

Terms of use for the BDEW Code Numbers for the German electricity market, issued and managed by Energie Codes und Services GmbH

With effect as of 1 January 2017, the Energie Codes und Services GmbH (hereinafter, the "GmbH") has taken over the issuing and management of BDEW Code Numbers, including all services contracts, from the German Association of Energy and Water Industries ("BDEW"). The following Terms of Use shall take effect from 1 January 2017 for the contractual allocation and use of a BDEW Code Number (BDEW code number agreement) as well as for the use of all BDEW Code Numbers which have already been issued. By using the BDEW Code Numbers after 1 January 2017, the owner of the BDEW Code Number accepts these Terms of Use.

The issuing of BDEW Code Numbers is exclusively for participation in the German energy market. Any use of data contained in the BDEW Code Number database for other purposes (for example general letters to companies, advertising etc.) is prohibited.

In addition to the statutory regulations (e. g. German Energy Industry Act (Energiewirtschaftsgesetz, EnWG), Renewable Energy Sources Act (Erneuerbare Energien Gesetz, EEG), Network Access Regulation (Strom-Netzzugangsverordnung, StromNZV)), the [decisions on business processes and data formats](#) published by Ruling Chambers 6 and 7 of the German Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railways (hereinafter "BNetzA") also apply.

Section 1 Eligibility

(1) Any legal person or natural person who participates in the German electricity market is entitled to apply for a BDEW Code Number, provided they do not yet own a BDEW Code Number. Each company requires a separate code number for each market role in the electricity market.

(2) BDEW membership is not required to apply for and use a BDEW Code Number.

(3) Applying for a BDEW Code Number for the purposes of transferring or selling it is prohibited.

Section 2 Application for a new BDEW Code Number to be issued

(1) All applications for BDEW Code Numbers to be issued are handled through the website www.bdew-codes.de. In sending an application, the applicant accepts these Terms of Use.

(2) The application must include the following information:

- Company name of the future owner of the BDEW Code Number corresponding to the wording recorded in the Commercial Register, i.e. first name and surname if the future owner of the code number is a natural person
- Address (street, house number, postcode, city)
- Company website
- Market role
- Email address
- Contact person including contact details (first name and surname, department/area, telephone number, email address¹)
- Any existing Global Location Number (GLN of GS1) held by the applicant, if this - possibly as an alternative - is to be used in a market function in the German electricity market

- Invoice recipient including contact details (first name and surname, department/area, telephone number, fax number, email address)

In submitting the application, the applicant warrants that the details contained in the application are accurate and that the applicant is entitled to apply for, and subsequently use, the BDEW Code Number, in particular that the registration and intended use of the BDEW Code Number neither infringes the rights of third parties nor violates any general laws.

(3) In submitting an application, the owner of the BDEW Code Number agrees to a publication of their allocated BDEW Code Number together with all of the information sent with the application.

Section 3 Issuing of BDEW Code Numbers by the GmbH

(1) The examination of applications and the issuing of BDEW Code Numbers will generally be performed on a first come first served basis. In the case of a correct and complete application, where all requirements are met, the BDEW Code Number will be issued by the GmbH by email. If an application is rejected, the applicant will also be notified by email, stating the grounds for the rejection.

(2) At the point a BDEW Code Number is issued, a contract is formed between the GmbH and the applicant with these Terms of Use.

(3) The GmbH warrants that the personal data of the applicant or the owner of the BDEW Code Number will only be disclosed to third parties involved in the processing and performance of the BDEW Code Number contract and may not be used or disclosed for the purpose of advertising.

Section 4 Obligations of GmbH

(1) The GmbH shall ensure that BDEW Code Numbers will not be allocated more than once (avoidance of conflict).

(2) The GmbH is not obligated to assess whether the registration of a BDEW Code Number or its use by the owner of the BDEW Code Number infringes the rights of third parties.

¹ As far as possible no general information addresses

(3) The GmbH publishes the list of companies at www.bdew-codes.de with the data on the owner and all allocated BDEW Code Numbers as provided in the application.

Section 5 Rights and obligations of the owner of the BDEW Code Number

(1) The owner of the BDEW Code Number may use the allocated BDEW Code Number in legal transactions. The owner of the BDEW Code Number is obligated, immediately upon allocation of the code, to review the correct publication of the BDEW Code Number assigned to it and the associated information on the websites and to inform the GmbH immediately of any mistakes. Where no such notification is sent by the owner of the BDEW Code Number within ten working days of the owner being informed of the allocation, the publication of their code number in the register shall be considered correct. Where no such notification is sent by the owner of the BDEW Code Number within ten working days of the owner being notified of the allocation and the GmbH shall no longer bear any liability in this respect.

(2) The owner of the BDEW Code Number undertakes to inform the GmbH immediately of any changes to its submitted data. The contact person for the BDEW Code Number can amend the personal contact details themselves. All other changes must be sent to the GmbH by email or through the channel specified by the GmbH.

(3) The owner of the BDEW Code Number shall also immediately inform the GmbH, if the owner of the BDEW Code Number is ceasing their activities or is no longer participating in the German electricity market. The owner's BDEW Code Number will then be blocked accordingly.

