



# Terms and conditions for balance suppliers' payments for services supplied by Energinet.dk and provision of security

December 2015

Version 1.5

***Effective as of 1 April 2016***

*'The regulations are available in Danish and English. In the event of discrepancies between the Danish and English version, the Danish version of the regulation is legally binding.'*

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## Revision view

Chapter no.	Text	Version	Date
	Consultation version.	1.0	May 2014
	Revised as a result of consultation in 2014.	1.1	Aug. 2014
	Revision of chapter 1.	1.2	October 2014
	New chapter 2.5 regarding notification added.	1.3	April 2015
	2.5.4 added as a result of consultation in May 2015.	1.4	September 2015
	2.5 changed to section 4 with addition of notification of changes in the terms. Clarification of section 3.1.1. Clarifications according to the approval of the methods by the Danish Energy Regulatory Authority of the agreement from the Danish Energy Association between the grid company and balance supplier about use of the distribution network and clarifications according to the issued Executive Order on Electricity Supply, 1233 of 06.11.2015 ( <i>Elleveringsbekendtgørelsen</i> ).	1.5	December 2015

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## Reading instructions

These terms and conditions contain Energinet.dk's terms and conditions for balance suppliers' payments for services supplied by Energinet.dk.

The terms and conditions are structured in such a way that **chapter 1** describes the objective and also contains the regulatory provisions of the terms and conditions.

**Chapter 2** contains the **terms of payment**, **chapter 3** contains the **provision of security** and **chapter 4** contains the **price and term changes**.

The terms and conditions are published by Energinet.dk and are available from:

Energinet.dk  
Tonne Kjærsvej 65  
7000 Fredericia  
Denmark  
Tel. +45 70 10 22 44

The terms and conditions can be downloaded at [www.energinet.dk](http://www.energinet.dk)

## 1. Objective and regulatory provisions

### 1.1 Objective and statutory authority of the terms and conditions

These terms and conditions contain Energinet.dk's terms and conditions for balance suppliers' payments for services supplied by Energinet.dk pursuant to Section 72 b(1), 72 d and 73 a of the Danish Electricity Supply Act<sup>1</sup> (*Elforsyningsloven*).

The terms and conditions have been issued under the provisions of the Executive Order on transmission system operation and the use of the electricity transmission grid etc. (Executive Order on transmission system operation (*Systemansvarsbekendtgørelsen*))<sup>2</sup>, see Section 7(1), item 3, and of Section 73 a of the Danish Electricity Supply Act.

### 1.2 Complaints and sanctions

Under Section 31(4) of the Danish Electricity Supply Act and Section 7(3) of the Executive Order on transmission system operation, complaints about the terms and conditions can be lodged with the Danish Energy Regulatory Authority, Carl Jacobsens Vej 35, 2500 Valby, Denmark.

Complaints about how Energinet.dk has enforced the terms and conditions can also be lodged with the Danish Energy Regulatory Authority.

If decisions made by Energinet.dk result in the deregistration of a market participant as a user of the DataHub, the market participant which the decision concerns can also demand that such decision be brought before the courts; see Section 31(5) of the Danish Electricity Supply Act.

Questions regarding the enforcement of the provisions of the terms and conditions can be directed to Energinet.dk.

#### Sanctions

If a balance supplier fails to comply with these terms and conditions, the terms applying to Energinet.dk's termination of its service to the balance supplier and the transfer of the balance supplier's meter IDs to other suppliers are described below; see Section 72 d(4) of the Danish Electricity Supply Act .

### 1.3 Effective date

These terms and conditions come into force on 1 October 2016.

Questions and requests for additional information can be directed to Energinet.dk's contact for these terms and conditions as stated on Energinet.dk's website [www.energinet.dk](http://www.energinet.dk).

The terms and conditions are registered with the Danish Energy Regulatory Authority pursuant to Section 73 a of the Danish Electricity Supply Act, Section 1 of the Executive Order on grid companies', regional transmission companies' and Energinet.dk's methods for determining tariffs etc.<sup>3</sup> (*Bekendtgørelse om netvirksomheders, regionale transmissionsvirksomheders og Energinet.dk's*

<sup>1</sup> Consolidated Act no. 1329 of 25 November 2013 on the Danish Electricity Supply Act as amended

<sup>2</sup> Executive Order no. 891 of 17 August 2011 on transmission system operation and the use of the electricity transmission grid etc.

