

## **Background**

This agreement sets out the standard terms and conditions for contracts formed under the New Zealand Gas Exchange.

## TERMS AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In the Agreement, unless the context indicates otherwise:

**Agreed Quantity** means, for any given Supply Day, the quantity of Gas specified as the Agreed Quantity for that Supply Day in the Contract Notice (subject to any amendment agreed under clause 4.2);

**Agreement** means the binding legal agreement for the sale and purchase of Gas between Buyer and Seller formed under the Rules by the issuing of the Contract Notice on the terms set out in the Contract Notice and these Standard Terms;

**Agreement Date** means the date on which the Contract Notice is issued;

**Buyer** means:

In respect of an Offer to Buy, the Offeror; and

In respect of an Offer to Sell, the Accepting Participant;

**Carbon Charge** means a charge imposed under any statute or regulation in relation to carbon emissions from the use of fossil fuels including gas and includes a charge under the ETS;

**CCRA** means the Climate Change Response Act 2002;

**Deliver** means to make available at the TH Delivery Point either through the Seller obtaining an Approved Nomination for the transport of that quantity of Gas to the Hub or reselling gas purchased at the Hub or a combination of the two, and "**Delivered**" has a corresponding meaning;

**ETS** means the Emissions Trading Scheme defined in Part 4 of the Climate Change Response Act 2002;

**ETS Participant** means a Participant in the ETS as defined in section 54 of the CCRA;

**Force Majeure Event** means an event or circumstance beyond the reasonable control of a Party that results in or causes a failure by a Party in the performance of any obligations imposed on it by the Agreement, notwithstanding the exercise by such Party of reasonable care and, subject to the foregoing, shall include a Gas Contingency and an MPOC Event;

**Gas Contingency** means any event or circumstance that may cause a critical contingency management plan to be invoked and includes a critical contingency under the Gas Governance (Critical Contingency Management) Regulations 2008;

**GST** means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time, including any tax levied in substitution of that tax;

**Ministerial Consent** means the consent of the Minister of Energy pursuant to section 41 of the Crown Minerals Act 1991 or section 23 of the Petroleum Act 1937;

**MPOC** means the code issued by the owners of the Maui Pipeline covering operation of that pipeline as amended or replaced from time to time (which is available on [www.mauipipeline.co.nz](http://www.mauipipeline.co.nz));

**MPOC Event** means a curtailment under the MPOC of an Approved Nomination which affects the Hub;

**New Zealand Gas Exchange** means the New Zealand Gas Exchange established in accordance with the Rules;

**Notify** means to notify in writing in accordance with clause 16;

**Offer to Buy** means an offer to buy gas submitted by a Participant in accordance with the Rules;

**Offer to Sell** means an offer to sell gas submitted by a Participant in accordance with the Rules;

**Participant** means a Participant as defined in the Rules;

**Party** means Buyer or Seller respectively and "**Parties**" means them collectively;

**Permit Holder** means a "permit holder" under the Crown Minerals Act 1991 or a "licensee" under the Petroleum Act 1937;

**Price** means the Price for Gas specified in the Contract Notice;

**Regulations** means the Gas (Levy of Industry Participants) Regulations 2009 and any regulations that replace them;

**Rules** means the Rules of the New Zealand Gas Exchange as amended from time to time;

**Seller** means:

In respect of an Offer to Sell, the Offeror; and

In respect of an Offer to Buy, the Accepting Participant;

**Standard Terms** means these New Zealand Gas Exchange Standard Trading Terms: Version 2010-1;

**Supply Commencement Date** means the Supply Commencement Date specified in the Contract Notice, being the first date on which gas will be delivered, or made available for nomination, under the Agreement;

**Supply Day** means a Day during the Supply Period on which Seller is to deliver Gas to Buyer;

**Supply End Date** means the Supply End Date specified in the Contract Notice, being the last date on which gas will be delivered under the Agreement; and

**Supply Period** means the period starting at 0000 hours on the Supply Commencement Date and ending at 2400 hours on the Supply End Date.

