**Exhibit C**

**On 30 September 2009**

**CHARBONNAGES DE FRANCE**

and

**ELECTRICITE DE FRANCE**

(The **Sellers**)

and

**E.ON FRANCE**

(The **Purchaser**)

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**SHARE SALE AND PURCHASE AGREEMENT**
**In respect of approximately 35% of the share capital of Société Nationale d'Electricité et de Thermique (SNET)**

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**SHARE SALE AND PURCHASE AGREEMENT**

**BETWEEN**

1. **Charbonnages de France**, *Etablissement Public National* subject to winding-up and liquidation proceedings pursuant to Decree 2007-1806 dated 21 December 2007, whose registered office is at Nanterre (92000), Challenge 92, 101 avenue François Arago, registered with the Companies and Commercial Registry of Nanterre under number 542 008 677 (hereinafter **CdF**),

2. **Electricité de France**, *Société Anonyme* whose registered office is at Paris (75008), 22-30 avenue Wagram, having a share capital of 911,085,545 Euros, registered with the Companies and Commercial Registry of Paris under number 552 081 317, (hereinafter **EDF**),

(CdF and EDF are jointly referred to hereinafter as the **Sellers**),

**AND**

3. **E.ON France SAS,** *Société Par Actions Simplifiée* whose registered office is at Paris (75002), 3 rue du quatre septembre, having a fully paid share capital of 6,535,000 Euros, registered with the Companies and Commercial Registry of Paris under number 501 706 360,

(hereinafter the **Purchaser**),

The Sellers and the Purchaser are jointly referred to hereinafter as the **Parties** and each individually as a **Party**.

## WHEREAS:

(A) Société Nationale d'Electricité et de Thermique is a *société anonyme* whose registered office is at Rueil Malmaison (92565), 2 rue Jacques Daguerre, having a share capital of EUR 569,206,335 divided into 37,337,488 shares, registered with the Companies and Commercial Registry of Nanterre under number 399 361 468 (hereinafter the **Company**).

(B) On the date hereof, EDF is the owner of seven million (7,000,000) shares (the **SNET I Shares**) out of the thirty seven million, three hundred and thirty seven thousand and four hundred and eighty eight (37,337,488) shares representing the entirety of the share capital of the Company. CdF is the owner of six million sixty eight thousand and one hundred and twenty one (6,068,121) shares (the **SNET II Shares**) out of the thirty seven million, three hundred and thirty seven thousand and four hundred and eighty eight (37,337,488) shares representing the entirety of the share capital of the Company (the SNET I Shares and the SNET II Shares are referred to hereinafter as the **Shares**). The Purchaser and one of its Affiliated Companies own together twenty four million two hundred sixty nine thousand three hundred sixty seven (24,269,367) shares representing the remaining portion of the share capital of the Company.

(C) EDF and CdF have jointly negotiated the sale of the Shares to the Purchaser. EDF and EnBW, on the one hand and the Purchaser on the other hand, entered into a memorandum of understanding on 28 April 2009 (the **Memorandum of Understanding**) whereby E.ON stated its intention to acquire the Shares and EDF stated its intention to sell and transfer the SNET I Shares and to have CdF sell and transfer the SNET II Shares, in the context of other transactions between EDF, EnBW and the Purchaser which include:

(i) the reciprocal granting of drawing rights in the generation capacity of power plants to be carried out by means of a swap transaction between E.ON and EnBW (the **Drawing Rights Swap Transaction**),

(ii) the transfer of power plants, the granting of drawing rights and shareholdings (including the SNET I Shares) to be carried out by means of separate transactions within the overall framework of a swap transaction between EDF and E.ON (the **Asset Swap Transaction**), and

(iii) the transfer of the SNET II Shares (the **Cash Transaction**).

The Cash Transaction, the Drawing Rights Swap Transaction and the Asset Swap Transaction are together referred to as the **Transactions**. CdF confirmed its interest in selling the SNET II Shares in a confirmation letter dated 28 April 2009.

(D) The Transactions are entered into in the context of E.ON's obligation towards the European Commission on the divestment of E.ON's extra-high-voltage transmission system and of approximately 4,800 MW of its power generation capacity (the **Commitments**).

(E) Hence, the Sellers wish to sell and transfer to the Purchaser, and the Purchaser wishes to purchase and acquire from the Sellers, the Shares upon the terms and subject to the conditions of this Agreement.

## NOW THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, save where the context otherwise requires or the Agreement otherwise provides, capitalised words and expressions shall have the meanings given hereafter:

**1953 Decree** has the meaning set forth in article 3.1.1(a).

**Affiliated Company** means in relation to any company, any other company that, directly or indirectly, controls, is controlled by, or is under common control with such company. For the purposes of this definition, "control" means (i) the holding directly or indirectly of more than 50% of the voting rights attached to all shares, securities and other financial instruments issued by the company, or (ii) the right to nominate more than half of the members of any executive body.

**Agreement** means this agreement including the definitions.

**Applicable Laws** means, with respect to any Person, all laws, statutes, ordinances, codes, rules, regulations, decrees, injunctions, judgments or awards of any governmental authority or compulsory norm applicable to or binding on such Person from time to time.

