

WINGAS UK General Terms & Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (except as otherwise stated):

Affiliate means in respect of a Party any company which is a holding company of that Party and any other subsidiary of such holding company. The expressions "**holding company**" and "**subsidiary**" shall have the meanings specified by Section 736 of the Companies Act 1985;

Annual means a continuous period of 12 Months;

Contract Quantity means for each Contract Year and each Site the Annual, Monthly and Daily Quantity of Gas specified in the table headed Contract Quantity in Part C of the Special Terms and Conditions. The Contract Quantity including the annual, Monthly and Daily Quantities will be amended from time to time as set out in Part C of the Special Terms and Conditions;

Annual Transporter Quantity means the Quantity of Gas which the Transporter estimates the Customer will require in any Contract Year as specified in Part C "Supply Schedule" of the Special Terms and Conditions;

Business Day means any calendar day other than a Saturday, a Sunday or a bank holiday in England and Wales;

Contract Year means a period during the Supply Period, commencing at 0600 hours on the Supply Start Date and ending at 0600 hours on the earlier of the (i) Supply End Date; and (ii) Termination Date;

Credit Support means the Credit Support to be provided by the Customer to WINGAS UK in the form set out on Clause 8 of these General Terms and Conditions and Part D of the of the Special Terms and Conditions and may be the Initial Credit Support or Additional Credit Support;

Due Date means the due date for payment of any sum under this Agreement and unless expressly stated otherwise shall be the date of the invoice;

Emergency Information means the telephone and fax numbers of persons who are contactable in an emergency at a Site. If the Site is manned for twenty-four (24) hours a Day, the Customer must provide WINGAS UK with the contact details of one person and if the Site is not manned for twenty-four (24) hours a Day the contact details of three persons;

Event of Force Majeure has the meaning given to it in the relevant transportation agreement between a Transporter and WINGAS UK for the delivery of Gas to a Site;

Gas Act means the Gas Act 1986;

General Terms and Conditions means these general terms and Conditions which together with the Special Terms and Conditions signed by the Parties form part of this agreement;

ICIS Heren Month Ahead means the offer price listed in the table labelled "NBP Price Assessment" on page 2 of the ICIS Heren NBP report;

Maximum Quantities means the Quantity of Gas (if any) specified as such for a Site in Part C of the Special Terms and Conditions;

Meter Service Provider means the person who or company which is responsible for the installation, reading and maintenance of the metering equipment at a Site;

Minimum Quantities means those Quantities of Gas (if any) specified as such in Part C of the Special Terms and Conditions;

Month means a period commencing at 0600 hours on the first day of any calendar month and ending at 0600 hours on the first day of the following calendar month and **Monthly** shall be construed accordingly;

Network Code means the Uniform Network Code published by the Joint Office of Gas Transporters and any other Network Code operated by a Gas Transporter;

Out of Contract Price means the Price payable by the Customer for Gas taken by it after the Supply End Date or the Termination Date, whatever is earlier, which shall be calculated for:

(i) DM Sites on a Daily basis being:

(1) the product of the Quantities of Gas delivered to the Customer that Day multiplied by the higher of the (a) Price; and (b) System Marginal Buy Price for that Day; plus

(2) the product of the DM Sites Margin as specified in the Special Terms and Conditions under Out of Contract Margin multiplied by the Quantities of Gas delivered to the Customer that Day; plus

(3) all charges payable by WINGAS UK to the Transporter in respect of the Gas delivered that Day; and

(ii) NDM Sites, on a Monthly basis being:

(1) the product of the Quantity of Gas delivered to the Customer that month multiplied by the higher of the (a) Price; and (b) average of the System Marginal Buy Price on those days on which Gas was consumed; plus

(2) the product of the NDM Sites Margin as specified in the Special Terms and Conditions under Out of Contract Margin multiplied by the Quantity of Gas delivered to the Customer that month; plus

(3) all charges payable by WINGAS UK to the Transporter in respect of the Gas delivered that month;

Party means a party to this Agreement;

Pass Through when describing either transportation or metering charges or both shall mean that the charges for transportation and/or metering charged to the Customer by WINGAS UK shall be the amount charged to WINGAS UK by the Transporter and meter service provider for the relevant transportation and/or metering service and shall be subject to revision by increase or decrease by an amount equal to any revision in the relevant charges to WINGAS UK;

Payment Days means the number of calendar days shown in the Special Terms and Conditions;

Price means the price payable for the purchase of Gas specified in Part B of the Special Terms and Conditions;

Price Fix, Price Unfix and any cognate form means a transaction made between WINGAS UK and the Customer pursuant to paragraph 2 of the definition of Commodity Charge in Part B of the Special Terms and Conditions;

Quantities Delivered means in relation to a Site the amount of Gas expressed in kWh delivered to the Customer at that Site, as calculated in accordance with the Network Code;

Site means the site specified in Part C of the Special Terms and Conditions at which WINGAS UK will deliver Gas to the Customer;

Special Terms and Conditions means the Special Terms and Conditions signed by the Parties which form part of this Agreement;

Supply End Date means the date specified in Part A of the Special Terms and Conditions for the cessation of the supply of Gas under this Agreement;

Supply Period means the period from 0600 hours on the Supply Start Date until 0600 hours on the earlier of the Supply End Date and the Termination Date;

Supply Start Date means the date specified in Part A of the Special Terms and Conditions for the commencement of the supply of Gas under this Agreement or such other date as is notified by WINGAS UK;

Termination Date means the date described hereunder in Clause 12;

Transporter means any person holding a Gas transporter licence under the Gas Act with whom WINGAS UK has a contract for the transportation of Gas to the Customer and

WINGAS UK Account means the bank account specified as such in Part A of the Special Terms and Conditions.