(4) BDEW Code Numbers may only be used for participation in and implementation of market communications on the German electricity market by the owner of the BDEW Code Number. Misuse can lead to the blocking of a BDEW Code Number by the GmbH and to claims for damages by the GmbH. Misuse is deemed to have occurred, in particular, when a BDEW Code Number is transferred to a third party without the written consent of the GmbH.

Section 6 Blocking of the BDEW Code Number by the owner of the BDEW Code Number

The owner of the BDEW Code Number can, at any time, request, by email or letter or through the channel specified by GmbH, the blocking of a BDEW Code Number or the amendment of the data it has submitted pertaining to the BDEW Code Number allocated to it, where it cannot undertake such amendment itself as per Section 5 (2).

Section 7 Transfer of a BDEW Code Number

(1) In the event of legal succession, the owner of the BDEW Code Number must inform the GmbH, providing appropriate proof (e.g. corresponding extract from the commercial register), in writing no later than 14 days after the legal succession takes effect.

(2) A transfer of the BDEW Code Number in the scope of a legal transaction requires, in order to be effective, a corresponding written declaration from the original owner of the BDEW Code Number, the registration of the future owner with the GmbH, a written declaration from the future owner accepting the relevant obligations from the previous owner and the consent of the GmbH, as inherently expressed through the registration.

The previous and the new owners are obligated to notify their contractual partners of the transfer of the BDEW Code Number.

Section 8 Ownership of multiple BDEW Code Numbers following a legal succession

A legal successor, which already holds a corresponding BDEW Code Number in its name is obligated to notify the GmbH without delay as to which of the two BDEW Code Numbers they wish to retain. The other BDEW Code Number will then be blocked. In the absence of such a decision, the GmbH may block the BDEW Code Number of the owner which has ceased to exist.

Section 9 Blocking of the BDEW Code Number by the GmbH

(1) A BDEW Code Number is issued for an indefinite period of time.

(2) The contractual relationship may be terminated by either party with a notice period of 3 months effective at the end of a calendar year, provided a longer notice period is not stipulated by law. Termination must be in writing.

(3) The GmbH can for good cause block a BDEW Code Number with immediate effect. Good cause exists, for example, if

a) the owner of the BDEW Code Number has undertaken, in writing, without restriction and under penalty of law, not to use a BDEW Code Number or the owner has issued a final declaration to that effect in preliminary injunction proceedings, or a corresponding final and absolute judgment on the substance of the case has been handed down against the owner of the BDEW Code Number, or

b) the owner of the BDEW Code Number has violated material contractual obligations and continues to violate them despite written warnings and the setting of time limits, in particular by using a BDEW Code Number for purposes other than participation in the German electricity market or the owner of the BDEW Code Number violates contractual obligations despite repeated warnings, or

c) the information provided by the owner of the BDEW Code Number to the GmbH is false and not corrected despite a request to do so from the GmbH, or

d) the GmbH no longer performs the issuing and management of the BDEW Code Numbers, or

e) the owner of the BDEW Code Number has ceased their activities or is no longer participating in the German electricity market, or

f) the owner of the BDEW Code Number does not comply with their obligation to pay fees despite written reminders, or

g) insolvency proceedings are instituted against the assets of the owner of the BDEW Code Number, or

h) the GmbH is entitled to block the code under Section 8.

In the event of (3) b), c) and f) the GmbH will inform the owner of the BDEW Code Number in writing of the grounds for blocking and set the owner a time limit of thirty (30) calendar days to remedy the grounds. During this time, the GmbH is entitled to temporarily block the BDEW Code Number. If the grounds for the temporary block are eliminated, the GmbH will remove the block. In this event, the GmbH is released from any liability in relation to the block.

(4) The GmbH can, moreover, temporarily or permanently block the BDEW Code Number where an order is received from an authority or other public entity due to a rights infringement or where there is a strong suspicion thereof. In this event, the GmbH is released from any liability in relation to the block.

(5) Notwithstanding any further statutory rights, the GmbH may, upon dispatching the notification of the block, remove a BDEW Code Number from the publicly available BDEW Code Number list.

(6) Once the block has taken effect, the owner of the BDEW Code Number loses the right to continue to apply or use the BDEW Code Number. Where necessary for the due and proper termination of the contractual relationship of the owner of the BDEW Code Number, the owner is permitted, in deviation from the first sentence, to use the BDEW Code Number for final transactions. In the case of continued use of the BDEW Code Number contrary to these provisions, the user is liable for any damage caused.

(7) A permanently blocked BDEW Code Number shall be re-issued no sooner than ten years after the blocking.

Section 10 Fees

(1) The owner of the BDEW Code Number undertakes to pay the fees set out in the price list to the GmbH.

(2) For the purposes of the fee to be paid, all codes issued upon application and according to the respective terms of use, (BDEW Code Numbers, EIC codes, electricity grid operator numbers) will be summarised at the relevant date and billed together. The billing date for ascertaining the annual fee to be billed is 1 January each year.