**Asset Swap Agreements** documenting the Asset Swap Transaction, apart from the present Agreement, means the following agreements:

(i) Share Sale and Purchase Agreement regarding the sale and purchase of the shares in "Gesellschaft für die Beteiligung an dem Kraftwerk Rostock GmbH";

(ii) Agreement on Supply of Electric Energy (on an as-if-basis);

(iii) Drawing right agreement regarding electric capacities in the power plant Buschhaus; and

(iv) Agreement for the assignment of TITLE II (Clause de Sauvegarde) of the addendum n°3 to the EDF-SNET PPA Contract.

**Asset Swap Transaction** has the meaning set forth in paragraph C (ii) of the recitals.

**Assignment Agreement** means the agreement (i) pursuant to which a power of attorney is granted by EDF to the Purchaser to negotiate with the Company all contractual issues relating to the *"clause de sauvegarde"* set forth in the title II of the addendum 3 of EDF-

SNET PPA Contract from the signing date of the Assignment Agreement, and (ii) providing for the assignment of the rights and obligations under the "*clause de sauvegarde*" from EDF to the Purchaser for a consideration of one hundred and five million Euro (€ 105,000,000) effective as from 1 January 2010 subject to the satisfaction or waiver of the Conditions Precedent set out in article 3.1.1 of this Agreement.

**Business Day** means any day, other than Saturday or Sunday or public holiday in France or in Germany.

**Cash Transaction** has the meaning set forth in paragraph C (iii) of the recitals.

**Commitments** have the meaning set forth in paragraph D of the recitals.

**Company** has the meaning set forth in paragraph A of the recitals.

**Completion** means the completion of the sale and purchase of the Shares in accordance with Article 4.

**Completion Date** means the date on which Completion occurs in accordance with Article 4.

**Conditions Precedent** means the conditions precedent set forth in Article 3.1.1.

**Drawing Rights Swap Agreements** means the following agreements:

(i) Drawing right agreement regarding electric capacity in the nuclear power plant Gundremmingen B;

(ii) Drawing right agreement regarding electric capacity in the nuclear power plant Gundremmingen C;

(iii) Drawing right agreement regarding electric capacity in the nuclear power plant Krümmel;

(iv) Drawing right agreement regarding electric capacity in the nuclear power plant Unterweser;

(v) Drawing right agreement regarding electric capacity in nuclear power plants in France; and

(vi) Drawing rights swap transaction agreement.

**Drawing Rights Swap Transaction** has the meaning set forth in paragraph C (i) of the recitals.

**Due Date** has the meaning set forth in Article 2.3.1.

**EDF-SNET PPA Contract** means the existing 1996 EDF-SNET power purchase agreement, as amended, entered into between EDF and the Company, including in particular the "*clause de sauvegarde*" set forth in the Title II of the Addendum n°3 of December 10, 2004.

**Effective Date** has the meaning set forth in Article 4.3.

**EnBW** means EnBW Energie Baden-Württemberg AG, a company incorporated in Germany, whose principal office is at Durlacher Allee 93, 76131 Karlsruhe.

**Encumbrance** means any *nantissement, gage, hypothèque*, option or other real or personal right (*droit réel* or *personnel*) restricting in any manner the enjoyment, ownership or transferability of the Shares (including a call option, inalienability agreement, tag along right (*droit de sortie conjointe*), drag along right (*obligation de sortie conjointe*), preferential agreement (*pacte de préférence*), escrow agreement or reservation of title) or any other instrument having a comparable effect as the afore-mentioned encumbrances.

**Memorandum of Understanding** has the meaning set forth in paragraph C of the recitals.

**Notice** has the meaning set forth in Article 9.9.1.

**Person** means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization enjoying legal personality, including any governmental authority.

**Purchase Price** has the meaning set forth in Article 2.2.

**Purchaser's Representations** means the representations set forth in Article 5.2.

**Resigning Persons** has the meaning set forth in Article 4.3(a).

**Seller's Representations** means the representations set forth in Article 5.1.

**Shares** has the meaning set forth in paragraph B of the recitals.

**SNET I Shares** has the meaning set forth in paragraph B of the recitals.

**SNET II Shares** has the meaning set forth in paragraph B of the recitals.

**Tax** means any taxes, duties, deductions, contributions or charges, including in particular, income tax, withholding tax, indirect taxes, local taxes, value added tax, sales taxes, registration or stamp duties, customs duties imposed or collected by any State or by any organisation or local authority, national or supranational, and including interest, penalties, fines, reassessments and other related charges.

**Termination Date** has the meaning set forth in Article 3.2.1.

**Transactions** has the meaning set forth in paragraph C of the recitals.

### 1.2 Interpretation

In this Agreement, save where the context otherwise requires or the Agreement otherwise provides:

(a) words importing the singular number only shall include the plural and vice versa, and words importing the use of any gender shall include all other genders;

(b) references to any time of day are to Central European Time (CET);

(c) headings are inserted for convenience only and shall not affect the interpretation or construction of this Agreement;

(d) all Schedules to this Agreement shall form an integral part thereof and shall have the same force and effect as any other provisions of this Agreement.

