

GOPACS

GENERAL TERMS & CONDITIONS

GOPACS

grid operator platform for congestion solutions



GENERAL TERMS & CONDITIONS of **Stichting GOPACS**, having its registered office at Utrechtseweg 310 M01 in (6812 AR) Arnhem, **The Netherlands**. These product conditions can also be found on the GOPACS website:

Article 1 - General

1.1 For the purpose of these general conditions (“Conditions”), the terms below are defined:

- **Connected Party:** an entity with a connection to the electricity network with an EAN code, including any representative of such entity.
- **BRP: *Balance Responsible Party*:** A party that has a contract proving financial security and identifying balance responsibility with the Imbalance Settlement Responsible of the Market Balance Area entitling the party to operate in the market. This is the only role allowing a party to nominate energy on a wholesale level. Additional information: The meaning of the word “balance” in this context signifies that the quantity contracted to provide or to consume must be equal to the quantity really provided or consumed.
- **Buy Order:** the offer from a User to purchase more electricity or generate less electricity than stated in the Electricity Programmes and Transport Forecasts.
- **Congestion Area:** an area designated by the Grid Operators at any time and for a specific period, in accordance with Chapter 9 of the Electricity Network Code, where congestion occurs or is expected to occur.
- **Congestion Management Portal:** the platform of GOPACS on which CP Participants can place an Order within a Congestion Area designated by the Grid Operators or representatives appointed by CP Participants
- **CP Participant: Congestion Management Portal Participant:** the legal entity of the participant that has been accepted as such by GOPACS and does not place Orders via a Trading Platform but via the Congestion Management Portal. This is not necessarily the entity of the Connected Party.
- **EAN code:** a unique number consisting of 18 digits referring to the connection of a Connected Party.
- **Energy Programme:** the energy programme as defined in the Electricity Glossary.
- **User:** a CP Participant or an HP Participant that offers controllable power to GOPACS.
- **GOPACS:** the foundation GOPACS (*Grid Operators Platform for Congestion Spreads*), having its registered office at Utrechtseweg 310 M01 in 6812 AR Arnhem, The Netherlands.

- GOPACS Platform: the platform / website of GOPACS.
- Trading Platform: a continuous electricity trading platform with which GOPACS collaborates and on which HP Participants can place an Order.
- Trading Platform Participant: the legal entity of a participant that has been accepted as such by GOPACS and places Orders via a Trading Platform. This is not necessarily the entity of the Connected Party.
- IDCONS: *Intra-day congestion spreads*, being the combination of a Buy Order and a Sell Order.
- Market Message: a message from a Grid Operator to the market in response to an identified congestion in which (potential) Users within a Congestion Area are asked to place an Order on a Trading Platform or via the Congestion Management Portal.
- Electricity Network Code: the decision of the Netherlands Authority for Consumers and Markets of 21 April 2016, reference ACM/DE/2016/202151, setting the conditions referred to in Section 31 of the 1998 Electricity Act, or any regulation or decision replacing this decision.
- Grid Operator: each of Liander N.V., Enexis Netbeheer B.V., Stedin Netbeheer B.V., TenneT TSO B.V. or Westland Infra Netbeheer B.V., individually and jointly "**Grid Operators**".
- (counter)Order: a Buy Order or a Sell Order placed by a User. The Buy Order or Sell Order that is matched to the first-placed Order is called the counter-Order.
- Agreement: the agreement between GOPACS and a User.
- Sell Order: the offer from a User to take less electricity or generate more electricity than stated in the Electricity Programmes and Transport Forecasts.
- Spread: the difference between a Buy Order and a Sell Order, which difference, pursuant to these Product Conditions, will be paid by the Grid Operator(s) to the User that has placed the Buy Order or the Sell Order.
- Transport Forecast: the (individual) transport forecast as referred to in the Electricity Glossary.
- Conditions: these General Conditions of GOPACS as amended from time to time and governing the use of the GOPACS Platform.