- 1.2 Capitalised terms not defined in this Agreement shall have the meanings given to them in the Network Code.
- 1.3 All references to Clauses and sub-Clauses shall, unless otherwise stated, be references to Clauses and sub-Clauses of these General Terms and Conditions.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 References to any document or enactment shall be to that document or enactment as modified, amended, replaced or re-enacted from time to time and shall also include a reference to any subordinate legislation made under that enactment.
- 1.6 References to a person shall include a reference to that person's successors or assigns.
- 1.7 A reference to a person shall include a reference to a firm, a body corporate, an unincorporated association or a partnership.
- 1.8 If a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day.
- 1.9 A reference to "in writing" shall include any modes of reproducing words in any legible form.
- 1.10 A reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation".
- 1.11 In the event of a conflict between the Special Terms and Conditions and the General Terms and Conditions, the Special Terms and Conditions shall prevail.

2. SALE AND PURCHASE

- 2.1 The Customer agrees to purchase all of its Gas for use at the Site from WINGAS UK on the terms of this Agreement.
- 2.2 WINGAS UK will make the Annual, Monthly and Daily Quantities of Gas set out in the table headed Contract Quantity in Part C of the Special Terms And Conditions available to the Site at the Supply Meter Point for the Supply Period.
- 2.3 The obligation of WINGAS UK to make Gas available is conditional on:
 - (i) the Customer having provided to WINGAS UK the Emergency Information, the Credit Support and a valid direct debit mandate no later than twenty (20) Business Days before the Supply Start Date;
 - (ii) the Site being registered with the Transporter, and all other requirements of, the Transporter being met, prior to the Supply Start Date and
 - (iii) in the case of DM Sites only, the installation of properly working daily meter reading equipment .
- 2.4 The Customer warrants to WINGAS UK that:
 - (i) it is the owner and/or occupier of the Site;
 - (ii) there are no grounds for an objection to the supply of Gas under this Agreement to be lodged with any Transporter;
 - (iii) it has the power and authority to permit, grant and provide the matters referred to in Clause 9 (*Equipment*) and
 - (iv) Gas supplied under this Agreement is to be used wholly or mainly for non-domestic purposes.The warranties in this Clause 2.4 shall be deemed to be repeated on each Day of the Supply Period. WINGAS UK may terminate this Agreement with immediate effect if the Customer is in breach of this Clause 2.4.

3. CONSUMPTION

- 3.1 The Customer shall not, without the prior written consent of WINGAS UK, offtake at any Site in any Contract Year, Month or on any Day of the Supply Period a Quantity of Gas greater than the Quantities set out in the table headed Contract Quantity in Part C of the Special Terms and Conditions.
- 3.2 The Customer shall not, without the prior written consent of WINGAS UK, offtake at any Site (i) during a Gas Year a Quantity of Gas greater than the Annual Transporter Quantity and (ii) during a Day a Quantity of Gas greater than the Maximum Daily Consumption both as set out in Part C of the Special Terms and Conditions.
- 3.3 If the Customer breaches either or both of Clauses 3.1 and 3.2 the Customer shall pay to WINGAS UK the following amounts:
 - (i) in the case of a breach of Clause 3.1, the product of the Quantity of Gas delivered to the Customer in excess of the Quantities set out in the table headed Contract Quantity in Part C of the Special Terms and Conditions on each relevant Day multiplied by the Price calculated using for the commodity charge element the section entitled "Commodity for Quantities in excess of the contracted quantities";
 - (ii) in the case of a breach of Clause 3.2 all charges payable by WINGAS UK to the Transporter (including any ratchet charges).
- 3.4 If the Customer breaches Clause 3.1 or 3.2, WINGAS UK may adjust the Contract Quantity and the Annual Transporter Quantity. If WINGAS UK adjusts the Contract Quantity or the Annual Transporter Quantity, it shall be entitled to amend the Price correspondingly to take into consideration any additional market costs and any increased or reduced charges which may become payable to the Transporter.
- 3.5 The Customer shall not, without the prior written consent of WINGAS UK, offtake at any Site in any Contract Year, Month or on any Day of the Supply Period a Quantity of Gas less than the Quantities set out in the table headed Contract Quantity in Part C of the Special Terms and Conditions. If the Customer breaches this Clause 3.5 the Customer shall pay to WINGAS UK an amount equivalent to the product of the shortfall (in kWh) in the Quantity on each relevant Day and the Price calculated using for the commodity charge element the section entitled "Commodity for Contracted Quantities not taken".