## 2 SALE AND PURCHASE, PURCHASE PRICE

### 2.1 Sale and purchase

Upon the terms and subject to the conditions of this Agreement, in consideration for the payment by the Purchaser of the Purchase Price, the Sellers shall sell and transfer to the Purchaser, and the Purchaser shall purchase and acquire from the Sellers, all of the Shares on Completion Date free from all Encumbrances, with all rights attached to such Shares, including all dividends to be distributed by the Company in respect of the Shares for the year 2008 and following financial years.

### 2.2 Purchase Price

The purchase price to be paid by the Purchaser to the Sellers as consideration for the purchase of the Shares as defined in this Agreement, shall be a total of three hundred sixty million one hundred and fifty thousand and five Euro (€ 360,150,005) (the **Purchase Price**), allocated as follows between the Sellers:

(a) In consideration for the sale and transfer of the SNET I Shares, the Purchaser shall pay to EDF a total amount of one hundred and ninety two million nine hundred and sixteen thousand and thirty one Euro (€ 192,916,031);

(b) In consideration for the sale and transfer of the SNET II Shares, the Purchaser shall pay to CdF a total amount of one hundred and sixty seven million two hundred and thirty three thousand and nine hundred and seventy four Euro (€ 167,233,974).

### 2.3 Payment of Purchase Price

2.3.1 Payment of the Purchase Price shall be made in full on 4 January 2010 if all of the Conditions Precedents have been satisfied or, as the case may be, waived, on or before 29 December 2009 pursuant to Section 4.1.2, failing which payment shall be made on the Completion Date. The day on which payment of the Purchase Price is to be made is hereinafter referred to as the **Due Date.**

2.3.2 Payment of the Purchase Price shall be made in full on Due Date by wire transfers to the benefit of the following bank accounts of the Sellers with credit value date as of Due Date:

(a) Account holder: EDF, Division Trésorerie et Financement Intra-Groupe, BNP Paribas, 30004 00828 00011049811 76 – IBAN / FR76 3000 4008 2800 0110 4981 176 – SWIFT CODE : BNPA FR PP;

(b) Account holder: CdF, BNPP 30004 01328 00010479012 04 - IBAN / FR76 3000 4013 2800 0104 7901 204 - SWIFT CODE: BNPAFRPPPTX.

## 3 CONDITIONS PRECEDENT AND PRE-COMPLETION CONDUCT

### 3.1 Conditions Precedent

3.1.1 The obligation of the Sellers and the Purchaser to consummate the Completion is subject to the fulfillment of all the following conditions precedent prior to the Termination Date (the **Conditions Precedent**):

(a) The sale of the SNET I Shares is subject to an unconditional decision of the French government pursuant to the Decree (*Décret*) 53-707 issued on 9 August 1953 regarding the economical and financial control from the French State (the **1953 Decree**). Such decision may be rendered in the form of an *arrêté interministériel* which will be delivered jointly for EDF and CdF;

(b) The sale of the SNET II Shares is subject to an unconditional decision of the French government pursuant to the 1953 Decree, such decision to be rendered in the form of an *arrêté interministériel* which may be delivered jointly for EDF and CdF. Pursuant to the Decree (*Décret*) 2007-1806 issued on 21 December 2007 regarding the winding-up and liquidation of CdF, the order (*arrêté*) issued on 27 December 2007 appointing the liquidator (*liquidateur*) and setting forth the terms of its assignment, and the order issued on 27 February 2008 determining a specific procedure for the economical and financial control of the French State over CdF, the sale of SNET II Shares is also subject to (i) the prior approval from the General Controller (*Contrôleur Général Economique et Financier*) or, if the approval of the General Controller is subject to specific conditions not followed by the liquidator, (ii) the expiry of a 15-days period without an opposition from the Minister in charge of Economy to the sale of the SNET II Shares.

As a result of such decision process, no conditions shall be imposed by the French government on the Purchaser or on the Company.

(c) The satisfaction or waiver of the conditions precedent set out in the other Asset Swap Agreements and the Drawing Rights Swap Agreements (save for the condition precedent as may be included in these agreements that the Conditions Precedent of this Agreement have been satisfied or waived) as listed in Schedule 3.1.1(c) to this Agreement.

(d) The signature of the Assignment Agreement.

(e) The Purchaser has confirmed in writing vis-à-vis the Sellers that the acquisition of the Shares by the Purchaser does not require clearance under applicable merger control provisions.

(f) The supervisory boards of E.ON AG and of the Purchaser have approved this Agreement and the transactions contemplated herein.

3.1.2 As soon as one Party becomes aware of the fulfilment of a condition precedent it shall notify the other Party in writing within 3 Business Days, such notification to be accompanied by appropriate documentation evidencing the fulfilment of the relevant condition precedent. For the avoidance of doubt, in relation to the condition precedent in Section 3.1.1(f) the Purchaser's notification to the Sellers of the approval by E.ON AG's supervisory board and the Purchaser's notification to the Sellers of the approval by the Purchaser's supervisory board shall be deemed appropriate documentation evidencing the fulfilment of such condition precedent.

