

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

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

Adjusted Agreed Quantity means for a Supply Day, the Agreed Quantity for that Supply Day decreased by the amount of any part of an Agreed Quantity of Gas that is not delivered on that Day due to any reason other than default or breach of the Agreement by Seller;

Adjusted Maximum Available Quantity means for Supply Days, the Maximum Available Quantity for that Supply Day decreased in the same proportion as the Adjusted Agreed Quantity to the Agreed Quantity;

Agreed Quantity means for any given Supply Day the quantity of Gas specified as the "Agreed Quantity" for that Supply Day in accordance with Item 7 of the Schedule;

Agreement means the binding legal agreement for the sale and purchase of Gas between Buyer and Seller, comprising the GSA and incorporating these Standard Terms (as may be varied from time to time by Buyer and Seller in accordance with clause 20);

Agreement Date means the date of the GSA;

Available Quantity means, for any given Supply Day the quantity of Gas that Seller makes available to Buyer for purchase by Buyer in accordance with clause 4;

Buyer means the Party named as "Buyer" in Item 2 of the Schedule and includes its successors and permitted assigns;

Deliver means to make available at the Delivery Point and "delivered" has a corresponding meaning;

Delivery Point means the point at which Gas is delivered by Seller to Buyer, as specified in Item 6 of the Schedule;

Distribution Network has the same meaning as distribution system in Section 2(1) of the Gas Act 1992;

Force Majeure Event means an event or circumstance beyond the reasonable control of a Party, which results in or causes a failure by a Party in the performance of any obligations imposed on it by this Agreement notwithstanding the exercise by such Party of reasonable care and subject to the foregoing shall include any such event or circumstance which may cause the Industry Contingency Plan to be invoked and includes an MPOC Event;

GSA means the "Gas Supply Agreement (incorporating Wholesale Market Standard Terms: Version 2007-1)" executed by Buyer and Seller;

Maximum Available Quantity means the maximum amount of Gas specified in Item 7 of the Schedule for which Buyer is able to nominate;

Minimum Available Quantity means the minimum amount of Gas specified in Item 7 of the Schedule for which Buyer is able to nominate;

Minimum Daily Take means an amount of Gas specified in Item 7 of the Schedule of which Buyer is required to take delivery and pay for, or, if Buyer is unable to take delivery, pay for, on any given Supply Day;

MPOC means the Maui Pipeline Operating Code as amended from time to time and available on www.mauipipeline.co.nz;

MPOC Approved Nomination means an Approved Nomination as defined in the MPOC;

MPOC Event means

- a) a curtailment under the MPOC of an MPOC Approved Nomination at the Delivery Point (including, without limitation, by way of interruptions or reductions under section 15 of the MPOC) other than as a result of the default or negligence of Seller; or
- b) a failure by a Welded Party (other than Buyer or Seller) to confirm the Agreed Quantity at the Delivery Point under section 9 of MPOC;

other than as a result of the default or negligence of the Buyer or Seller.

Nominated Quantity means for any Supply Day the quantity of gas that Buyer nominates under clause 4.1 for delivery to Buyer at the Delivery Point in accordance with the Agreement;

Notify means to notify in writing in accordance with clause 15;

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

Price means the Gas Price as specified in Item 8 of the Schedule;

Schedule means the schedule attached to the GSA;

Seller means the Party named as "Seller" in Item 1 of the Schedule and includes its successors and permitted assigns;

Standard Terms means this document;

Supply Commencement Date means the date named as the "Supply Commencement Date" in Item 3 of the Schedule, 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 (or to make Gas available to Buyer for nomination), as specified in Item 5 of the Schedule;

Supply End Date means the date named as the "Supply End Date" in Item 4 of the Schedule, being the last date on which gas will be delivered, or made available for nomination, under the Agreement;

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

Transmission Network has the same meaning as Pipeline in the MPOC.