**1.2 MPOC Definitions:** The following terms have the same meaning as given to those terms in the MPOC:

Approved Nomination

Bill Rate

Business Day

Charges

Day

Delivery Point

Gas

GJ

Maui Pipeline

Month

Transmission Day

Welded Point

**1.3 Rules Definitions:** The following terms have the same meaning as given to those terms in the Rules:

Accepting Participant

Contract Notice

Hub

Hub Operator  
Net TQ  
Offeror  
Participant Variance Agreement  
Register of Participants  
TH Delivery Point  
TH Receipt Point

**1.4 Interpretation:** In the Agreement unless the context indicates otherwise:

- 1.4.1 words importing one gender include the other gender;
- 1.4.2 section, clause and other headings are for ease of reference only and will not affect the Agreement's interpretation;
- 1.4.3 any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.4.4 references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities, in each case, whether or not having separate legal personality;
- 1.4.5 words importing the singular number include the plural and vice versa;
- 1.4.6 references to clauses are references to the clauses in these Standard Terms;
- 1.4.7 a word or expression defined in the Rules has the same meaning as it has in the Rules;
- 1.4.8 references to any statutory provision include any statutory provision that amends or replaces it, and any subordinate legislation made under it; and
- 1.4.9 all amounts invoiced pursuant to the Agreement are to be expressed in New Zealand dollars rounded to 2 decimal places.

## **2. CONDITION SUBSEQUENT**

**2.1 Ministerial Consent:** Where:

- 2.1.1 Seller is a Permit Holder; and
  - 2.1.2 the Agreement is one to which section 41(2) of the Crown Minerals Act 1991 or section 23 of the Petroleum Act 1937 applies,
- Seller and Buyer acknowledge that the Agreement is subject, by way of a condition subsequent, to Ministerial Consent being given.

## **3. TITLE AND RISK**

**3.1 Seller Warranties:** Seller warrants in favour of Buyer that:

- 3.1.1 Seller has the right to sell the Gas to Buyer; and
- 3.1.2 Gas will be delivered free and clear of all liens, encumbrances, charges or claims of any kind.

**3.2 Passing of Title:** Title to and every risk in relation to Gas delivered to Buyer under the Agreement will pass to and vest in Buyer at the TH Delivery Point. For the purposes of the Agreement, sections 18-20

(inclusive) of the Sale of Goods Act 1908 (relating to appropriation of unascertained goods) do not apply to the sale and purchase of Gas.

#### 4. AGREED QUANTITIES

- 4.1 **No Unilateral Variation:** Neither Seller nor Buyer has any right to vary an Agreed Quantity unilaterally.
- 4.2 **Variation by Agreement:** Seller and Buyer may vary an Agreed Quantity at any time, by agreement in writing .

#### 5. DELIVERY

- 5.1 **Seller Delivery Obligation:** Subject to clause 7.4, during each Supply Day, Seller will Deliver to the TH Delivery Point a quantity of Gas equal to the Agreed Quantity for that Supply Day.
- 5.2 **Buyer Take Obligation:** Subject to clause 7.4, during any Supply Day, Buyer must take delivery (by obtaining an Approved Nomination to transport that gas or reselling that gas) at the TH Receipt Point of a quantity of Gas equal to the Agreed Quantity for that Supply Day.
- 5.3 **Transport and allocation arrangements:** Each Party will ensure that it has in place, and complies with, the necessary arrangements for the delivery of the Agreed Quantity of Gas to the TH Delivery Point and for the transportation of the Agreed Quantity of Gas from the TH Receipt Point.

#### 6. MEASUREMENT

- 6.1 **Measurement:** The quantity of Gas delivered under the Agreement will be determined in accordance with:
  - 6.1.1 the MPOC; and/or
  - 6.1.2 the provisions of the Participant Variance Agreement.
- 6.2 **Energy content:** Gas delivered under the Agreement will be sold by energy content measured in GJ.