### 3.2 Undertakings of the Parties

3.2.1 Subject to Article 3.2.3, the Parties undertake to use their best efforts to ensure that the Conditions Precedent are satisfied, and to consummate Completion as soon as reasonably possible after the execution of this Agreement and, in any event, not later than 28 February 2010 (the **Termination Date**), unless extended by mutual written agreement of the Parties in accordance with Article 3.2.2. In particular, none of the Parties shall conduct any transactions or take any other steps that might put the Completion of the transactions contemplated by this Agreement at risk.

3.2.2 If at any time any of the Parties becomes aware of any fact or circumstance that may prevent any of the Conditions Precedent from being duly satisfied prior to or on the Termination Date, then such Party shall immediately inform the other Parties and the Parties shall co-operate with one another and make all best efforts to ensure that the Conditions Precedent are timely satisfied prior to or on the Termination Date. If it becomes evident that the Conditions Precedent will most likely not be satisfied or waived, the Parties shall jointly seek to resolve the matter.

3.2.3 If any of the Conditions Precedent is not fulfilled or waived by the Termination Date, then this Agreement may be terminated by either Party by sending a written notice to the other Parties. If the Conditions Precedent are satisfied or waived in accordance with Article 3.4 prior to the effectiveness of such notice (as determined in accordance with Article 9.9), the notice of termination shall have no effect. If this Agreement is terminated pursuant to this Article 3.2.3 in the absence of gross negligence (*faute lourde*) or wilful misconduct (*faute intentionnelle*) or manifest bad faith (*mauvaise foi*) which may have prevented the satisfactory fulfilment of such Conditions Precedent, neither Party shall have any claim against the other in relation to this Agreement.

### 3.3 Pre-Completion Conduct and Undertakings

Pending Completion, the Sellers shall not do anything that would affect the Purchaser's ability to receive full title to the Shares free from any Encumbrances.

### 3.4 Waiver

To the extent permitted by law, the Parties may at any time jointly waive all or part of the Conditions Precedent by written agreement.

# 4 COMPLETION ACTIONS AND DELIVERIES

## 4.1 Time and place of the Completion

4.1.1 Completion shall take place at the offices of E.ON AG, E.ON-Platz 1, 40479 Düsseldorf, Germany, or at such other place as the Parties may agree upon in writing.

4.1.2 Unless otherwise agreed in writing between the Parties, the consummation of the transactions contemplated by this Agreement shall take place at 10:00 a.m. CET on 30 December 2009 with effect as of 1 January 2010, 00:00 hrs, if all of the Conditions Precedent have been satisfied or, as the case may be, waived, on or before 29 December 2009.

4.1.3 If any of the Conditions Precedent has not been satisfied on or before 29 December 2009 the Completion shall take place at 10:00 a.m. CET on the last day of the month during which the last of the conditions precedent has been satisfied or, as the case may be, waived, provided, however, that in the event that at least one of such conditions is satisfied less than three (3) Business Days before the end of the relevant month, the Completion Date shall be the last day of the following month and provided further, in each case, that if such last day is not a Business Day, the Completion shall take place on the Business Day immediately preceding, but shall be effective on such last day.

4.1.4 As regards the Conditions Precedent listed in Article 3.1.1(a), the responsible Party shall be EDF, as regards the Conditions Precedent listed in Article 3.1.1(b) the responsible Party shall be CdF, as regards the Conditions Precedent listed in Article 3.1.1(c) the responsible Party shall, as far as possible, be EDF and the Purchaser as regards the Conditions Precedent listed in Article 3.1.1(d) the responsible Party shall be EDF and the Purchaser, as regards the Conditions Precedent listed in Article 3.1.1(e) the responsible Party shall be the Purchaser, as regards the Conditions Precedents listed in Article 3.1.1(f) the Purchaser shall be the responsible Party.

## 4.2 Deliveries by the Purchaser

On the Due Date, the Purchaser shall deliver to the Sellers a certificate issued by the Purchaser's bank evidencing the irrevocable wire transfer orders of the Purchase Price with credit value date as of Due Date.

## 4.3 Deliveries by the Sellers

On the Completion Date, the Sellers shall deliver the following to the Purchaser:

(a) the letters of resignations of EDF and of CdF as directors (*membres du conseil d'administration*) of the Company (the **Resigning Persons**) with effect on the later of

1 January 2010 00:00 hrs and Completion Date (the ***Effective Date***);

(b) duly executed share transfer forms (*ordres de mouvement*) in respect of the Shares to the Purchaser with effect on the Effective Date, together with the duly executed powers of attorney or other authorities under which any of the share transfer forms have been executed; provided that the executed share transfer forms (*ordres de mouvement*) in respect of the SNET II Shares shall be signed for CdF by its appointed liquidator.

(c) tax transfer forms (*formulaires CERFA n°2759 DGI*) duly executed by the Sellers; provided that the executed tax transfer forms (*formulaires CERFA n°2759 DGI*) in respect of the SNET II Shares shall be signed for CdF by its appointed liquidator.