4. CHANGES IN CONSUMPTION PROFILE

- 4.1 The Customer shall, as requested by WINGAS UK, throughout the Supply Period, provide WINGAS UK with accurate and timely information in respect of the Customer's offtake of Gas at the Site and shall notify WINGAS UK in advance of any significant forecasted changes in the Gas supply profile, such as the shut down or opening of the Customer's plant. If requested, the Customer shall provide consumption nominations Daily, weekly and Monthly in advance of delivery.
- 4.2 The Customer shall give WINGAS UK at least sixty (60) Business Days' written notice if it proposes to:
- (i) stop taking Gas at any Supply Meter Point; and/or
 - (ii) sell or vacate any Site. In the case of a sale, the notice shall not be valid unless it includes an executed statement from the purchaser acceding to the terms of this Agreement from the date of the sale. Failure to give a valid notice in respect of any such meter(s) will result in this Agreement remaining in effect and the Customer being liable for all its obligations.
- 4.3 The Customer shall pay all of the costs and related charges incurred by WINGAS UK in connection with the isolation of any Supply Meter Point.

5. DELIVERY

- 5.1 Title to and risk in the Gas shall pass to the Customer in respect of a Site at the Supply Meter Point in relation to that Site; or if a network exit agreement is in force with a Transporter in relation to a Site and that agreement identifies the point of offtake for that Site, title to and risk in the Gas shall pass to the Customer at the point so identified.

6. PRICE

- 6.1 The Customer shall pay WINGAS UK the Price for the Quantities Delivered, together with any other payments due under this Agreement.
- 6.2 In addition to the Price, the Customer shall be liable for all United Kingdom taxes, duties, levies or imposts levied on or on account of Gas or on account of the processing, sale, supply or consumption of Gas which are payable:
- (i) by WINGAS UK in respect of the Quantities Delivered; or
 - (ii) by any previous supplier in respect of a Site and reimbursable by WINGAS UK; or
 - (iii) by reference to any other amount payable to WINGAS UK under this Agreement.
- 6.3 In the event that the Customer neglects to make alternative supply arrangements after the Supply End Date causing WINGAS UK to remain as a supplier of Gas to any Site under the Network Code, any Gas taken by the Customer after the Supply End Date shall be paid for at the Out of Contract Price.
- 6.4 WINGAS UK will increase or decrease the Price to take account of any changes in the charges published by the Transporter and/or the Meter Service Provider in relation to a Site and which are payable by WINGAS UK in connection with this Agreement.
- 6.5 The Customer acknowledges that it has the benefit of the Price in the expectation that it would be paid in full for the full Supply Period and that the Price has been calculated on this basis. The Customer agrees that if Gas is no longer to be supplied to a Site or Gas is to be supplied to a Site to be added to Part C of the Special Terms and Conditions, WINGAS UK shall be entitled to revise the Price to reflect the effect of such change in supply and to charge the Customer any continuing charges made by the Transporter and Meter Service.
- 6.6 Commission paid to a broker or a consultant acting as an intermediary may be included within the Price.

7. BILLING AND PAYMENT

- 7.1 WINGAS UK will send to the Customer an invoice in respect of each Month for the provision of its services under this Agreement and the Customer shall pay each such invoice promptly, but not later than the Due Date. The invoice shall include a statement of:
- (i) the Quantities Delivered;
 - (ii) the applicable Price;
 - (iii) any applicable taxes, duties, levies or imposts; and
 - (iv) any other amount owing by the Customer to WINGAS UK pursuant to this Agreement including but not limited to amounts due under Clause 4.3.
- Any payment made by the Customer under the Agreement shall be settled in pounds sterling.
- 7.2 If the Customer disputes in good faith any sum shown on an invoice, the Customer shall, within five (5) days of receiving that invoice, give notice to WINGAS UK of the amount in dispute and the reasons for the dispute. Without prejudice to Clause 8.1, the Customer shall make payment into the WINGAS UK Account on or before the Due Date, subject to manifest errors, of the full amount shown in the invoice, whether disputed or undisputed. Payment shall be by permitting a direct debit and shall only be deemed to be received when all sums due have been received into the WINGAS UK Account in cleared funds.
- 7.3 If payment has not been received by WINGAS UK on or before close of business on the last of the Payment Days counting from the Due Date, WINGAS UK shall be entitled to charge interest at the rate of five percent (5%) per annum above one year LIBOR in pounds sterling compounded daily from that Day until payment is received and may prevent any proposed supplier transfer until payment is received in full.
- 7.4 WINGAS UK shall endeavour to use the information obtained by reading meters where available at the time required and which is, in the opinion of WINGAS UK, accurate. If the information required for charging purposes under this Agreement is not in the possession of WINGAS UK at the appropriate time, WINGAS UK may make such estimates for charging purposes as may be necessary, taking into consideration the Customer's Gas usage before and after the period of estimation, and the Customer shall be obliged to and agrees to pay all invoices drawn up in accordance with such estimates. The Customer may submit its own reading which may be used for charging purposes if it is available at the time required and is, in the opinion of WINGAS UK, accurate and in the event that the Customer is in possession of a relevant read and is requested by WINGAS UK to supply the details it shall promptly respond to any such request. When the required information becomes available following the use of an estimate, appropriate adjustments will be made to the invoice submitted by WINGAS UK after such information becomes available.