#### 7. PRICE AND PAYMENT

- 7.1 **Price:** Buyer will pay Seller the Price for each GJ of Gas delivered on each Supply Day, minus, if the Seller is a gas producer (as defined in the Regulations), any levy payable by the Buyer under the Regulations.
- 7.2 **Monthly invoicing:** Seller will send Buyer a Monthly invoice by the 10<sup>th</sup> Day of each Month stating:
  - 7.2.1 the Price payable by Buyer for Gas supplied on each Supply Day during the previous Month, including details of calculation;
  - 7.2.2 any GST payable by Buyer for the previous Month;
  - 7.2.3 any other amount due and payable by Buyer pursuant to the Agreement; and
  - 7.2.4 the total amount due under the invoice.
- 7.3 **Payment:** Buyer must pay Seller's invoices on or before the 20<sup>th</sup> Day of the Month in which the invoice is received, provided that if Seller's invoice is not received by the 10<sup>th</sup> Day of the Month then payment must be made within 10 Days of receipt of the invoice (in either case, the "**Due Date**"). Payment must be made without deduction or set-off and, unless agreed otherwise, be made by direct credit of immediately available funds to Seller's nominated bank account (as notified by Seller to Buyer from time to time).
- 7.4 **Non-payment:** If any amount payable by Buyer under the Agreement is not paid in accordance with clause 7.3, Seller may give not less than 3 Business Days notice of its intention to suspend delivery of Gas until the amount due is paid in full together with interest calculated in accordance with clause 7.6.
- 7.5 **Disputed invoices:** If Buyer disputes all or any part of any invoice, then Buyer must by the Due Date:

- 7.5.1 pay the amount not in dispute; and
- 7.5.2 Notify Seller of the dispute, including the grounds of dispute, with full supporting details; and
- 7.5.3 refer the dispute for resolution in accordance with clause 15 of the Agreement.
- 7.6 **Default interest payable to Seller:** Without prejudice to Seller's other rights and remedies, if any amount payable by Buyer under the Agreement is not paid by Buyer on or before the Due Date, Buyer shall pay interest on that amount from (but excluding) the Due Date to (and including) the date of actual payment (such payment to include all accrued interest). Interest shall accrue and be calculated Daily at the Bill Rate plus 3% per annum and be compounded Monthly.
- 7.7 **Default interest payable to Buyer:** Without prejudice to Buyer's other rights and remedies, if:
  - 7.7.1 any amount payable by Seller under the Agreement is not paid by Seller on or before the date the amount was due to be paid by Seller plus any applicable remedy period; or
  - 7.7.2 Buyer disputes an invoiced amount in accordance with clause 7.5 and it is agreed or determined that Buyer is due a refund, then Seller shall pay interest on the amount to be paid or refunded by Seller from (but excluding) the date the amount was determined as being payable by Seller (except that in respect of an amount referred to in clause 7.7.2, the Due Date shall be the date that Buyer overpaid) to (and including) the date of actual payment (such payment to include all accrued interest). Interest shall accrue and be calculated Daily at the Bill Rate plus 3% per annum and be compounded Monthly.
- 7.8 **Business Day:** If any monies fall due for payment on a Day that is not a Business Day, the Due Date will be the preceding Business Day.
- 7.9 **Maintenance of Records:** Both Seller and Buyer must prepare, and maintain for a period of not less than 7 years, proper books, records and inventories of all matters pertaining to the Agreement.