- 1.2 These Conditions apply to every Agreement between GOPACS and a User, as further described in Article 2 and Article 3.
- 1.3 GOPACS expressly rejects the applicability of any general conditions of the User, however named.
- 1.4 The nullity, voidability or non-applicability of any of the provisions in these Conditions or of any part of a provision will not affect the effect and validity of the other provisions. Where appropriate, action shall as much as possible be in line with the purport of the invalid, voided or inapplicable provision. In such a case, parties will consult each other as soon as possible in order to provide for the omission that has arisen.
- 1.5 If GOPACS does not require strict compliance with these Conditions, this does not mean that it loses the right to require strict compliance at a later time or in another case.
- 1.6 GOPACS has the right to amend these Conditions unilaterally, and such amended Conditions will then apply from the date notified and after the amended Conditions have been sent to the Users (electronically).
- 1.7 Deviations from these Conditions and from the Agreement are only valid if and in so far as they have been signed explicitly and In Writing by GOPACS or a duly authorised representative of GOPACS and apply until they are revoked by GOPACS.

Article 2 - Nature of the Agreement

- 2.1 GOPACS offers Users the possibility of trading in grid capacity on the electricity network, free of charge and in an easy manner, and so helping resolve congestion situations on the electricity network. A User that is able to influence its electricity consumption or electricity generation - and that wishes to buy or sell capacity - can use GOPACS's services by registering on the GOPACS Platform.
- 2.2 At the request of the Grid Operator in the Congestion Area, a User can place an Order on the GOPACS Platform pursuant to which network capacity (expressed in MVA per time unit) is made available. Another User can then place a counter-Order by which the system's balance is restored.

Article 3 - Conclusion of Agreements

- 3.1 The Agreement between GOPACS and a User (both the User placing a Buy Order and the User placing a Sell Order) is concluded by the (electronic) registration of a User on the GOPACS Platform (<https://idcons.nl/signup/#/signup>).
- 3.2 An Agreement can only be concluded after the User has accepted these Conditions and the IDCONS Product Conditions electronically.
- 3.3 The applicability of Section 6:227 subsection 1 DCC is excluded.
- 3.4 Additions or amendments to the Agreement, including the Conditions applicable to it, only apply if and in so far as they have been agreed in writing.
After placing an Order, a User is not entitled to withdraw or change the Order.

Article 4 - Performance of the Agreement

- 4.1. GOPACS only provides administrative services within the framework of the Agreement - on the basis of a power of attorney granted by the User to GOPACS (Section 3:60 DCC). In so far as the Order has been placed via the Congestion Management Portal, GOPACS is also responsible for processing and keeping records of the Orders and ultimately the payment of the funds. GOPACS does not initiate any cash flows itself. For a detailed description of this, GOPACS refers to its Product Conditions.
- 4.2. GOPACS uses systems designed to minimise errors and/or omissions in the service provision. GOPACS thus makes every effort to ensure that the service provision is complete and accurate. A User must read the Product Conditions to take note of the services GOPACS provides via the GOPACS Platform and thus the scope of GOPACS's activities before it enters into the Agreement.
- 4.3. GOPACS is authorised to engage the services of third parties for the purpose of performing the Agreement. GOPACS is also entitled to terminate the Agreement early.
- 4.4. A User must always provide all facilities, data and information necessary/useful for the proper performance of the Agreement in a timely and correct manner. A User must guarantee the accuracy, timeliness, completeness and reliability of the data and information it provides to GOPACS.
- 4.5. A User is not entitled to transfer all or any part of the Agreement and/or rights and obligations arising from it to a third party without the prior written consent of GOPACS. This is a clause with effect under property law within the meaning of Section 3:83 subsection 3 DCC.

Article 5 - Liability

- 5.1. GOPACS is not liable for any damage suffered by a User or third parties, except in so far as such damage is the direct result of an intentional act or omission and/or wilful recklessness on the part of GOPACS.
- 5.2. Without restricting the generality of the previous paragraph, GOPACS' liability towards a User will in all cases be limited to the amount paid out under GOPACS's liability insurance policies.
- 5.3. GOPACS will under no circumstances be liable for indirect damage, such as consequential damage, loss due to delays and loss of profit or turnover.
- 5.4. A User will indemnify GOPACS against all claims from third parties that are directly or indirectly related to (the use of) the services of GOPACS and will compensate GOPACS for any damage suffered by GOPACS as a result of such claims.

Article 6 - Force majeure on the part of GOPACS

- 6.1. If GOPACS is prevented from performing its obligations to a User due to force majeure, the period in which GOPACS is to perform with its obligations will be extended. In addition to the definition of force majeure in statute law and case law, force majeure means every circumstance beyond the control of GOPACS, including but not limited to natural disasters, illness of persons employed by GOPACS, the consequences of the Covid-19 virus, strikes, government measures, energy supply problems, Internet problems and the failure or non-operation of GOPACS' systems due to the activities of hackers and/or other cyber attacks.