8 CREDIT PROVISIONS

- 8.1 The Customer shall maintain the Credit Support in full force and effect for the Supply Period plus two calendar months and if applicable shall procure that the Credit Support is not reduced, repudiated, vitiated or invalidated in any way by the provider of the Credit Support.
- 8.2 The Credit Support required at least two weeks before the Supply Start Date is shown in Part D ("the Initial Credit Support").
- 8.3 During the Supply Period, the Customer shall deliver, and shall procure that the Credit Support provider if other than a bank shall deliver, its most recent (consolidated) annual (group) financial statements to WINGAS UK within 180 days following the end of each of the Customer's financial years, but only to the extent these are not made available at the Customer's or Credit Support provider's website. If requested by WINGAS UK, the Customer shall make available, and shall procure that the Credit Support provider if other than a bank shall make available, the respective most recent unaudited preliminary accounts.
- 8.4 The payment terms set out in this Agreement are based on the assessment by WINGAS UK of the Customer's creditworthiness at the date of the credit assessment. If WINGAS UK (in its sole discretion) reasonably determines that the Customer's creditworthiness or credit risk is materially different than at the date of the assessment or any later re-assessment, then WINGAS UK may serve notice upon the Customer requiring amendment to the terms of this Agreement or a form of Credit Support to be put in place as determined by WINGAS UK. If the Customer fails to implement revisions to the Credit Support (including providing Credit Support where there was previously no requirement or replacing existing Credit Support) within fourteen (14) Days of such notice WINGAS UK reserves the right to apply immediately Prepayment terms and/or WINGAS UK may terminate this Agreement immediately and charge the Commodity element of the Price at Out of Contract Margin. Prepayment means payment of the invoice relevant to a Month before the start of that Month. Without limiting the generality of this Clause 8.4, examples of the circumstances in which WINGAS UK may exercise its rights are:
- (a) The latest annual or other financial report of the Customer or of the Credit Support provider (other than in cases where the Credit Support provider is a bank) leads in the reasonable good faith opinion of WINGAS UK to a material impairment of Customer's creditworthiness; or
 - (b) WINGAS UK receives negative information from a credit insurance company, credit information agency or any other party that leads in the reasonable good faith opinion of WINGAS UK to a material impairment of Customer's creditworthiness; or
 - (c) WINGAS UK's credit insurer informs WINGAS UK that it is reducing the credit limit originally granted for the Customer under its credit insurance agreement with WINGAS UK; or
 - (d) Failure to provide the annual and/or management accounts; or
 - (e) Failure to meet a payment date or delay in a payment beyond the date with effect from which interest payments are incurred (without prejudice to any of WINGAS UK's other rights in such case); or
 - (f) An increase in the Quantity or the Price over the initial expected Quantity or Price to an extent material to the credit requirement; or
 - (g) Any other reason specified in Part D of the Special Terms and Conditions; or
 - (h) One or more of the Credit Rating Agencies downgrades the Credit Support provider so that, at any time while it is providing Credit Support, it no longer satisfies the relevant criterion of clause 8.6 below.
- 8.5 Replacement or (additional) Credit Support to be put in place shall be
- (a) an irrevocable and unconditional bank guarantee which guarantees payment on first demand by waiving the defences of preliminary injunction, avoidance and set-off, or
 - (b) a parent company guarantee which guarantees payment on first demand by waiving the defences of preliminary injunction, avoidance and set-off, or
 - (c) a cash deposit.
- The guaranteed amount shall cover the credit exposure resulting from WINGAS UK's deliveries of Natural Gas (including all components of the Price, applicable tax, and any other payments due under this contract).
- 8.6 The Credit Support provider shall fulfil the following requirements:
- (a) a guaranteeing bank shall have at least a long term Credit Rating by S & P of A-, or by Moody's of A3; if rated by both agencies the lower rating shall apply; or
 - (b) a parent company shall have at least a long term Credit Rating by S & P of BBB-, or by Moody's of Baa3; if rated by both agencies the lower rating shall apply.
- In case the parent company is not rated or the rating is below the above mentioned Credit Rating, WINGAS UK may assess whether the guaranteeing party is acceptable.

9. EQUIPMENT

- 9.1 The Customer shall:
- (i) permit WINGAS UK, the Meter Service Provider and the Transporter and their respective employees and contractors access to the Site for such purposes as are required to carry out any obligations which WINGAS UK, the Meter Service Provider and/or the Transporter has under any statute, regulation, licence, network code or other agreement relative to the supply of gas, or for the purpose of isolating any meter or meters;
 - (ii) on or before the disposal of any part of the Site in which any part of the Transporter's, the Meter Service Provider's or WINGAS UK's equipment is laid or installed, grant or procure the grant to WINGAS UK, the Meter Service Provider and the Transporter of an easement in such form as WINGAS UK, the Meter Service Provider and the Transporter may reasonably require to lay, install, maintain and operate such equipment, or any part of it, and which easement shall contain terms to prevent the Customer, its successors and assigns from doing anything which might unreasonably prevent or impede access to the equipment by WINGAS UK, the Meter Service Provider and/or the Transporter;
 - (iii) provide to WINGAS UK, the Meter Service Provider and/or the Transporter free of charge such land and supplies of power, water and drainage for equipment and areas to such part of the Site as WINGAS UK, the Meter Service Provider and the Transporter may require in order to support inspection, installation and maintenance on the Site; and
 - (iv) protect the land and supplies provided pursuant to Clause 9.1 (iii).
- 9.2 The Customer shall pay all of the costs (including those of any abortive visit which is not at the fault of the Meter Service Provider) which are payable by WINGAS UK to the Transporter and Meter Service Provider in respect of the installation, maintenance and removal of that equipment at the Site which is or has been used in connection with the delivery of Gas to the Customer.