<sup>3</sup> Executive Order no. 1085 of 20 September 2010 on grid companies', regional transmission companies' and Energinet.dk's methods for determining tariffs etc.

metoder for fastsættelse af tariffer m.v.) and Section 7(2) of the Executive Order on transmission system operation.

## **2. Terms of payment**

### **2.1 Invoicing**

2.1.1 Energinet.dk invoices the balance supplier for the services supplied by Energinet.dk on the basis of the total monthly consumption of the balance supplier's customers in accordance with the rules in force at the date of issue of the payment terms pursuant to Section 72 d(1) of the Danish Electricity Supply Act.

### **2.2 Time limit for payment**

2.2.1 Pursuant to the Danish Electricity Supply Act, the balance supplier's payments to Energinet.dk fall due monthly in arrears with the time limit for payment being fourteen (14) calendar days from the invoice date; however, no less than twenty-five (25) calendar days from the end of the month of consumption.

### **2.3 Exceeding the time limit for payment**

2.3.1 If the time limit for payment is exceeded, interest is accrued in accordance with the provisions set out in the Danish Interest Rate Act (*Renteloven*).

2.3.2 If the balance supplier has not paid Energinet.dk's receivable at the end of the time limit for payment specified in chapter 2.2.1, Energinet.dk sends a reminder – reminder 1 – after two (2) calendar days to the balance supplier's management with a time limit for payment of at least eight (8) calendar days.

2.3.3 If the balance supplier fails to pay Energinet.dk's receivable before the expiry of the time limit of eight (8) calendar days from the submission of reminder 1, Energinet.dk sends a reminder – reminder 2 – to the balance supplier with a time limit for payment of at least eight (8) calendar days calculated from date of the submission of reminder 2. Reminder 2 is sent by registered mail to the balance supplier's management. It must appear clearly from reminder 2 that, if the receivable is not paid within eight (8) calendar days, the claim will be sent for collection without further notice for the balance supplier's account.

2.3.4 Energinet.dk may provide commercial credit reference agencies with information about the balance supplier's non-payment under applicable legislation.

## **2.4 Termination of services as a consequence of non-payment**

- 2.4.1 If a balance supplier grossly or repeatedly violates its obligations under these terms of payment, this may result in Energinet.dk deciding to terminate the supply of its service to the balance supplier pursuant to Section 72 d(4) of the Danish Electricity Supply Act.
- 2.4.2 As this concerns payment relations between two professional parties, any breach of payment obligations is deemed to be a serious breach of contract, provided that no action is taken to remedy the situation in accordance with the following procedural approach:
- 2.4.3 If Energinet.dk finds that it has not received payment in accordance with chapter 2.3.2 above, Energinet.dk sends a notification to the balance supplier's management together with reminder 1, informing the balance supplier that the failure to comply with the obligation(s) constitutes a breach of these terms of payment. The stated time limit of eight (8) calendar days is thus a message instructing the balance supplier's management to remedy the breach.
- 2.4.4 If the time limit of eight (8) calendar days is not met, see chapter 2.3.3, a reminder 2 is sent by registered mail to the balance supplier's management specifying the ultimate time limit of eight (8) calendar days for remedying the breach, including effecting payment as well as a requirement, if any, for provision of security according to chapter 3.1.1 below. This reminder will also inform the balance supplier's management that any failure to meet the time limit will constitute a gross violation of the balance supplier's obligations and could result in the balance supplier being excluded from using Energinet.dk's services pursuant to Section 72 d(4) of the Danish Electricity Supply Act and in the balance supplier's meter IDs subsequently being transferred to another balance supplier in accordance with the procedure set out in Section 72 e of the Danish Electricity Supply Act.
- 2.4.5 If the balance supplier has made a qualified objection against Energinet.dk's invoice or requirement for provision of security that cannot be considered unfounded, Energinet.dk is not entitled to exclude the balance supplier from using Energinet.dk's services pursuant to Section 72 d(4) of the Danish Electricity Supply Act until Energinet.dk's claim has been upheld by a final and conclusive judgment or other decision.

