort to limit the consequences and duration of Force Majeure.

If a Force Majeure lasts for more than thirty (30) days, the Auction Office may suspend the participation of the Party and/or the Party may request the termination of its participation, by sending notification by registered mail with acknowledgement of receipt, with due explanation, if Force Majeure adversely affects the essential obligations of the Parties under the present Regulations. The suspension or termination will take effect on the date of receipt of the said

notification.

Section XI Entry into Force and Transitory Provision

Article XI.1 Entry into force

These Regulations enter into force on 01 January 2009, subject however to the transitory provisions in the following Articles.