- 9.3 Where, in accordance with the Network Code, a meter is removed for examination the Customer shall pay the expenses incurred in removing, examining and re-installing the meter and installing a substitute meter if the meter is found and agreed by both Parties to register accurately or to register inaccurately to a degree not exceeding that permitted by Section 17 of the Gas Act. The meter shall be deemed to be accurate until the examination has conclusively found the meter to be inaccurate.
- 9.4 The Customer shall take good care of all of the equipment of WINGAS UK, the Meter Service Provider and the Transporter on the Site and shall be responsible for all pipes and apparatus installed for the purposes of the supply of Gas beyond the final outlet of the primary metering installation of WINGAS UK, the Meter Service Provider and/or the Transporter (as appropriate).
- 9.5 Where the Customer fails to provide safe and unobstructed access to a meter installation whether or not such requirement for access was pre-planned, the Customer shall indemnify and keep indemnified WINGAS UK from and against any costs which WINGAS UK may incur from any third party as a result of such access to the meter installation being prevented.
- 9.6 Where the Customer is the meter owner as defined in the Gas Act 1986 as amended the Customer shall throughout the duration of this Agreement have a maintenance contract in force with a party approved by WINGAS UK.
- 9.7 At any time during the Supply Period WINGAS UK may choose to install an automatic meter reading device onto any meter in relation to which WINGAS UK is the Gas supplier.

10. EMERGENCIES

- 10.1 The Emergency Information must be kept up to date by the Customer and procedures must be in place such that at any time the designated contact is available and contactable both by telephone and by facsimile so as to ensure that any notification relating to the Gas supply is acted upon by the Customer promptly and properly. Notices of an emergency take effect at the time they are given and may be given orally or in writing.
- 10.2 The Customer shall contact the Transporter and WINGAS UK immediately in the event of any emergency affecting: (i) the Customer's ability to take supplies of Gas; or (ii) the safety of the equipment of the Customer, Meter Service Provider and/or the Transporter. The Customer shall allow the Transporter's personnel immediate and unconditional access to the Site to ensure the safe operation of the Site and the pipeline system of the Transporter.
- 10.3 The Customer acknowledges that WINGAS UK may be required to:
- (i) disconnect or approve the disconnection of the Site from the Transporter's transportation system; or
 - (ii) cease the supply of Gas to the Site; or
 - (iii) take such other action as required to comply with any requirement of the Network Code, applicable law or regulation.
- 10.4 The Customer agrees that WINGAS UK shall not have any liability to the Customer in respect of any loss or damage, costs or expenses whatsoever and howsoever arising as a result of such disconnection, cessation of supply or such other action. The Customer shall reimburse WINGAS UK in respect of any costs, expenses and charges incurred by WINGAS UK in connection with any such emergency action and/or works carried out by the Transporter in connection with them.

11. LIABILITY

- 11.1 In this Clause 11, gross negligence means the reckless disregard by a party for harmful, avoidable and reasonably foreseeable consequences of its actions. If this Agreement gives rise to any statutory, tortious or contractual liability such liability shall be limited for both Parties to compensation for direct loss or damage caused by the wilful misconduct and/or gross negligence of the other Party or on the part of their statutory representatives as well as their employees or servants. For the avoidance of doubt, any liability shall exclude loss of profit, loss of revenue, or production, or any consequential or indirect losses howsoever and whensoever arising.
- 11.2 Clause 11.1 is without prejudice to any provision of this Agreement which provides for an indemnity or which expressly provides for one Party to make payment to the other (including any Termination Payment).
- 11.3 The amount or amounts for which WINGAS UK may be liable to the Customer in respect of any breach of this Agreement shall not exceed £800,000.
- 11.4 Nothing in this Agreement shall exclude or limit the liability of any Party for death or personal injury resulting from the negligence of such Party.
- 11.5 The rights and remedies of the Parties pursuant to this Agreement exclude, and are in place of, any rights or remedies of any Party in tort (including negligence, nuisance and breach of statutory duty) or misrepresentation in respect of the subject matter of this Agreement, and accordingly, but without prejudice to Clause 11.4, each Party (to the fullest extent permitted by law) waives any rights or remedies and releases the other from any duties or liabilities arising in tort or misrepresentation in respect of the subject matter of this Agreement.
- 11.6 Without prejudice to Clause 11.5, where any provision of this Agreement provides for any amount to be payable by a Party upon or in respect of that Party's breach of this Agreement, each Party agrees and acknowledges that the remedy conferred by such provision is exclusive of and is in substitution for any remedy in damages in respect of such breach or the event or circumstance giving rise thereto.
- 11.7 The Customer agrees to indemnify WINGAS UK for any costs it incurs where notwithstanding any other provision of this Agreement WINGAS UK supplies Gas in accordance with the terms of this Agreement but where such terms are outside the parameters of any other agreement relating to deliveries of Gas to the Site.
- 11.8 Nothing in this Clause 11 shall prevent or restrict any Party from enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.
- 11.9 Each provision of this Clause 11 is to be construed as a separate limitation applying and surviving if, for any reason, one or other of the provisions of this Clause 11 is held inapplicable or unreasonable and shall remain in force notwithstanding the termination of this Agreement.