## 8. TAXES

- 8.1 **Goods and Services Tax:** All dollar amounts provided for in the Agreement are before the addition of GST. In addition to any payments specified or determined pursuant to the Agreement, each Party shall pay to the other an amount equal to any GST for which such other Party is liable in respect of the relevant payment. The GST amount will be due and payable at the same time as the payment in respect of which it is levied is due. All invoices provided under the Agreement are to comply with the Goods and Services Tax Act 1985.
- 8.2 **Other taxes and charges:** Except as provided in clauses 7.1 and 8.1, the Price for the Gas is inclusive of all taxes, levies, imposts or duties imposed on Seller by any Authority, including any amount payable under the Energy Resources Levy Act 1976.
- 8.3 **Carbon Charges:** Subject to clause 8.4, the Price for Gas is inclusive of all Carbon Charges that are or may be imposed on the Seller in relation to the Gas.
- 8.4 **ETS Obligations:** Where:
  - 8.4.1 Seller is an ETS Participant (for activities listed in Part 3 of Schedule 3 of the CCRA) in respect of the Gas being sold under this Agreement); and
  - 8.4.2 Buyer is an ETS Participant (for the purchase of natural gas as provided for under Part 4 of Schedule 4 of the CCRA), such that Buyer will be liable to surrender units under the CCRA in respect of the Gas; and
  - 8.4.3 Seller and Buyer will negotiate in good faith to agree a reduction in the Price (or an alternate mechanism to otherwise compensate Buyer) to reflect the fact that Buyer, rather than Seller will be liable to surrender units under the CCRA in respect of the Gas (but failing agreement this Agreement will apply without modification, and clause 15 will not apply to any failure to reach agreement).

## 9. LIABILITY AND INDEMNITY

- 9.1 **No liability for indirect loss:** Neither Party (in this clause, called the "defaulting Party") will (subject to clause 9.2) be liable to the other Party for:
- 9.1.1 any consequential, indirect or special loss or damage, loss of profits, loss of revenue, loss of business or anticipated savings suffered or incurred by that other Party as a result of or arising out of the Agreement, whether or not the loss or damage ought to have been known by the defaulting Party;
  - 9.1.2 any claims by third parties that are payable by that other Party as a result of any default by the defaulting Party under or in connection with the Agreement, and any costs or expenses in connection therewith.
- 9.2 **Wilful default:** Clause 9.1 shall not apply to any event or breach caused by the wilful default or fraud of either Party.
- 9.3 **Delivery failure:** If Seller fails to deliver or comply with any of its obligations under this Agreement in respect of all or any part of an Agreed Quantity, the provisions of the Participant Variance Agreement will be used in the first instance to settle any difference between Seller's Approved Nomination and Net TQ on a given Transmission Day. Any quantity of gas that has been sold to Seller at TH Delivery under the Participant Variance Agreement is deemed to have been Delivered by Seller under this Agreement. For any remaining shortfall between the amount of Gas Delivered and Agreed Quantity, Seller will pay to Buyer 50% of the price per gigajoule of Gas specified in the Contract Notice.
- 9.4 **No Right to Gas:** Buyer has no right to any Gas:
- 9.4.1 Delivered by Seller on a Day but not taken by Buyer on that Day; or
  - 9.4.2 not Delivered or deemed to have been Delivered by Seller,
- or for any compensation other than as specifically provided for in the Agreement or the Participant Variance Agreement.
- 9.5 **Exclusion of Consumer Guarantees Act:** The provisions of the Consumer Guarantees Act 1993 shall not apply to the supply of Gas under the Agreement.

## 10. ALTERNATE TRADING POINT

- 10.1 If a Party's participation in the New Zealand Gas Exchange is terminated under the Rules:
- 10.1.1 that Party is required to Notify the other Party; and
  - 10.1.2 both Parties are required to negotiate in good faith to seek to agree an alternative Welded Point at which to Deliver Gas to and uplift Gas from and any adjustment to the Price to reflect change in the transportation charges under MPOC.
- 10.2 If the parties are unable to agree on an alternate trading point prior to the Supply Commencement Date, then the Agreement will cease to be of effect.

## 11. FORCE MAJEURE

- 11.1 **Effect of Force Majeure Event:** Subject to clause 11.3, if as a result of a Force Majeure Event, any Party fails to perform any of its obligations under the Agreement, then the relevant Party will be relieved from liability under the Agreement (but for the avoidance of doubt will not be relieved from any obligations or liability under the Rules or Participant Variance Agreement) to the extent that, on account of the Force Majeure Event, it cannot meet such obligations under the Agreement.
- 11.2 **Limitation on relief:** A Party will not be relieved from liability to pay money due at the time of the Force Majeure Event or to give any notice which may be required to be given under the Agreement.
- 11.3 **Claiming relief:** If a Party seeks relief under clause 11.1, that Party must, upon the occurrence of the Force Majeure Event:



- 11.3.1 as soon as reasonably practicable, but in any event within 48 hours, Notify the other Party of the Force Majeure Event and as soon as reasonably practicable thereafter provide the other Party with full particulars of the Force Majeure Event, its cause and an estimate of the period of time required to remedy it;
- 11.3.2 except where the Force Majeure Event results from a Gas Contingency, to the extent reasonably practicable, render to the other Party reasonable opportunity and assistance to examine and investigate the Force Majeure Event and the matters which caused or gave rise to it;
- 11.3.3 except where the Force Majeure Event results from a Gas Contingency, as soon as reasonably practicable, take all reasonable steps to rectify, remedy or mitigate the Force Majeure Event so as to minimise the effects of the Force Majeure Event (provided that this shall not require a Party to settle a strike, lock-out or other labour dispute on terms that are not acceptable to it as being contrary to its commercial interests) and the other Party shall use all reasonable endeavours to assist; and
- 11.3.4 Notify as soon as reasonably practicable, but in any event within 48 hours, the other Party of termination of the Force Majeure Event.

## 12. ASSIGNMENT

- 12.1 **Assignment to Third Parties:** No Party may assign the whole or any part of its rights or interests under the Agreement unless it has obtained the prior written consent of the other Party, such consent not to be unreasonably withheld.

## 13. TERMINATION

- 13.1 **Termination:** The Agreement may be terminated:

- 13.1.1 by Seller, if Seller has suspended delivery of Gas under clause 7.4 and, within 3 Business Days of giving notice to Buyer that the amount outstanding (or any part of it) has not been paid, the amount (together with all interest payable under clause 7.7) remains unpaid;
- 13.1.2 by Buyer, if Seller fails to deliver the Agreed Quantity on any Supply Day (other than by reason of a Force Majeure Event);
- 13.1.3 by either Party, if the other Party defaults in the performance of any other obligation under the Agreement and, where that default is capable of remedy, fails to remedy that default (to the reasonable satisfaction of the first Party) within 10 Business Days of receipt of notice requiring remedy of default; or
- 13.1.4 by either Party, if a resolution is passed or any proceedings are commenced for the liquidation of the other Party (except for the purposes of solvent reconstruction or amalgamation), the other Party is placed in liquidation, the other Party makes, enters into or endeavours to make or enter into any composition, assignment or other arrangement with or for the benefit of its creditors, or any event analogous to the events described above occurs to the other Party.

- 13.2 **Effect of termination:** Termination (for any reason) will not affect any obligations or claims already accrued under the Agreement.

- 13.3 **No other right to terminate:** Neither Party is entitled to terminate or cancel the Agreement, except as expressly provided in the Agreement, and section 7 of the Contractual Remedies Act 1979 will have effect subject to this clause.



## 14. CONFIDENTIALITY

**14.1 Obligation of confidentiality:** Each Party shall keep confidential the terms of the Agreement (excluding these Standard Terms) and any information directly or indirectly obtained from the other Party under or in connection with the Agreement, except:

14.1.1 as required by:

- (a) law; or
- (b) the Rules; or
- (c) any listing rules by which a Party is bound; or
- (d) the Participant Variance Agreement; or

14.1.2 as reasonably agreed by the Parties.

14.2 Nothing in this clause shall prevent the Parties announcing that they have entered into the Agreement.

## 15. DISPUTE RESOLUTION

**15.1 Dispute resolution process:** If either Party believes that there is a dispute between the Parties concerning the Agreement, that Party will give written notice to the other Party setting out details of the dispute (the "Dispute Notice"). If a Dispute Notice is given the following process will apply:

15.1.1 The Parties will nominate and direct an appropriate person from within their organisation to use reasonable endeavours to resolve the dispute within 20 Business Days of the date of the Dispute Notice;

15.1.2 If the dispute is not resolved under clause 15.1.1 above, the Parties may agree to refer the dispute to an independent expert agreed by the Parties; or

15.1.3 If the Parties do not agree to refer the dispute to an independent expert within 30 Business Days of the date of the Dispute Notice, the dispute must be referred to a sole arbitrator under the Arbitration Act 1996. If the Parties are unable to agree on an arbitrator within 40 Business Days of the date of the Dispute Notice, such arbitrator is to be appointed by the President for the time being of the New Zealand Law Society or his or her nominee.