If the Completion Date is 30 December 2009, the Sellers and the Purchaser shall deposit the duly executed share transfer forms (*ordres de mouvement*) in respect of the Shares and the tax transfer forms (*formulaires CERFA n°2759 DGI*) duly executed by the Sellers with the acting notary in escrow until payment of the Purchase Price has been made in accordance with Section 2.3.2. The acting notary shall deliver the duly executed share transfer forms (*ordres de mouvement*) and the executed tax transfer forms (*formulaires CERFA n°2759 DGI*) in respect of the Shares to the Purchaser upon submission of evidence of payment that the Purchase Price has been ordered and the execution of the order has been confirmed by the bank of the Purchaser in accordance with Section 2.3.2.

### 4.4 Undertaking of the Purchaser

On the Due Date, the share transfer register (*registre des mouvements de titres*) and the shareholders' accounts (*comptes d'actionnaires*) of the Company shall be updated in order to evidence that the transfer of ownership of the Shares to the Purchaser was duly registered and copies of such register should be handed over by the Purchaser to the Sellers on Due Date.

Further, on the Completion Date, however, before performance of any of the other actions to be performed on the Completion Date, the Parties shall restate and confirm this Agreement by notarization of the Agreement provided that CdF is represented in person by its appointed liquidator.

### 4.5 Contemporaneous Effectiveness

All matters at Completion Date will be considered to take place simultaneously, and no delivery of any document will be deemed complete until all transactions and deliveries of documents required by this Agreement to occur on or prior to Completion Date are completed, and title to the Shares shall not be transferred and Purchaser shall have no property rights or interest in the Shares unless and until Completion Date actually takes place without regards to delivery and payment to occur on the Due Date. For the avoidance of doubt, if the Completion Date is 30 December 2009, the economic risk pertaining to the Shares shall transfer to the Purchaser on 1 January 2010, 00:00 hrs notwithstanding the deferral of payment of the Purchase Price pursuant to Section 2.3.1.

**4.6 Post closing covenants**

4.6.1 After the Effective Date, the Purchaser shall be responsible for:

(a) performing all formalities required by Applicable Laws to give effect and perfect the sale and purchase of the Shares, including any amendment to the by-laws of the Company and any publication formalities;

(b) holding a shareholders meeting of the Company during which the Purchaser: (i) shall accept the resignations of the Resigning Persons as defined above, (ii) shall appoint the persons nominated by the Purchaser as new directors and (iii) shall expressly acknowledge that there is no claim against the Resigning Persons relating to their mandate.

4.6.2 Within six (6) weeks following the Completion Date, the Purchaser shall evidence that the corporate formalities have been duly published with the Commercial and Companies Registry and that the Resigning Persons do not appear anymore on the SNET K-bis extract.

## 5 REPRESENTATIONS

**5.1 Seller's representations**

EDF represents to the Purchaser that the EDF Representations, and CdF represents to the Purchaser that the CdF Representations (collectively the **Seller's Representations**) shall be true, accurate and correct as at the Effective Date.

5.1.1 EDF Representations

(a) Organization of EDF, Authority and Validity

(i) EDF is validly existing under the Applicable Laws of its jurisdiction of incorporation. EDF has full authority and legal capacity to enter into and perform this Agreement. No consents and approvals are required to be obtained by EDF in connection with the execution of this Agreement and the consummation of the transactions contemplated herein other than those listed in Article 3.1 as a Condition Precedent to Completion.

(ii) EDF is not in a state of insolvency or in suspension of payments and is not and has never been subject to a court-ordered reorganization or court-ordered liquidation proceedings or any other conciliation or collective bankruptcy proceedings.

(b) Ownership of the Shares

EDF is the sole owner of the SNET I Shares, free and clear of any Encumbrances.

5.1.2 CdF Representations

(a) Organization of CdF, Authority and Validity

(i) CdF is validly existing under the Applicable Laws of its jurisdiction of incorporation. CdF has full authority and legal capacity to enter into and perform this Agreement. No consents and approvals are required to be obtained by CdF in connection with the execution of this Agreement and the consummation of the transactions contemplated herein other than those listed in Article 3.1 as a Condition Precedent to Completion.

(ii) CdF is subject to liquidation proceedings pursuant to the Decree 2007-1806 dated 21 December 2007 regarding the winding-up and liquidation of CdF. A liquidator (*liquidateur*) has been appointed by order dated 27 December 2007. His assignment includes the sale of the SNET II Shares.

(b) Ownership of the Shares

CdF is the sole owner of the SNET II Shares, free and clear of any Encumbrances.

**5.2 Purchaser's representations**

The Purchaser represents to the Seller that the following statements (the **Purchaser's Representations**) shall be true, accurate and correct as at the Effective Date. The Purchaser makes no representation to the Sellers other than the Purchaser's Representations.

5.2.1 Organization, Authority and Validity

(a) The Purchaser is validly existing under the Applicable Laws of its jurisdiction of incorporation. The Purchaser has full authority and legal capacity to enter into and perform this Agreement. No consents and approvals are required to be obtained by the Purchaser in connection with the execution of this Agreement and the consummation of the transactions contemplated herein other than those listed in Article 3.1 as a Condition Precedent to Completion.

(b) the Purchaser is not in a state of insolvency or in suspension of payments and is not and has never been subject to a court-ordered reorganization or court-ordered liquidation proceedings or any other conciliation or collective bankruptcy proceedings.

