

**AMPELIUS TRADING LIMITED (Company number SC491365)**

**TERMS OF BUSINESS**

*The Ampelius Terms (defined below) govern your dealings with Ampelius Trading Limited. You and all Designated Users (both as defined below) shall be deemed to have accepted the Ampelius Terms whenever you or any Designated Users access and use the Services and System Data (both as defined below).*

**1. Agreement**

1.1 These terms of business constitute a legally binding agreement between us and you in relation to the Services (as defined in clause 1.3 below). References in these terms to “**Ampelius**” or “**we**” or “**us**” or “**our**” mean Ampelius Trading Limited.

1.2 References to “**you**” in this agreement means .

1.3 Ampelius offers the following routes to market for energy parts and services:

(a) an electronic Multilateral Trading Facility (“**MTF**”); and

(b) a voice-only brokerage service.

(together referred to as the “**Services**” in these Terms of Business).

1.4 The MTF allows for the electronic posting of bids and offers and enables participants to interact directly with orders posted on the relevant screens by other participants in order to execute transactions.

1.5 In addition to these terms of business, users of the MTF shall be subject to the provisions of the rule book relating to use of the MTF (as amended by Ampelius from time to time) (“**Rule Book**”);

If there is any conflict, between the provisions of these terms of business and the Rule Book, these terms of business shall take precedence.

1.6 These terms of business, taken together with the Rule Book and any relevant fee schedule (the “**Ampelius Terms**”), comprise the terms which govern your use of the Services.

1.7 In these Terms of Business the expression “**Designated User**” means those individuals (employed by you or otherwise) who are notified by you in writing to us from time to time shall be entitled to access and use the Services and the System Data (the latter as defined in clause 7.1 below).

## **2. The Services**

2.1 You shall act as primary users of the System and we shall act upon instructions which we reasonably believe have been given by someone who is authorised to act on your behalf. To avoid any confusion, you should, from time to time, provide us with updated lists of individuals who are authorised to act on your behalf.

2.2 We may record our telephone calls with you and we acknowledge that you may also make recordings of our telephone calls.

## **3. Fees**

3.1 We will charge fees for the Services at rates which will be agreed between us and you in writing from time to time.

3.2 You will pay our fees without deductions (including any bank charges) and must account for VAT wherever appropriate.

3.3 Our invoices shall be paid within thirty (30) days of their receipt by you. We shall be entitled to charge interest on any late payments at the rate of two per centum per annum (2%) above LIBOR from time to time until the date of payment.

If non-payment continues for more than five (5) days after receipt of a notice from us about your payment default, we shall be entitled to suspend the Services until payment is made. If non-payment continues for more than thirty (30) days after our notice about default payment has been given, we shall be entitled to terminate this agreement with immediate effect.

3.4 You hereby agree to inform Ampelius if you cease to be registered for VAT, obtain a new VAT number or transfer your business as a going concern.

## **4. Use of the Services**

4.1 Ampelius grants you a non-exclusive, non-transferable, revocable licence to access and use the Services and the System Data (the latter as defined in clause 7.1 below) in accordance with the Ampelius Terms. You shall at all times remain fully responsible for the adherence in full by all Designated Users and all your employees to the Ampelius Terms.

4.2 Unless we notify you in writing otherwise from time to time, the Services shall be available 24 hours a day and 7 days per week.

## **5. Confirmations**

5.1 Any transaction confirmation we send to you shall contain details of the relevant transaction.

You must notify us by email of any errors on a transaction confirmation sent by us within 24 hours of receipt by you of the relevant confirmation.