12. TERM AND TERMINATION

12.1 This Agreement shall take effect on the date of its signature and, subject to this Clause 12, shall end at 0600 on the Supply End Date or, if earlier, in relation to any Site, the date on which a Last Resort Supply Direction given to any other Gas Supplier takes effect. For the avoidance of doubt, WINGAS UK shall have no liability arising from such earlier termination in the event a Last Resort Supply Direction takes effect in relation to a Site.

12.2 WINGAS UK may terminate this Agreement with immediate effect if:

- (i) the Customer fails to perform or comply with any material obligation under this Agreement which is not capable of remedy, and, if it is capable of remedy, it is not remedied to the reasonable satisfaction of WINGAS UK within twenty-one (21) days of the receipt of written notice of its failure and demand for it to be remedied; or
- (ii) the Customer becomes insolvent or goes into liquidation, receivership, administration or makes a composition with creditors; or
- (iii) the Customer incurs a liability for interest under Clause 7.3; or
- (iv) the Customer breaches Clause 8; or
- (v) the Customer breaches this Agreement and that breach is such as to cause WINGAS UK to be in breach of its Supply Licence or Shipper's Licence.

12.3 In the event the Customer ceases to purchase all of its Gas for use at the Site before the Supply End Date (other than by agreement with WINGAS UK), the Customer will pay liquidated damages calculated as follows: 50% of the total energy costs, including all transportation and metering costs before VAT, forecast from the beginning of the Month in which the cessation occurs to the contractual Supply End Date. The Parties agree that this calculation represents a fair view of the costs and losses likely to be incurred by WINGAS UK Ltd.

12.4 If the Customer offtakes any Gas after the Termination Date all such Gas so offtaken shall be paid for at the Out of Contract Price.

12.5 Any termination in accordance with this Agreement shall be without prejudice to:

- (i) any antecedent rights or remedies of either Party including remedies arising from such termination; and
- (ii) the obligations of the Parties to perform covenants and undertakings which are expressed or by their nature are intended to survive the termination of the obligations to supply and take and pay for Gas.

12.6 Notwithstanding the termination or expiry of this Agreement, Clauses 1 (*Definitions*), 11 (*Liability*), Clause 13.7 (*Disputes, Applicable Law and Jurisdiction*) and Clause 13.9 (*Confidentiality*) shall continue to apply.

13. MISCELLANEOUS

13.1 Waiver

No default by either Party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of the other Party. A waiver by a Party of a default by the other Party will not prevent the first Party from subsequently requiring compliance with the waived obligation. No waiver by a Party of any default of the other Party shall operate, or be construed, as a waiver in respect of any other further default.

13.2 Assignment

The Customer shall not assign or transfer the whole or any part of this Agreement or any of its rights or obligations under this Agreement without the prior written consent of WINGAS UK. WINGAS UK may not assign, transfer, charge or otherwise encumber all or part of its rights under this Agreement or subcontract any of its obligations without the Customer's consent (such consent not to be unreasonably withheld or delayed) except that WINGAS UK may assign, transfer, charge or otherwise encumber or subcontract any of its rights or obligations under this Agreement to an Affiliate of WINGAS UK without the consent of the Customer. For the purposes of this Clause the expression "Affiliate of WINGAS UK" shall be construed as if the definition of Affiliate had been amended by applying the provisions of Section 736 (1) (a) and (c) of the Companies Act 1985 as if the words "a majority" had been replaced by the words "not less than twenty-six percent (26%)". Where WINGAS UK has consented to an assignment or a Site has been sold during the Supply Period without WINGAS UK's consent the Customer acknowledges that it shall remain bound by the terms of this Agreement and that it shall be liable and pay for all charges calculated in accordance with this Agreement unless and until

- (i) any subsequent owner, lessee, licensee or occupier the Site enters into an Agreement with WINGAS UK or another licensed gas supplier for the supply of Gas to the Site or
- (ii) the Site is physically disconnected from the Transporter's system.

13.3 Notices

Save for Clause 10.1, notices given under this Agreement shall, except to the extent expressly provided otherwise in this Agreement, be given or sent by hand, first class mail, facsimile or email to the address or facsimile number of the relevant Party given in Part A of the Special Terms and Conditions or to such other address as may have previously been notified in writing to the Party giving such notice.

13.4 Gas Act and Energy Act

(a) This Agreement is made pursuant to the Gas Act and provides for a supply to the Site in excess of 73,000 kWh as WINGAS UK is from time to time permitted to supply to the Customer under the Gas Act. The Customer acknowledges that WINGAS UK is under no obligation to supply Gas to the Site at a pressure and/or a quality and/or calorific value greater than those provided under the relevant provisions of the Gas Act.

(b) If WINGAS UK receives a direction under section 2(1)(b) of the Energy Act 1976 that prohibits or restricts the supply of Gas to a Site WINGAS UK may discontinue or restrict the supply of Gas to that Site and the Customer agrees that it will immediately stop using or restrict its use of Gas in accordance with the direction.