5.2.2 Independent Assessment

The Purchaser acknowledges and agrees that: the Sellers Representations are the only representations or other assurances of any kind given or made by or on behalf of the Sellers on which the Purchaser may rely (and has relied upon) in entering into this Agreement.

## 6 CONFIDENTIALITY

6.1 Each Party agrees not to make any public announcements or issue any press release or other form of communication regarding this Agreement or the transactions contemplated hereby without the prior written approval of the other Parties, both with respect to timing and content.

6.2 None of the Parties shall divulge to any person or use for any purpose whatsoever any of the trade secrets, know-how or confidential information or any financial information or trading information relating to any other Party, which it acquires or has acquired as a result of, or in connection with, entering into this Agreement. The Purchaser and the Sellers shall use their best efforts to prevent their employees from doing anything that if done by a Party would be a breach of this Article 6.2. This restriction shall continue to apply after the expiration or termination of this Agreement without limit in point of time.

6.3 The obligation of confidentiality imposed by Articles 6.1 and 6.2 shall not apply to:

6.3.1 information that is independently developed by the relevant Party or acquired from a third party to the extent that it is acquired with the right to disclose the information;

6.3.2 information that becomes within the public domain otherwise than as a result of a breach of such undertaking of confidentiality;

6.3.3 the disclosure of information to the extent required to be disclosed by law to any person who is authorised by law to receive the information;

6.3.4 the disclosure of information which is required to be disclosed by the rules or regulations of any securities exchange or regulatory or governmental authority to which any Party or the Purchaser's controlling companies are from time to time subject to, or submits to, including without limitation an official stock exchange;

6.3.5 the disclosure of information to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a party in a case where such disclosure is required by such proceedings;

6.3.6 the disclosure of information to a Party's professional advisers who are bound to the disclosing Party by a duty of confidence, which applies to any information disclosed;

6.3.7 the disclosure of the information to any tax authorities to the extent reasonably required for the purpose of the tax affairs of the Party concerned or any member of its group;

6.3.8 the disclosure to the other Parties to this Agreement;

6.3.9 the disclosure of information pursuant to the terms of this Agreement;

6.3.10 the disclosure of information to which the other Parties have given their prior written consent.

## 7 EFFECT OF TERMINATION

7.1.1 If this Agreement is terminated, each Party shall: (i) within 7 (seven) Business Days return all information, documents, work papers and materials belonging to the other Party relating to the transactions contemplated hereby, whether so obtained before or after the execution of this Agreement, to the Party that had supplied them or had procured its supply; and/or (ii) only at the instruction of the other Party, destroy all such documents, work papers and other materials and thereafter notify the other Party that the documents have been destroyed as instructed, and (iii) treat all confidential information as such and in accordance with this Agreement and any related agreements.

7.1.2 Termination of this Agreement shall be without prejudice to any accrued rights or obligations of the Parties up to the Termination Date and the provisions of Article 6 (Confidentiality), Article 7 (Effect of Termination), Article 8 (Governing Law and Disputes) and Article 9.8 (Notices) shall remain in full force and effect notwithstanding termination.

# 8 GOVERNING LAW AND DISPUTES

## 8.1 Governing law

This Agreement shall be governed by, and construed in accordance with, the laws of France.

Each Party irrevocably waives any right that it may have to object to the application of the laws of France.

## 8.2 Disputes

All disputes arising out of or in connection with this Agreement, including all disputes concerning the validity or interpretation of this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said rules. The seat of arbitration shall be Geneva (Switzerland). The language used in the arbitration proceedings shall be English. Any Party shall have the right to have recourse to and shall be bound by the Pre-Arbitral Referee Procedure of the International Chamber of Commerce in accordance with its Rules for a Pre-Arbitral Referee Procedure. The final award of the arbitral tribunal shall be rendered in English.

# 9 MISCELLANEOUS

## 9.1 Costs and expenses

9.1.1 General Costs

Save as expressly otherwise provided in this Agreement, each Party shall bear its own costs and expenses and taxes, including the fees and expenses of its legal and other advisers and value added tax or any similar Tax thereon, incurred in connection with this Agreement, including:

(a) the negotiation, preparations, investigation, execution and performance of this Agreement and any other documents referred to in this Agreement or ancillary or incidental to it, and

(b) the negotiations, preparations, investigation, execution and performance of all supplements, waivers and variations of this Agreement and any other documents required to fully consummate the transaction contemplated in this Agreement.

9.1.2 Other Costs

Any transfer taxes (including any *droits d'enregistrement*) that may become payable as a result of the signing of this Agreement and/or the transfer of the Shares shall be borne by the Purchaser and shall be paid on a timely basis in compliance with Applicable Laws.