## **6. Confidentiality**

6.1 Any and all non-public information in any form obtained by either you or us or our respective employees arising out of or related to the provision or use of the Services including but not limited to trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto (all relating to us or you) (“**Confidential Information**”) and which is marked by as "Confidential", shall be deemed to be confidential and proprietary information. You and Ampelius therefore agree to hold such Confidential Information concerning or relating to the other party in strict confidence and not to disclose such Confidential Information to third parties (other than:- (i) with the prior written consent of the other party; (ii) to our respective employees and contract personnel; or (iii) where such disclosure is required by law, by a court of competent jurisdiction or by another appropriate regulatory body) or to use such Confidential Information concerning or relating to the other party for any purpose whatsoever other than as contemplated by the Ampelius Terms and to advise our respective employees who may be exposed to such Confidential Information concerning or relating to the other party of their obligations to keep such Confidential Information confidential in accordance with this clause 6. The obligations contained in this clause 6 shall continue in full force and effect for a period of three (3) years from expiry or earlier termination of this agreement.

6.2 The restrictions in clause 6.1 above shall not apply to Confidential Information concerning or relating to the other party which:- (i) is in or becomes part of the public domain other than by disclosure in violation of this agreement; (ii) is known to or obtained previously without an obligation of confidentiality; or (iii) is independently developed outside of this agreement.

6.3 If a party or its employees in receipt of Confidential Information concerning or relating to the other party (“**the Recipient**”) becomes compelled by law, by a court of competent jurisdiction or by another appropriate regulatory body to disclose any such Confidential Information, the Recipient shall to the extent permitted by law promptly notify the disclosing party of such requirement so that the disclosing party may seek injunctive relief or other appropriate remedy. If such injunctive relief or other remedy is not obtained, the Recipient shall disclose only that portion of such Confidential Information which it is legally required to disclose and shall take all reasonable steps to preserve the confidentiality of such Confidential Information. In addition, the Recipient shall not oppose any action (and will, if and to the extent requested by the disclosing party, co-operate with, assist and join with the disclosing party, at the disclosing party’s expense, in any reasonable action) by the disclosing party to obtain injunctive relief or other reliable assurance that confidential treatment will be accorded to such Confidential Information.

6.4 You shall promptly provide us with information relating to the use of the Services that is reasonably and lawfully requested by us from time to time if such information is reasonably and lawfully necessary in order to enable us to assess the identity of persons or entities accessing the Services and/or the System Data through your passwords, to maintain the integrity of the Services, or to comply with applicable laws or regulations, and such information which you provide to us, to the best of your knowledge, will be accurate and complete in all material respects. Should you refuse to provide information to us upon a request by us to that effect without reasonable excuse, or if the information which you provide to us demonstrates a proven potential violation of this agreement or the Ampelius Terms, Ampelius shall have the right to terminate this agreement forthwith by notice in writing to you.

## **7. Representations, Warranties and Covenants**

7.1 You acknowledge and agree that all information (including, without limitation, price and trading data) displayed and distributed to you via the Services (“**System Data**”) is, except as set forth in clause 8.5, the exclusive proprietary property of Ampelius or Ampelius’ third party providers. Neither party shall have the right to use, other than for the purposes of this agreement, whether directly or indirectly, of any patent, copyright, proprietary right or confidential know-

how, trademark or process provided by the other party and the intellectual property rights in such shall remain with the party providing such patent, copyright, proprietary right or confidential know-how, trademark or process.

7.2 You have been granted a limited licence by us to use the Services and the System Data solely for the purposes set forth in clause 1.4 above and you will have no other rights with respect to the Services or the System Data. You and all Designated Users shall not provide access to the Services or any System Data to any third party save for a third party which has first been authorised by Ampelius in writing.

7.3 You agree that you will not copy, modify, reverse engineer, reverse assemble or reverse compile any software relating to the Services or any of the System Data displayed on the Services or issued by Ampelius. You further agree that you will not distribute, rent, sell, retransmit, redistribute, release or license the Services, any System Data, or any part thereof to any third party.

7.4 You further agree that you will not communicate, redistribute, or otherwise furnish, or permit to be communicated, redistributed or otherwise furnished, all or any portion of the System Data, in any format, to any third party.

7.5 Notwithstanding the foregoing, you grant us a non-exclusive licence to use any and all data submitted to the Services by you and all information related to transactions entered into by you in connection with the Services to use, sell, retransmit or redistribute such information solely and in order to properly provide the Services, subject to the provisions of clause 6.