- 6.2. If the force majeure situation has lasted longer than thirty (30) days, or if it is clear that it will last longer than thirty (30) days, both Parties will have the right to dissolve the Agreement for the part not yet performed by GOPACS.
- 6.3. In the event of force majeure, a User will not be entitled to compensation.

Article 7 - Suspension and dissolution

- 7.1. If a User fails to perform any obligation to GOPACS under the Agreement and these Conditions, or if GOPACS can reasonably expect that the User will fail to perform any obligation to GOPACS, GOPACS will be entitled to suspend the (further) performance of its obligations under the Agreement by means of a written notification, without GOPACS being obliged to pay any compensation, without this affecting its other rights.
- 7.2. In the event that a User:
 - fails to perform any of their obligations under the Agreement or these Conditions;
 - is declared bankrupt, or is admitted to the Statutory Debt Restructuring Scheme for Natural Persons, files for bankruptcy or suspension of payments or admission to the Statutory Debt Restructuring Scheme for Natural Persons, or proceeds to surrender all of their assets to their creditors, or if an attachment is levied against all or any part of a User's assets;
 - is placed under guardianship or otherwise loses the power of disposition over all or any part of their assets;
 - ceases or transfers all or any part of their business operations, including transferring their business operations to a new or an existing company, or proceeds to change the objects of their business operations;
 - dies; or
 - fails to perform any obligation resting on them pursuant to the law or pursuant to the Agreement or the Conditions, or fails to perform it in good time and/or properly;GOPACS will be entitled to dissolve the Agreement in whole or in part with immediate effect, without a notice of default or court order being required, by means of a written notification, without this affecting its other rights.

Article 8 – Intellectual Property

- 8.1 All intellectual property rights listed on www.gopacs.eu with regard to the GOPACS Platform and its services are vested exclusively in de stichting GOPACS. The User acknowledges these rights and guarantees that it will refrain from any infringement thereof.

Article 9 - Confidentiality and publicity

- 9.1 A User is obliged to keep confidential all information of which a User knows or should reasonably know to be confidential and may use such information only for the performance of the Agreement.
- 9.2 Confidential information includes but is not limited to: all information, documents, data, data files, (electronic) data carriers, personal data, data that can be traced back to employees,

working methods and business data of GOPACS, and any (intellectual) (property) rights and items underlying the services and which have been made available by GOPACS, such as designs, drafts, advices, simulations, models analyses, studies, etc.

- 9.3 A User may only disclose Confidential information:
- a.) to their own employees, hired staff or other persons working for them in so far as this is necessary for the performance of the Agreements and the User guarantees that the persons concerned will comply with this article;
 - b.) if GOPACS has given prior written consent to do so;
 - c.) if a User is required to do so pursuant to a mandatory provision of law or is requested to do so by the judicial authorities. However, the above may not be effected until after GOPACS has been notified In Writing.
- 9.4 A User must not publish information provided by GOPACS (on its website) without the prior written consent of GOPACS.
- 9.5 The confidentiality obligation laid down in this article, as well as the penalty, will remain in full force after termination of the Agreement (for whatever reason).
- 9.6 In the event of violation of the provisions of this article, the User will forfeit for each violation, without any further notice of default being required, an immediately due and payable penalty of twenty-five thousand euros (€ 25,000) to GOPACS, as well as an immediately due and payable penalty of five hundred euros (€ 500) for each day that the violation continues, with any part of a day to be considered a full day. The aforementioned penalty applies without prejudice to GOPACS' right to claim full damages.

Article 10 - Processing of personal data and privacy

- 10.1 The information on the processing of personal data and GOPACS' privacy policy can be found at: <https://en.gopacs.eu/privacy-policy>

Article 11 - Disputes and applicable law

- 11.1 These Conditions, as well as the Agreement, are governed exclusively by Dutch law.
- 11.2 Any disputes arising from the Agreement or these Conditions must be submitted to the competent court in Gelderland (location Arnhem), The Netherlands, provided that GOPACS has the right to bring claims against a User before other courts competent to hear such claims.