(3) The annual fee to be billed comprises one fee per code number owner and one fee per code number. The fees are to be understood as net prices based on a quantity scale, which must be paid with value added tax applied accordingly. The basis for ascertaining the quantity scale is the total number of electricity network operator numbers, BDEW Code Numbers and EIC codes valid as of the relevant billing date.

(4) Owners of codes, who possess a valid code as of 1 January of a given year, ("existing customers") will be billed in advance in the first quarter for the annual fee for that calendar year. Newly added codes will first be included in the calculation of the fee at the next billing date.

(5) Companies which acquire a code (BDEW Code Numbers, EIC codes or electricity grid operator numbers) for the first time during the year and are consequently entered into the data base for the first time ("new customers") will, in the case of such a commencement of contract during the year, be billed the annual fee on a pro rata basis for the remaining months. The billing date for the calculation of the proportionate fee to be paid is the first of the month following the validity date of the first code issued. If further codes are issued, after the initial issuing of codes, during the same calendar year, those codes will first be included in the calculation of fees from the next billing date.

(6) Changes during the year in the number of codes issued (BDEW Code Numbers, EIC codes, electricity grid operator numbers) do not entitle the GmbH to any claims for additional payment nor do they entitle the owner of the electricity grid operator number to any claims for reimbursement. The rule established in Subsection (5) remains unaffected hereby.

(7) The owner of the BDEW Code Number shall bear the costs of applicable bank fees or other fees.

(8) The GmbH is entitled to send bills via email to the owner of the BDEW Code Number or the administrative contact partner.

(9) The GmbH may amend the price list once a year, effective 1 January of a new calendar year, with a notice period of three months. The GmbH will only amend the price list where there are legitimate grounds to do so, e.g. in the case of increased issuing or management costs. The owner of the BDEW Code Number will be informed of the change by email, with accompanying reasoning.

If the owner of a BDEW Code Number does not wish to accept the new fees, the owner has a right to extraordinary termination for a period of six weeks prior to the end of the respective calendar year.

Section 11 Liability

(1) The GmbH makes no guarantee as to the accuracy of the published data on the BDEW Code Numbers and owners of BDEW Code Numbers. The applicant or owner of the BDEW Code Number is solely responsible for the accuracy and completeness of the data.

(2) The GmbH and the owner of the BDEW Code Number are liable to each other for property damages and financial damages which arise from a culpable violation of material contractual obligations. In the case of culpability as a result of simple negligence, liability is limited to loss or damage which can typically be foreseen in relation to this type of contractual agreement.

(3) In the event of a violation of non-material contractual obligations, the parties to the contract are liable to one another only for intentional and grossly negligent acts, whereby the liability for property damage and financial losses caused by gross negligence is limited, to the extent permitted by law, to the loss or damage which can typically be foreseen in relation to this type of contractual agreement.

(4) Material contractual obligations are understood here to mean those obligations which must be fulfilled to enable the due and proper performance of the contract and the observance of which the respective other party to the contract will rely on and may rely on.

(5) Losses and damage which can typically be foreseen in relation to this type of contract are those which the parties, at the time of entering into the contract, foresaw as a possible consequence of a contractual violation or, which the parties, taking into account the circumstances known or indisputably recognisable to them, should have foreseen when applying the degree of care customary in the course of trade.

(6) Subsections (1) to (5) apply also in respect of legal representatives, employees as well as the vicarious agents or performing agents of the parties to the contract.

Section 12 Changes to the basis of the contract, communication channels

(1) Where it is necessary to alter or amend these Terms of Use - in particular due to a change in the legislative situation, recent court decisions of the highest court or a change in the market conditions - the GmbH is entitled to modify these Terms of Use accordingly. Owners of BDEW Code Numbers will be notified of any alterations or amendments

at least three months before they take effect, unless a different time limit has been set by the legislator.

(2) The GmbH is entitled to notify owners of BDEW Code Numbers or the administrative contact partners by email of any alterations or amendments as per Subsection (1).

(3) In the event that the owner of a BDEW Code Number does not accept an alteration or amendment to the Terms of Use, the owner has a right of extraordinary termination for a period of six weeks after the sending of the email from the GmbH containing the relevant notification. If the owner of a BDEW Code Number does not exercise its right of termination despite the respective notification, the new Terms of Use shall be deemed as having been accepted. The owner of a BDEW Code Number will be informed of this consequence in the notification of alteration or amendment.

Section 13 Choice of law, place of jurisdiction, valid language version

(1) The BDEW Code Number agreement is governed by German law.

(2) To the extent permitted, Berlin is the exclusive place of jurisdiction. The GmbH is also entitled to bring legal action in the general place of jurisdiction of the owner of the BDEW Code Number.

(3) In the case of disagreement between the German language version of these Terms of Use and the English language version, solely the German language version is binding and thus takes precedence over the English version.

Section 14 Contact

The GmbH is registered in the Commercial Register; its registered address is in Berlin (Local Court of Charlottenburg, Commercial Register, B 179968 B).

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