## **3. Security**

### **3.1 Security**

- 3.1.1 Energinet.dk demands that the balance supplier provides adequate security, see item 3.1.3, for future payments of Energinet.dk's receivables when Energinet.dk in compliance with the regulatory principles for casework has sufficient information to decide, that the balance supplier will be unable to pay for the services supplied. Therefore, Energinet.dk will require provision of security; see chapter 3.1.3-3.1.9, in one of the following situations:
  - a) The balance supplier has negative equity.
  - b) Energinet.dk has sent reminder 2 to the balance supplier.
  - c) The balance supplier has within the latest 12 settling periods four (4) times not paid Energinet.dk in due time. In due time is when the time limit for payment has been exceeded with more than two (2) days.

- d) The balance supplier is registered in Experians RKI-register or similar registers of debtors.
  - e) The balance supplier has in two (2) successive years accounting loss; see the public annual report of the company, unless the positive equity of the company in the latest annual report as a minimum constitutes last year's loss twice. The equity is corrected if the auditor's report is qualified.
- 3.1.2 The balance supplier's payment of Energinet.dk's receivable after Energinet.dk's submission of a requirement for provision of security does not exempt the balance supplier from providing the security required in accordance with item 3.1.1.
- 3.1.3 Energinet.dk may require that security corresponding to the last three (3) months' payment be provided.  
Energinet.dk may require that the amount of the security provided be adjusted every month. The balance supplier may require that the amount of the security provided be adjusted if it can be assumed that it differs significantly from a substantiated estimate for the first three (3) months' payment for services supplied.
- 3.1.4 The balance supplier is notified of Energinet.dk's requirement for the provision of security by registered mail addressed to the balance supplier's CEO.
- 3.1.5 Security must be provided in the form of
- a) a cash deposit paid to Energinet.dk or a reputable bank
  - b) an on-demand guarantee issued by a reputable bank or
  - c) a parent company guarantee in the event that Energinet.dk does not find any reason for concern.
- A cash deposit paid to Energinet.dk accrues interest in the balance supplier's favour at the three-month CIBOR rate applicable on the start date of the deposit.
- 3.1.6 A bank to which a cash deposit has been paid or which has issued an on-demand guarantee, see item 3.1.5, must have a minimum rating of BBB- from a reputable credit rating agency (Moody's, Standard & Poor's or Fitch).
- 3.1.7 The security must be provided towards Energinet.dk no later than seven (7) calendar days from the date of Energinet.dk issuing a written request to this effect.
- 3.1.8 Energinet.dk must release or, in the case of security provided in the form of a cash deposit, repay the security specified in item 3.1.3 no later than one hundred and eighty (180) calendar days from the date on which Energinet.dk obtained the relevant security; see, however, item 3.1.9.
- 3.1.9 Regardless of the rule specified in item 3.1.8, Energinet.dk is not obliged to release the security if Energinet.dk has sent one or more reminder(s) 1 and/or reminder(s) 2 to the balance supplier during the period of time stated in item 3.1.8. In such cases, a new period of one hundred and eighty (180) calendar days will commence as of the date for the submission of the most recent reminder 1 or reminder 2. The same applies if the conditions mentioned in item 3.1.1 are still applicable.



### **3.2 Provision of security upon the balance supplier's reorganisation, bankruptcy etc.**

- 3.2.1 In the event that the balance supplier is undergoing reorganisation or is declared bankrupt, the collection of amounts payable and the payment for the services supplied by Energinet.dk to the balance supplier after the commencement of the bankruptcy proceedings or reorganisation, respectively, take place pursuant to the provisions set out in the Danish Bankruptcy Act (*Konkursloven*).

## **4. Price and term changes**

- 4.1.1 Any change in prices by Energinet.dk must be made in conformity with the law.
- 4.1.2 Energinet.dk provides notification of changes in prices via the DataHub pursuant to the applicable market regulations' rules on creation, change and cancellation of price elements.
- 4.1.3 Energinet.dk notifies the balance supplier of any changes in prices via the DataHub giving a prior notice of at least one month.
- 4.1.4 Significant changes in prices and terms to the detriment of the balance supplier are notified to the balance supplier giving a prior notice of at least four months. Significant changes in prices are changes in existing prices or fees which increase the concerned price element with 10% or more and simultaneously increase the total amount payable by consumers by at least DKK 40 per month inclusive of VAT. Creation of a new price element is always regarded as a significant change. Significant changes in terms are alone changes directly impacting the balance supplier's customer relations. Changes of the terms due to changes in legislation or market regulations can be carried out without any warning.