### 9.2 Assignment

9.2.1 Neither of the Parties shall be entitled to assign or otherwise transfer (directly or indirectly, by law or otherwise) this Agreement or any of its rights, duties and obligations hereunder, without the prior written consent of the other Parties. Until Completion Date, a Party may assign all or part of its rights and obligations under this Agreement without the prior written consent of the other Parties to an Affiliated Company, provided, however, that (i) the assigning Party shall remain without exception liable for the fulfilment of all obligations under this Agreement by the Affiliated Company (and any subsequent Affiliated Company assignees) and (ii) the agreement on transfer (a) provides that the transferred rights and obligations shall automatically re-transfer to such Party upon the assignee ceasing to be an Affiliated Company of the assigning Party, and (b) imposes a corresponding re-transfer obligation on the Affiliated Company in case of any on-transfer of rights and/or obligations under this Agreement.

9.2.2 Notwithstanding the above, the Purchaser recognizes to be aware that CdF is subject to liquidation proceedings and that once CdF will have been wound-up, all the outstanding rights and obligations of CdF under this Agreement shall be automatically assigned to the French State.

### 9.3 Entire agreement

Each of the Parties to this Agreement confirms that this Agreement represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement including undertakings, arrangements, understandings or statements of any nature (whether oral or written) between the Parties with respect thereto and, without prejudice to the generality of the aforementioned, excludes any warranty, condition or other undertaking implied by law or by custom. Each Party confirms that in entering into the Agreement it has not relied on any representation or undertaking which is not contained in this Agreement or any documents referred to in it.

### 9.4 Amendments

The Agreement may not be amended or supplemented nor may any provisions thereof be waived except by a written instrument making specific reference to this Agreement and signed by each of the Parties.

**9.5 Waiver**

9.5.1 Except as expressly stated otherwise in the Agreement, no omission or delay on the part of any Party hereto in exercising any right, power, privilege or remedy under this Agreement, nor any indulgence or forbearance extended to another Party, shall operate to prejudice or impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power or privilege or remedy.

9.5.2 No waiver by any Party in respect of a breach of this Agreement shall operate as a waiver in respect of any subsequent breach.

**9.6 No third party beneficiaries**

This Agreement is concluded for the benefit of the Parties and their respective successors and permitted assigns, and nothing herein is intended to or shall implicitly confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement, except to the extent explicitly stated otherwise in this Agreement.

**9.7 Severability**

If any of the provisions of this Agreement, or the applicability thereof to any Party or circumstance, shall be found by a court, arbitrator or other competent authority to be void or unenforceable or in conflict with the law of any state or jurisdiction it shall be deemed severed from this Agreement and the remaining provisions shall continue to apply in full force and effect. The Parties shall, on request of any of them, negotiate in good faith to agree on such amendments to this Agreement that are required to reflect the intention and accomplish the purpose of the provisions that was found to be void or unenforceable.

**9.8 Liability**

Even though EDF and CdF are acting as Sellers for the purpose of selling the SNET I Shares and the SNET II Shares, they shall not be considered as jointly and severally liable for any of their undertakings or obligations under this Agreement.

**9.9 Notices**

9.9.1 Any notice or other communication to be given by one Party to another under or in connection with the matters contemplated by this Agreement shall be in writing (a **Notice**) and shall be addressed to the recipient and sent to the address, facsimile number or E-mail address (subject to the receipt of an acknowledgment receipt) of such other Party given in this Agreement for the purpose and marked for the attention of the person so given or such other address or facsimile number and/or marked for such other attention as such other Party may from time to time specify by Notice given in accordance with this Article to the Party giving the relevant notice or communication to it.

The addresses and contact details for notifications shall be as follows:

| | |
|---|---|
| **If delivered to the Purchaser:** | **E.ON France SAS**<br>3 rue du quatre septembre<br>75002 Paris<br>France<br><br>For the attention of: Mr. Antonio Haya<br>Facsimile: +33 1 4298-9382<br>E-mail: antonio.haya@eon-energie.com |
| With a copy to: | **E.ON AG**<br>E.ON Platz 1<br>40479 Düsseldorf<br>Germany<br><br>For the attention of: Dr. Frank Fischer<br>Facsimile: +49 (211) 4579 963<br>E-mail: frank.fischer@eon.com |
| and: | **E.ON Energie AG**<br>Brienner Straße 40<br>80333 München<br>Germany<br><br>For the attention of: Maria Lecheler<br>Facsimile: +49 89 1254 3164<br>E-mail: maria.lecheler@eon-energie.com |
| With a copy to: | **Freshfields Bruckhaus Deringer LLP**<br>Feldmühleplatz 1<br>40545 Düsseldorf<br>Germany |

For the attention of: Dr. Anselm Raddatz
Facsimile: +49 211 49 79 65 224
E-mail: Anselm.RADDATZ@freshfields.com

| | |
|---|---|
| **If delivered to EDF:** | **Electricité de France**<br>Optimization & Trading<br>1, place Pleyel<br>93282 Saint-Denis<br>France<br><br>For the attention of: Frédéric Mayoux, Head of Structured Marketing & Pricing Group<br>Facsimile: + 33 (1) 43 69 25 45<br>E-mail: frederic.mayoux@edf.fr |
| With a copy to: | **Electricité de France**<br>Direction Juridique - Pôle Droit des Affaires<br>22-30 avenue Wagram<br>75382 Paris Cedex 2<br>France<br><br>For the attention of: Virginie Uriet, Head of the Business Law Group<br>Facsimile: +33 (1) 40 42 50 02<br>E-mail: virginie.uriet@edf.fr |
| **If delivered to CdF:** | **Charbonnages de France**<br>Challenge 92, 101 avenue François Arago<br>92000 Nanterre<br>France<br><br>For the attention of: Olivier Méot (*Responsable du Service Filiales et Participations*)<br>Facsimile: +33 (1) 47 51 31 63<br>E-mail: Olivier.MEOT@charbonnagesdefrance.fr |
| With a copy to: | **Norton Rose** |