1.1.1 The following terms have the same meaning as they are defined in clause 1.1 of the MPOC:

- Bill Rate
- Business Day
- Day
- Gas
- Gas Specification
- GJ
- Industry Contingency Plan
- Maui Pipeline
- Month
- Week
- Welded Party

1.2 Interpretation: In the Agreement unless the context indicates otherwise:

1.2.1 Gender: words importing one gender include the other genders;

1.2.2 Headings: section, clause and other headings are for ease of reference only and will not affect the Agreement's interpretation;

1.2.3 Negative Obligations: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

1.2.4 Persons: 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;

1.2.5 Plural and Singular: words importing the singular number include the plural and vice versa;

1.2.6 Sections, Clauses and Schedules: references to sections, clauses and a Schedule are references to the Agreement's sections, clauses and Schedule;

1.2.7 Statutes and Regulations: references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it; and

1.2.8 Currency Rounding: 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 Seller is a permit holder and the Agreement is one to which section 41(2) of the Crown Minerals Act applies:

2.1.1 Subject to Ministerial Consent: the Agreement is subject to, by way of a condition subsequent, such Ministerial Consent;

2.1.2 Application: Seller will make an application for Ministerial Consent as soon as is reasonably practicable after the Agreement Date, and both Parties will do such things as may be reasonably required to facilitate such application, and to obtain Ministerial Consent (subject to clause 2.1.3); and

2.1.3 Conditional Consent: if Ministerial Consent is proposed to be given subject to any conditions:

(a) each Party will, as soon as is practicable, notify the other whether such conditions are acceptable (insofar as they are relevant to that Party);

(b) neither Party shall be required to accept any condition, provided that the Parties shall act in good faith in determining whether any condition is acceptable; and

2.1.4 Consent not obtained: if Ministerial Consent is declined or is not obtained (on conditions acceptable to the Parties), the Agreement will terminate (subject to any agreement to the contrary by the Parties) and clause 12.3 will apply accordingly and the Parties agree that, as between the Parties, this Agreement shall be valid and binding in respect of the period from the date of this Agreement to the date on which the consent application is declined or the consent not obtained on conditions acceptable to the Parties (as the case may be).

3. TITLE AND RISK

3.1 Seller Warranty: Seller warrants in favour of Buyer that:

3.1.1 Right to sell: Seller has the right to sell the Gas to Buyer; and

3.1.2 Clear title: 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 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 Buyer nomination: Where a Maximum Available Quantity and Minimum Available Quantity are specified in Item 7 of the Schedule, Buyer must notify Seller of the Nominated Quantity for each Supply Day in accordance with the limits specified in the Schedule.

4.2 Variations: Buyer has no right to vary Nominated Quantity, except pursuant to any agreement between Buyer and Seller. Seller and Buyer may vary an Agreed Quantity at any time, by agreement in writing.

4.3 Agreed Quantity: Each Nominated Quantity will be deemed to be the Agreed Quantity for the relevant Supply Day.

4.4 Good faith: All nominations and confirmations, and requests for, and consideration of, variations under the Agreement will be made in good faith.

5. DELIVERY

5.1 Seller Delivery Obligation: Subject to clause 7.4, during each Supply Day Seller will deliver to the Delivery Point a quantity of Gas equal to the Agreed Quantity for that Supply Day.

5.2 Buyer Take Obligation: During any Supply Day, but subject to Seller fulfilling its obligations under clause 5.1, Buyer must take delivery, at the Delivery 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:

5.3.1 It has in place, and complies with, the necessary arrangements for the delivery of Gas to, and the transportation of Gas from, the Delivery Point;

5.3.2 It complies with the allocation arrangements that are in place from time to time at the Delivery Point.

6. MEASUREMENT

6.1 Measurement: The quantity of Gas delivered under the Agreement will be determined by:

6.1.1 MPOC: in accordance with the MPOC where the Delivery Point is a point on the Maui Pipeline; and/or

6.1.2 Allocation arrangements: in accordance with the allocation arrangements in place from time to time at the Delivery Point.

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 Gas delivered on each Supply Day calculated in accordance with Item 8 in the Schedule.

7.2 Monthly invoicing: Seller will send Buyer a Monthly invoice by the 10th 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, including any amounts specified in Item 8 of the schedule; and

7.2.4 the total amount due under the invoice.

7.3 Payment: Buyer must pay Seller's invoices on or before the 20th Day of the Month in which the invoice is received, provided that if Seller's invoice is not received by the 10th 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 the Buyer under the Agreement is not paid in accordance with clause 7.3 (time being of the essence), the 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 14 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 paid by Buyer 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.