7.6 You and we shall comply with the provisions of the Ampelius Terms and any and all laws, rules, regulations or orders applicable to your access to and use of the Services and the System Data.

7.7 You acknowledge and accept that you shall be solely responsible for any and all reasonable costs or expenses associated with your accessing and utilising the Services.

7.8 You represent, warrant and undertake to us that as at the date of this agreement and at the point of any transaction which we arrange for you using the Services:-

- (a) you have power and authority to enter into the Ampelius Terms and enter into transactions using the Services;
- (b) you have adequate financial resources to enter into transactions and conclude contracts through the Services; and
- (c) the Ampelius Terms and each transaction into which you enter using the Services shall be binding upon you.

7.9 You acknowledge and agree that all intellectual property rights whatsoever in and relating to the software used by Ampelius to provide the Services and the System Data are owned by Ampelius or by relevant third parties.

## **8. Liability**

8.1 Subject to the provisions of this clause 8, neither party shall be liable to the other for any Consequential Loss, regardless of cause, even if caused or contributed to by the negligence, fault, strict liability, or breach of duty (statutory or otherwise) of the other party, and each party hereby releases the other party in this regard. For the purposes of this agreement, **Consequential Loss** shall mean (i) consequential or indirect loss under English law; and (ii) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), increased cost of working, loss of contract, loss of competitive advantage, goodwill or business interruption, whether direct or indirect, to the extent that these are not included in (i) and whether or not foreseeable at the date of commencement of the Services.

8.2 Notwithstanding anything to the contrary contained herein, you shall be liable to us for any Consequential Loss arising out of your infringement or misappropriation of any intellectual property rights related to the Services or the System Data to the extent that such infringement or misappropriation is caused by your Wilful Misconduct. Your liability for any Consequential Loss arising out of your infringement or misappropriation of any intellectual property rights related to the Services or the System Data shall not exceed £250,000, even if the liability asserted is based on negligence (whether active or passive) or other fault or strict liability and regardless of whether the action is based on contract, tort, statute or otherwise arising out of or in relation to performance of this agreement..

8.3 Except with respect to:- (i) Gross Negligence, Wilful Misconduct or fraudulent acts of any Designated Users; (ii) any claim that you have intentionally infringed upon or misappropriated any intellectual property rights related to the Services or the System Data; (iii) our indemnification obligations in clause 8.6 below regarding any claim or allegation that the Services infringes upon the intellectual property rights of a third party; or (iv) any amounts owed by you pursuant to clause 3 hereof; the limit of such party's liability to the other party hereunder shall not exceed £250,000. For the purposes of this agreement, **Gross Negligence** shall mean any act or failure to act which, in addition to constituting negligence, was in reckless disregard of or wanton indifference to the consequences as affecting the property, rights, safety or welfare of any person or entity. **Wilful Misconduct** shall mean any act or failure to act which was an intentional or deliberate disregard of or wanton indifference to the consequences as affecting the property, rights, safety or welfare of any person or entity.

8.4 Ampelius's liability to you under clause 8.6 below with respect to a claim or allegation that the Services infringes upon the intellectual property rights of a third party shall not exceed £250,000, even if the liability asserted is based on negligence (whether active or passive) or other fault or strict liability and regardless of whether the action or claim is based on contract, tort, statute or otherwise arising out of or in relation to performance of this agreement.