13.5 Force Majeure

(1) If either Party is by reason of an Event of Force Majeure rendered unable wholly, or in part, to perform any of its obligations under this Agreement, then the Party affected (**Affected Party**) shall not be liable for the failure to perform those obligations:

- (i) to the extent that such failure is the result of an Event of Force Majeure; and
- (ii) for the period during which such Event of Force Majeure exists.

(2) The Affected Party shall advise the other Party as soon as practicable by notice in writing of the Event of Force Majeure together with its estimate of the likely:

- (i) effect of the Event of Force Majeure on its ability to perform its obligations; and

- (ii) duration of such Event of Force Majeure having regard to the matters referred to in Clause 13.5.3.
- (3) The Affected Party shall use reasonable endeavours to:
 - (i) mitigate the effect of the Event of Force Majeure on its ability to perform the Agreement (but shall not thereby oblige the Affected Party to limit the absolute discretion of the Affected Party in relation to the settlement of any labour dispute which constitutes an Event of Force Majeure); and
 - (ii) continue to perform its obligations under this Agreement as soon as practicable after the Event of Force Majeure has ended.
- (4) The Parties acknowledge that an Event of Force Majeure shall not release any Party from any obligation to pay amounts due under this Agreement.

13.6 Network Code

- (a) WINGAS UK may modify any provision of this Agreement to the extent required as a consequence of the modification of any network code, licence condition or applicable law.
- (b) If WINGAS UK receives a request from a Transporter or a gas shipper relevant to the supply of Gas to a Site to discontinue the supply of Gas to that Site, WINGAS UK shall be entitled to do so and the Customer agrees that it will immediately take all steps within its power to avoid using Gas at the Site.

13.7 Disputes, Applicable Law and Jurisdiction

Any dispute between the Parties in modification of this Agreement in relation to the rights, duties and liabilities of the Parties under this Agreement shall in the first instance be referred for discussion and resolution, if possible, at a meeting between the respective nominees of WINGAS UK and the Customer. Any such meeting shall be held within fourteen (14) days of the service of notice by either Party requesting such a meeting. If the respective nominees of WINGAS UK and the Customer fail to resolve any dispute referred to them within fourteen (14) days of the service of a notice under Clause 13.7 then, unless otherwise agreed, either Party may submit the dispute, controversy or claim for final settlement by arbitration governed by and conducted in accordance with the Rules of the London Court of International Arbitration as at present in force which, as amended by this Clause 13.7, are deemed to be incorporated in this Agreement. The number of arbitrators shall be one, the seat of arbitration shall be London and the language of arbitration shall be English. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

13.8 Third Party Rights

No term of this Agreement shall be enforceable by any person who is not a Party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

13.9 Confidentiality

For a period of two (2) years after the Supply End Date or the Termination Date, this Agreement and all information disclosed under this Agreement between the Parties shall be treated as confidential (**Confidential Information**). Subject to Clause 13.7 Confidential Information shall not be disclosed to any other person except in order to give effect to this Agreement or to the extent required by applicable law, the rules of any recognised stock exchange or requested by any competent regulatory authority. A Party may disclose Confidential Information to the employees, consultants or legal and other advisors of that Party and its Affiliates provided that the disclosing Party shall procure that the recipient of this Confidential Information maintains confidential the material disclosed to it. Neither Party shall disclose to any person the Price without the prior written consent of the other Party, save for the purposes of the auditing of its accounts or to the extent required by applicable law, the rules of any recognised stock exchange or to comply with a request made by any competent regulatory authority provided that it shall first notify the other Party of such requirements and shall pay due consideration to any representations made by such other Party with respect to the nature and extent of the disclosure.

13.10 Severability

If any provision or part of a provision of this Agreement is found by a court or authority of competent jurisdiction to be invalid or unenforceable that provision or part of a provision shall be deemed to be deleted from this Agreement and the remaining provisions shall continue in full force and effect. The Parties shall in this event seek to agree upon a valid and enforceable provision or part thereof to replace the provision or part found to be invalid, illegal or unenforceable.

13.11 Entire Agreement

This Agreement sets out the entire agreement between the Parties and supersedes and replaces any previous agreement between them in relation to the subject matter of this Agreement. Except as expressly stated in this Agreement, no amendment, other than Pass Through charges, taxes, duties, levies or costs of a similar nature may be made to any part of this Agreement except by an instrument in writing signed by both of the Parties.

14. Interruptible Supplies

14.1 This Clause 14 applies to those Sites which have been designated as Interruptible (as defined in any relevant Network Code).

14.2 An Interruption is a period during which the rate of offtake of Gas and the Quantity of Gas offtaken at a Site shall not exceed the amounts calculated in accordance with Clause 14.3) below and an Interruptible Tranche is a tranche of DM Supply Point capacity designated as Interruptible associated with an Interruption Allowance.