Washington Plaza
42 rue Washington
75008 Paris

For the attention of: Anne Lapierre (*Avocat*);
Arnaud Bélisaire (*Avocat*)
Facsimile: +33 (0)1 53 89 56 56
E-mail: anne.lapierre@nortonrose.com; arnaud.belisaire@nortonrose.com

9.9.2 Any Notice shall be given by letter delivered by hand or courier, or sent by registered post or facsimile or e-mail, and shall be deemed to have been received or served:

(a) in the case of delivery by hand or courier service, when delivered;

(b) in the case of registered post, on the 2nd (second) Business Day following the date of posting if posted to an address in the same country; if sent from outside the country, on the 5th (fifth) Business Day following the day of posting;

(c) in the case of facsimile or e-mail, on acknowledgement thereof by the addressee.

9.9.3 Any Notice or other communication not received on a Business Day or received after 17.00 hours on any Business Day in the place of receipt shall be deemed to be received on the next following Business Day.

9.9.4 For the avoidance of doubt, any Notice shall be considered validly given by a Party to the other Party pursuant to the provisions of Article 9.8, even if such Notice relates to the service of a writ of summons (or similar deed aimed at commencing judicial proceedings) or a court decision which has not yet been notified to the other Party by the competent court according to the applicable procedural rule.

9.9.5 The Parties shall promptly communicate to each other any variation of the said details.

**Schedule** 3.1.1(c)

**Conditions Precedent in the other Asset Swap Agreements and Drawing Rights Swap**

| 1. ROSTOCK SHARE PURCHASE AGREEMENT | | |
|---|---|---|
| Relevant Section | Condition Precedent | Right to Waiver |
| 2.2.1 | The EU COM has approved the Rostock SPA in accordance with Section 14 of the Commitments | Not subject to waiver |
| 2.2.2(a) | The German Federal Cartel Office has either<br><br>(i) cleared the conclusion of the As-if Contract Rostock between the Seller and the Target and the DRA Buschhaus between the Seller and the Purchaser; or<br><br>(ii) notified the Parties that the conclusion of these agreements is not subject to merger control regulations pursuant to the Law against Restraints of Competition (GWB). | Not subject to waiver |
| 2.2.2(b) | The Spin-off has been registered with the Commercial Register at the Seller's registered office | Not subject to waiver |
| 2.2.2(c) | The increase of the registered share capital of the Target referred to in Section 1.2 of the Rostock SPA and the Spin-off have been registered with the Commercial Register at the Target's registered office | Not subject to waiver |
| 2.2.2(d) | The supervisory boards of the Seller and E.ON AG have approved the | The Seller is entitled to waive this Condition |

| | | |
|---|---|---|
| | Rostock SPA and the transactions contemplated therein | Precedent by written statement vis-à-vis the Purchaser |
| 2.2.2(e) | RWE has consented to the Transaction in writing | Not subject to waiver |
| 2.2.2(f) | The conditions precedent set out in the DRSTA have been satisfied or waived | Not subject to waiver |

## 2. Drawing Rights Swap Transaction Agreement

| Relevant Section | Condition Precedent | Right to Waiver |
|---|---|---|
| § 11 (1) | The EU COM has approved the DRSTA, the Related Agreements and EnBW Trading GmbH as "Generation Capacity Purchaser" in accordance with Section 14 of the Commitments | Not subject to waiver |
| § 11 (2)(a) | The supervisory boards of EKK and E.ON AG, respectively, have approved the DRSTA and the transactions contemplated therein | Not subject to waiver |
| § 11 (2)(b) | The German Federal Cartel Office has either<br><br>(i) cleared the conclusion of the DRSTA as well as each of the DRA; or<br><br>(ii) notified the Parties that the conclusion of these agreements is not subject to merger control regulations pursuant to the Law against Restraints of Competition (GWB) | Not subject to waiver |
| § 11 (2)(c) | Satisfaction or waiver of the conditions precedent set out in Section 2.2 of the | Not subject to waiver |

| | | |
|---|---|---|
| | Sale and Purchase Agreement regarding the Sale and Purchase of all Shares in Gesellschaft für die Beteiligung an dem Kraftwerk Rostock mbH (save for the condition precedent as may be included in the Rostock-SPA that the Conditions Precedent of this Agreement have been satisfied or waived), except for the Conditions Precedent pursuant to Section 2.2.2 (b), (c), and provided, however, that the consummation of the transactions contemplated by this Agreement shall not be hindered or affected in any way by the Purchaser withdrawing from the Rostock-SPA in accordance with § 2.2.7 of the Rostock-SPA in case of a complete devaluation of the Rostock Assets (as defined in the Rostock-SPA). | |