8.5 You acknowledge, understand and accept that we make no warranty whatsoever to you as to the Services, express or implied, and that the Services are provided on an "as is" basis at your sole risk. Neither Ampelius nor its managers, officers, affiliates, subsidiaries, shareholders, employees or agents make any warranty with respect to, and no such party shall have any liability to you for:- (i) the accuracy, timeliness, completeness, reliability, performance or continued availability of the Services, (ii) delays, omissions or interruptions therein, (iii) the creditworthiness of any other participant or counterparty, or (iv) any acts or omissions by you. You acknowledge and agree that no Services provided by Ampelius shall serve as the primary basis for any decisions made by you and that we are not your advisor or fiduciary. We provide no warranty whatsoever to you as to the quality or standard of any goods or services purchased by you or any Designated Users from any third parties using the Services (including, without limitation, any implied warranties as to merchantability or fitness for a particular purpose). You shall use reasonable endeavours to ensure the accuracy of all information supplied by you for the purposes of you concluding transactions using the Services. Your use of any template legal documentation provided by Ampelius for the purposes of concluding transactions is entirely at your own risk and we shall have no liability whatsoever to you from any use made of or reliance placed on any such template legal documentation or any of its content. We are not lawyers and accordingly you should always seek appropriate legal advice in the individual case.

8.6 Subject to clauses 8.1 to 8.5, Ampelius shall indemnify you and hold you harmless against any third-party claim, action, suit or proceeding, including any such claim relating to death or personal injury, against any losses, judgments, liabilities, costs or expenses (including, without limitation, reasonable legal fees and expenses and any other costs and expenses incurred in connection with the defence of any such claim, action, suit or proceeding), and amounts paid in settlement actually and reasonably incurred by you, suffered, incurred, or sustained by you as a result of:- (i) any allegation that the Services infringe the intellectual property rights of a third party, (ii) any fraudulent act, Willful Misconduct or Gross Negligence by Ampelius, or (iii) any act or omission of, or breach of the Ampelius Terms or violation of law, rule or regulation by Ampelius. The termination of any claim, action, suit or proceeding by settlement or its equivalent shall not create a presumption that the indemnification provisions hereof shall not be applicable. Ampelius shall have full control over the manner in which any third party intellectual property rights claims will be defended and/or settled. Ampelius shall not settle any such claims without your prior written consent, such consent not to be unreasonably withheld or delayed. You shall have the right to retain your own legal advisors to oversee any such claims.

8.7 Subject to clauses 8.1 to 8.5, you shall indemnify and hold harmless Ampelius against any third-party claim, action, suit or proceeding, including any such claim relating to death or personal injury, against any losses, judgments, liabilities, costs or expenses (including, without limitation, reasonable legal fees and expenses and any other costs and expenses incurred in connection with the defence of any such claim, action, suit or proceeding), and amounts paid in settlement actually and reasonably incurred by Ampelius, suffered, incurred, or sustained by Ampelius as a result of:- (i) any allegation that your modification or use of the Services or the System Data infringes the intellectual property rights of a third party, (ii) any fraudulent act, Wilful Misconduct or Gross Negligence by you or any Designated User, or (iii) any act or omission of, or breach of the Ampelius Terms or violation of law, rule or regulation by you; (iv) any act or omission by any person obtaining access to the Services or the System Data through your passwords (other than through the default of Ampelius) whether or not you authorised such access. The termination of any claim, action, suit or proceeding by settlement or its equivalent shall not create a presumption that the indemnification provisions hereof shall not be applicable. You shall have full control over the manner in which any third party intellectual property rights claims will be defended and/or settled. You shall not settle any such claims without Ampelius's prior written consent, such consent not to be unreasonably withheld or delayed. We undertake to use reasonable endeavours to keep the System secure in accordance with good industry practice.

8.8 Each party's liability to the other party for all claims and causes of action, whether in contract, tort or otherwise, arising out of a material failure to perform an obligation hereunder, shall not arise until the party asserting a claim has given the other party written notice of the act, event or circumstance claimed to give rise to liability (the "**Cause**") and, where such Cause is capable of remedy, has afforded the other party thirty (30) days after written notice of such failure to cure the Cause.

8.9 The allocations of liability in this clause 8 represent the material, agreed upon and bargained for understanding of the parties, and each party acknowledges that the other party's rights and obligations hereunder reflect such allocations. These allocations are material inducements for each party entering into this agreement and the parties would not have entered into this agreement but for these allocations.