A decision of the independent expert and arbitrator is binding on the parties.

15.2 This clause 15 does not in any way affect a Party's right to apply for injunctive relief from a court.

## 16. NOTICES

**16.1 Notices:** Every notice or other communication required to be given under, or in connection with, the Agreement shall be given in writing to the addresses nominated in the Register of Participants by:

16.1.1 personal or courier delivery, and shall be deemed to be given at the time of delivery; or

16.1.2 facsimile transmission, and shall be deemed to be given at the time specified on the facsimile transmission report that evidences full transmission, free of errors; or

16.1.3 except for notices given under clauses 13 and 15, by email, and shall be deemed to be given at the time of sending, provided that the sender has not received a transmission error notification.

**16.2 Notices provided outside of working hours:** Any notice that is not related to a notification of a curtailed Approved Nomination at the Trading Hub and is given after 5:00pm or on a day which is not a Business Day, shall be deemed to be given at 9:00 am on the next Business Day.

**16.3 Notice Agent:** Any notice given by a Party that is more than one person must be signed by all persons comprising that Party, unless that Party has appointed an agent for the giving and receiving of notices

and advised the other Party of such appointment. If any such agent is appointed, the giving and receiving of notice will be as agreed between the Parties and the agent.

## **17. WARRANTIES**

**17.1 Warranties:** Buyer and Seller each represents and warrants in favour of the other that:

- 17.1.1 it is a duly established entity having the power and right to carry on business in New Zealand;
- 17.1.2 it has the legal capacity and power to enter into the Agreement and perform its obligations under the Agreement; and
- 17.1.3 the Agreement creates obligations that are legally binding on it and enforceable against it.

## **18. RELATIONSHIP BETWEEN THE PARTIES**

Nothing in the Agreement shall create, constitute or evidence any partnership, joint venture or agency between the Seller and the Buyer, and neither the Seller or the Buyer shall make, or allow to be made, any representation that any such relationship exists between the Seller and the Buyer. Neither the Seller nor the Buyer shall have any authority to act for, or to incur any obligation on behalf of, the other, except as expressly provided in the Agreement.

## **19. ENTIRE AGREEMENT**

The Agreement constitutes the entire agreement, understanding and arrangement (express and implied) between the Parties relating to the subject matter of the Agreement and supersedes and cancels any previous agreement, understanding, representation and arrangement relating thereto, whether written or oral.

## **20. AMENDMENT**

The Agreement may only be amended, supplemented or novated by instrument in writing signed by the Parties.

## **21. GOVERNING LAW AND JURISDICTION**

The Agreement is governed by the laws of New Zealand and the Parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

## **22. EXCLUSION OF IMPLIED TERMS**

All terms and conditions (including warranties, guarantees and other assurances) relating to the Agreement and the Gas that are implied by law or custom are excluded to the maximum extent permitted by law.

## **23. WAIVER**

Any delay, failure or forbearance by a Party to exercise (in whole or in part) any right, power or remedy under, or in connection with, the Agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of the Agreement shall not be effective unless that waiver is in writing and signed by the Party by whom it is given. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

## **24. SURVIVAL**

24.1 Clauses 7 - 9 and 14 - 25 shall survive termination of the Agreement.

24.2 The provisions of the Agreement and any act, matter or thing done in connection with the Agreement, or in connection with any other agreement, instrument, document, judgment or order of any court, or in connection with the expiry or earlier termination of the Agreement, shall not operate as a merger of any of the rights, powers or remedies of any of the Parties under, or in connection with, the Agreement or at law, and those rights, powers and remedies shall survive and continue in full force and effect to the extent that they are unfulfilled or are not exhausted.

## **25. SEVERABILITY**

If any provision of the Agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from the Agreement and shall not affect the enforceability, legality, validity or application of any other provision of the Agreement.