14.3 At all times during a period of Interruption the rate of offtake of Gas, in kWh/hour, at the Supply Point does not exceed a rate of offtake determined as follows:

$$SPOR * (SPC - IT) / SPC$$

And on each Day or part Day of Interruption the Quantity of Gas offtaken, in kWh, during the period of Interruption, does not exceed a Quantity determined as follows:

$$(SPC - IT) * H / 24$$

where

- (i) SPOR is the Supply Point Offtake Rate;
- (ii) SPC is the Registered Supply Point Capacity;
- (iii) IT is the amount or aggregate amount (in kWh/Day) of the Interruptible Tranche or Interruptible Tranches which were subject to Interruption;
- (iv) H is the period in hours on the Day during which the Interruption was in force.

- 14.4 Where the Interruption applies to a shared Supply Point, the offtake rate and maximum shall be adjusted in accordance with Section G paragraph 6.11 of the Transportation Principal Document which forms part of the Network Code.
- 14.5 Upon entering into this Agreement the Customer shall provide to WINGAS UK at least one (1) telephone and one (1) facsimile number (but not more than four (4) numbers in total) on which WINGAS UK and/or the Transporter may contact, twenty-four (24) hours a Day, a representative of the Customer in respect of an Interruption and the names and job titles of not more than three (3) representatives who may be contacted at such numbers, together with any other information required by WINGAS UK to comply with any statutory, regulatory or transportation obligation. The Customer shall ensure that:
- (i) these details are maintained up to date and shall notify WINGAS UK of any change in such details before such change takes effect; and
 - (ii) at all times on each Day one (1) of such representatives is available and capable of being contacted both by telephone and by facsimile.
- 14.6 The Customer acknowledges the right of the Transporter to contact it in the circumstances set out in the Network Code and undertakes to comply with any notification given by the Transporter thereunder.
- 14.7 WINGAS UK shall use reasonable endeavours to give or to procure that the Transporter gives the Customer not less than four (4) hours' notice of the time at which an Interruption will occur (Interruption Notice), specifying the:
- (i) Site which will be subject to an Interruption;
 - (ii) time at which the Interruption will occur; and
 - (iii) estimated cessation of the Interruption.
- 14.8 Notwithstanding Clause 13.3 (Notices) above an Interruption Notice given by telephone is valid; summary confirmation by fax and/or e-mail will be provided.
- 14.9 When an Interruption Notice has been served, WINGAS UK shall as soon as reasonably practicable after receiving notification from the Transporter that such Interruption is no longer required or will cease at a certain time to be required, notify the Customer accordingly.
- 14.10 Notwithstanding Clause 14.2), the Customer may benefit from any exception under the Network Code to which it is entitled and which has been agreed with WINGAS UK.
- 14.11 The number of Days on which an Interruption can occur at a Site shall not exceed the number of Days (each a Day of Interruption) in any Gas Year which the Transporter has accepted as the Interruption Allowance in its acceptance of an Interruptible Offer in respect of a Site.
- 14.12 A Day in respect of which WINGAS UK and/or the Transporter gives more than one (1) Interruption Notice shall constitute one (1) Day of Interruption. A Day in respect of which an Interruption Notice has been served but on which no Interruption occurs shall not constitute a Day of Interruption.
- 14.13 Where the Supply Start Date falls part way through a Gas Year, the Days on which the Transporter required Interruption at a Site in that part of the Gas Year falling before the Supply Start Date will be taken into account in determining the number of Days upon which Interruption may be required of the Customer in that part of the Gas Year falling after Supply Start Date.
- 14.14 The exercise by WINGAS UK of a right under this Agreement to require or secure the discontinuance or reduction of offtake at any Site shall not constitute an Interruption.
- 14.15 The Customer shall provide its best estimates of consumption in the form and by the time required by the Transporter if WINGAS UK requests details for the purposes of enabling the Transporter to plan the exercise of its rights as to Interruption. Failure to comply with any such request may result in the Supply Point being designated as Firm.
- 14.16 If the Customer fails to comply with an Interruption Notice (irrespective of whether the failure results from an Event of Force Majeure) and if the Transporter determines that such failure results in a significant risk to the security of its transportation system, the Transporter or WINGAS UK may take any steps to isolate or disconnect any Supply Meter Point at the Site, and the Customer shall be liable
- (i) to reimburse WINGAS UK for all of the costs and expenses incurred by the Transporter and WINGAS UK in taking such steps and in any subsequent reconnection or restoration of the supply; and
 - (ii) to WINGAS UK for all charges imposed on WINGAS UK by the Transporter as a result of such failure.
- 14.17 If, as a result of an Event of Force Majeure, the Customer fails to comply with an Interruption Notice and unless the Transporter otherwise determines, then with effect from the date of such failure the Site affected by an Event of Force Majeure shall be redesignated as "firm" for the purposes of the Network Code. This Agreement, including the Price, shall be adjusted to take account of the capacity within the Transporter's system that WINGAS UK will be required to book to ensure the "firm" delivery of the Maximum Consumption of that Site.
- 14.18 The Customer shall not be entitled to relief under Clause 13.5 (Force Majeure) in respect of:
- (i) the unavailability of the representatives referred to in Clause 14.5) other than for wholly unforeseeable and unavoidable reasons; and
 - (ii) the fact that there is no facility for the Customer's plant to operate with a supply of fuel or energy alternative to, or in substitution for, Gas or the fact that such a facility exists but is temporarily unusable or unavailable for reasons within the Customer's control.