## **9. Termination**

This agreement may be terminated by you or us immediately at any time by providing 30 days' notice in writing to the other. We shall be entitled to terminate this agreement with immediate effect in the event of you becoming bankrupt or going into liquidation (other than voluntarily for the purposes of reorganisation or reconstruction), making an assignment for the benefit of your creditors, making an arrangement, composition or compromise with your creditors or having

receiver appointed in respect of the whole or any part of you assets. We shall also be entitled to terminate this agreement with immediate effect for your continued breach of clause 8.8 and 3.3 hereof. You shall be entitled to terminate this agreement with immediate effect in the event of us becoming bankrupt or going into liquidation (other than voluntarily for the purposes of reorganisation or reconstruction), making an assignment for the benefit of our creditors, making an arrangement, composition or compromise with our creditors or having a receiver appointed in respect of the whole or any part of our assets. You shall also be entitled to terminate this agreement with immediate effect for our continued breach of clause 8.8 hereof.

Any termination of this agreement shall not affect any outstanding obligations owed by, and the accrued rights of, either party under this agreement up to the date of termination.

## **10. Assignment**

Neither party may assign its rights and/or obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

## **11. Notices**

### 11.1

Any notices served pursuant to this agreement shall be sent by letter or email to the registered office of the other party or such other address as one of us may notify to the other from time to time. The address for each party's registered office is:-

Ampelius Trading Limited: 8 Glassel Park Road, Longniddry, East Lothian, United Kingdom. EH32 0NY

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11.2 Any notice shall be deemed to have been served (a) if sent by first class mail two days after the date of posting; or (b) if sent by email at the time and date indicated on the email transmission report.

## **12. Force Majeure**

Neither party shall be liable for any breach of this agreement or any other obligation which it might owe to the other in the event of any failure by it to perform its obligations due to any act, event or circumstances which are outside of such party's control including, without limitation, any act of God, fire, industrial dispute, war, strikes, failure or malfunction of any telecommunications or computer services.

## **13. Anti-Corruption Undertakings**

In recognition of the principles enshrined in the various pertinent international and regional conventions on combating corruption and to ensure compliance with the Applicable Laws applicable to the parties or their ultimate parent companies,

13.1 Ampelius, in respect of this agreement and the matters that are subject of this agreement, warrants that neither it nor to its knowledge anyone on its behalf, has made or offered nor will make or offer any payment, gift, or promise or give any advantage, whether directly or through a Close Family Member or other intermediary, to or for the use of any Public Official, where such payment, gift, promise or advantage would be for purposes of;

(i) influencing any act or decision of such Public Official

(ii) inducing such Public Official to do or omit to do any act in violation of his or her lawful duties;

(iii) securing any improper advantage; or

(iv) inducing such Public Official to use his or her influence to affect any act or decision of any department, agency or instrumentality of government or public enterprise;

13.2 Ampelius, in respect of this agreement and the matters that are subject of this agreement, warrants that it has not made or offered and will not make or offer any payment, gift, or promise or advantage, whether directly or through intermediaries, to or for any Person (other than a Public Official) insofar as such payment, gift, promise or advantage would be for purposes of inducing such Person to do or omit to do any act in violation of his or her lawful duty or to secure any improper advantage, or otherwise do or refrain from doing something that would violate Applicable Laws applicable to the activities under this agreement.

13.3 Ampelius shall cause all of their directors, officers, employees (including agency personnel) and any contractors and each of its Affiliates and their directors, officers, employees (including agency personnel) to comply with the obligations set forth in this Clause 13.

13.4 All financial settlements, billings and reports rendered to you shall accurately and in reasonable detail reflect all activities and transactions undertaken in performance of this agreement. Ampelius also shall maintain adequate controls to ensure that all payments made in performance of this agreement are authorised and in compliance with this agreement.

13.5 All payments by you to Ampelius shall be made in accordance with the terms of payment specified in Clause 3. The payment indications that pursuant to Clause 3 will be notified in the Ampelius' invoice shall be deemed to constitute a representation and warranty by Ampelius to the bank account so notified is owned solely by Ampelius and that no Person other than Ampelius has any ownership of or interest in such account.