8.2 Other taxes and charges: All other taxes and charges are payable as specified in Item 8 in the Schedule.

9. LIABILITY AND INDEMNITY

9.1 No liability for indirect loss: Neither Party (in this clause, called the "defaulting Party") will be liable to the other Party for:

9.1.1 Indirect loss: 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 Third party claims: any claims by third parties which 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 Maximum Liability: The maximum liability of either Party to the other Party under or in connection with the Agreement (whether in contract, tort (including negligence), breach of statutory duty, equity or otherwise) is:

9.2.1 Single Breach: in respect of any single event or breach (or any related series of events or breaches), the amount specified in Item 12 in the Schedule:

9.2.2 All breaches: in respect of all such events or breaches occurring during the Supply Period, the amount specified in Item 12 of the Schedule:

provided that these limits do not apply to any payments due and owing under the Agreement.

9.3 Wilful default: None of clauses 9.1 or 9.2 apply to any event or breach caused by the wilful default of either Party.

9.4 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 then, subject to clause 9.2, Seller will pay to Buyer the amounts specified in Item 12 in the Schedule for each Day on which such failure occurs.

9.5 No Right to Gas: Buyer has no right to any Gas:

9.5.1 Not taken: delivered by Seller on a Day but not taken by Buyer on that Day; or

9.5.2 Not delivered: not delivered by Seller;

or for any compensation other than as specifically provided for in the Agreement.

9.6 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. FORCE MAJEURE

10.1 Effect of Force Majeure Event: Subject to clauses 10.3 or 10.4, 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 to the extent that, on account of the Force Majeure Event, it cannot meet such obligations under the Agreement.

10.2 Ongoing Force Majeure Event: If a Force Majeure Event continues for longer than the period specified in Item 10 of the Schedule after a Party first gives notice under clause 10.4.1, the other Party may at any time thereafter, and for so long as notice has not been given under clause 10.4.4, terminate the Agreement by notice to the other Party.

10.3 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.

10.4 Claiming relief: If a Party seeks relief under clause 10.1 that Party must, upon the occurrence of the Force Majeure Event:

10.4.1 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;

10.4.2 except where the Force Majeure Event results from an MPOC Event, 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;

10.4.3 except where the Force Majeure Event results from an MPOC Event, 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

10.4.4 notify as soon as reasonably practicable, but in any event within 48 hours, the other Party of termination of the Force Majeure Event.

11. ASSIGNMENT

11.1 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.

12. TERMINATION

12.1 Termination Date: The Agreement terminates on the date specified in Item 11 in the Schedule.

12.2 Termination: The Agreement may be terminated prior the Termination Date:

12.2.1 Non-payment: 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;

12.2.2 Non-delivery: by Buyer if Seller fails to deliver the Agreed Quantity on at least the number of Supply Days specified in Item 11 of the Schedule (other than by reason of a Force Majeure Event);

12.2.3 Breach: 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 reasonable satisfaction within 10 Business Days of receipt of notice requiring remedy of default;

12.2.4 Financial failure: 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.

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

12.4 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.

13. CONFIDENTIALITY

13.1 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 as required by law, any listing rules by which a Party is bound or reasonably agreed by the Parties. Nothing in this clause shall prevent the Parties announcing that they have entered into the Agreement.

14. DISPUTE RESOLUTION

14.1 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:

14.1.1 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;

14.1.2 if the dispute is not resolved under clause 14.1.1 above, the Parties may agree to refer the dispute to an independent expert agreed by the Parties;

14.1.3 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 to be appointed by the President for the time being of the New Zealand Law Society or his or her nominee.

14.2 This clause 14 does not in any way affect a Party's right to apply for injunctive relief from the Court.

15. NOTICES

15.1 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 specified in Item 9 of the Schedule by:

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

15.1.2 Facsimile: 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

15.1.3 Email: except for notices given under clauses 12 and 14, 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.

15.2 Notices provided outside of working hours: any notice 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.

15.3 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.

16. WARRANTIES

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

16.1.1 Duly established: it is a duly established entity having the power and right to carry on business in New Zealand;

16.1.2 Legal capacity: it has the legal capacity and power to enter into the Agreement and perform its obligations under the Agreement; and

16.1.3 Binding Agreement: the Agreement creates obligations that are legally binding on it and enforceable against it.

17. 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.

18. 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.

19. AMENDMENT

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

20. 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.

21. 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.

22. 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.

23. SURVIVAL

23.1 Clauses 7-10, 12-14, and 16-25 shall survive termination of the Agreement.

23.2 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.

24. 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.

25. COUNTERPART EXECUTION

The Agreement may be executed in any number of counterparts (including facsimile copies) and provided that each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the Parties.