13.6 Ampelius represents and warrants that no Public Official or Close Family Member owns or possesses, directly or indirectly, shares or any other beneficial interest in Ampelius (other than ownership of publicly traded securities that is not sufficient to constitute a controlling interest), or is a director, officer or agent of Ampelius, except for any ownership, interest or position that Ampelius has disclosed to you in writing. The foregoing representation and warranty will continue so long as this agreement remains in effect. Ampelius agrees to notify you promptly and in writing of any developments that would or might affect the accuracy of the foregoing representation or warranty. In any case, if a Public Official or Close Family Member owns or acquires, directly or indirectly, shares or any other beneficial interest in Ampelius, Ampelius shall take appropriate steps to ensure that such Public Official or Close Family Member avoids any conflict of interest, complies with the Applicable Laws prohibiting conflicts of interest on the part of Public Officials and complies with the anti-corruption provisions described in 13.1 and 13.2 above.

13.7 Ampelius shall promptly give notice to you of any investigation or legal proceeding initiated against Ampelius by any public authority relating to an alleged violation of Applicable Laws by Ampelius in relation to the Services performed under this agreement.

13.8 Without prejudice to any other rights or remedies you otherwise may have hereunder or at law, including but not limited to damages for breach of this agreement, if any of the undertakings or requirements of this Clause 13 have not been complied with or fulfilled by Ampelius in any material respect, you shall have the right:

- (i) to suspend payment and/or require reimbursement of any advance payment made under this agreement, and/or
- (ii) to suspend and/or terminate this agreement for Ampelius' default with immediate effect.

For the purposes of this agreement:

**"Applicable Laws"** means all laws, ordinances, rules, regulations, by-laws, decrees, orders and the like, whether of governmental or other authority or agency having jurisdiction over the parties and which are or may become applicable;

**"Close Family Members"** shall mean a spouse or partner of a Public Official; one of his/her children, siblings or parents; the spouse or partner of his/her children or siblings; or any household member of a Public Official;

**"Public Official"** means an elected or appointed official, employee or agent of any national, regional or local government/state or department, agency or instrumentality of any such government/state or any enterprise in which such government/state owns, directly or indirectly, a majority or controlling interest; an official of a political party; a candidate for public office; and any official, employee or agent of any public international organisation; and

**"Person"** means any individual, company, firm, partnership, association or body corporate.

#### **14. Miscellaneous**

14.1 If any provision of this agreement becomes invalid or unenforceable this shall not affect the validity or enforceability of the remaining provisions of this agreement. This agreement shall be governed by the laws of England and us and you hereby agree to submit to the non-exclusive jurisdiction of the English courts.

Any dispute between us arising out of or in relation to this agreement shall be settled in negotiations between our respective managing directors. Should they be unable to resolve the dispute through good faith consultation within a reasonable period of time, either one of us may take appropriate action in the English courts to resolve the dispute.

14.2 You consent to the processing of any personal data (as defined in the Data Protection Act 1998) relating to you which is submitted to Ampelius in connection with this agreement for the purposes of the operation or administration of this agreement. Ampelius confirms that it shall also comply with the provisions of the Data Protection Act 1998.

14.3 In the event of the expiry or termination of this agreement, the rights and obligations of the parties contained in clauses 3, 6, 7, 8, 9, 10 and 13 shall survive the expiry or earlier termination of this agreement.

14.4 This agreement constitutes the entire agreement between us with respect to its subject matter and supersedes all prior agreements, written or oral and each of us acknowledges that it has not been induced to enter into this agreement by reason of any representation made by or on behalf of the other party.

14.5 No exercise, or failure to exercise, or delay in exercising any right, power or remedy vested in either party under or pursuant to this agreement shall constitute a waiver by that party of that or any other right, power or remedy.

14.6 No provision of this agreement may be waived, modified or amended in any respect except in writing, signed by an authorised representative of each of its parties.