

# **OPERATING MARGINS GAS PROCUREMENT TENDER TERMS**

**GPTT 1.0**

**Issued 15<sup>th</sup> April 2009**

**Network Operations  
National Grid Gas plc  
National Grid House  
Warwick Technology Park  
Gallows Hill  
Warwick  
CV34 6DA**

**PLEASE NOTE :**

**This document should be read in conjunction with the documents entitled;**

- **Gas Procurement Tender Offer Notice GPT 4-09**
- **Gas Procurement Tender Invitation Notice GPT 4-09**
- **Gas Procurement Tender Rules GPTR 1.0**

**Each of these documents can be found at:**

**<http://www.nationalgrid.com/uk/Gas/OperationalInfo/GasOperatingMargins/>**

**nationalgrid**

**Reference Number: GPTT1.0**

**GAS PROCUREMENT TENDER TERMS**

1. DEFINITIONS

In these terms and conditions (these “**Gas Procurement Tender Terms**”) the following words have the meanings set out below:

“**Accepted Daily Quantity**” means, in relation to a Gas Purchase Contract, for each Day in the relevant Delivery Period, the Accepted Quantity divided by the number of Days in the Delivery Period, rounded down to the nearest whole number (save that in respect of the last Day of the Delivery Period, to allow for any such rounding down, the Accepted Daily Quantity shall be the Accepted Quantity less the sum of the Accepted Daily Quantities for every previous Day in the Delivery Period);

“**Accepted Quantity**” means, in relation to a Gas Purchase Contract, the aggregate amount of gas in kWh specified as such in the Gas Procurement Tender Acceptance relating to that Gas Purchase Contract (which amount, for the avoidance of doubt, may be less than or equal to the Tendered Quantity unless otherwise provided in the relevant Gas Procurement Tender Offer);

“**Contract Value**” means, in relation to a Gas Purchase Contract, the Price multiplied by the Accepted Quantity, in each case as specified in the Gas Procurement Tender Acceptance relating to that Gas Purchase Contract;

“**Day**” means, in relation to the Gas Day;

“**Delivery Period**” means, in relation to a Gas Purchase Contract, the continuous period of one or more Days as specified in the Gas Procurement Tender Offer and Gas Procurement Tender Acceptance relating to that Gas Purchase Contract, on each Day of which the Tendering User must deliver the Accepted Daily Quantity of gas to National Grid Gas pursuant to that contract;

“**Delivery Method**” means, in relation to a Gas Purchase Contract, such method and, where applicable, location, for the delivery of gas as is specified in the Gas Procurement Tender Offer and Gas Procurement Tender Acceptance relating to that Gas Purchase Contract;

“**Gas Procurement Tender Acceptance**” means an acceptance by National Grid Gas as set out in a Gas Procurement Tender Acceptance Notice, whether in whole or in part, of a Gas Procurement Tender Offer from a Tendering User;

“**Gas Procurement Tender Acceptance Notice**” means a notice (bearing the same reference number as the Gas Procurement Tender Invitation Notice and Gas Procurement Tender Offer Notice, pursuant to both of which it is issued) containing one or more Gas Procurement Tender Acceptances issued by National Grid Gas and served in accordance with Clause 7 and the other provisions of these Gas Procurement Tender Terms and the Gas Procurement Tender Rules;

**“Gas Procurement Tender Invitation Notice”** means the notice described on its face as such and issued by National Grid Gas inviting Users to submit Gas Procurement Tender Offers;

**“Gas Procurement Tender Offer”** means an offer submitted by a Tendering User in a Gas Procurement Tender Offer Notice by which such Tendering User offers to sell gas to National Grid Gas for Operating Margins purposes at the Price, for a specified maximum quantity over a specified Delivery Period and by a specified Delivery Method, in each case as permitted or determined by the relevant Gas Procurement Tender Invitation Notice where appropriate;

**“Gas Procurement Tender Offer Notice”** means a notice (bearing the same Reference Number as the Gas Procurement Tender Invitation Notice pursuant to which it is submitted) containing one or more Gas Procurement Tender Offers submitted by or on behalf of a Tendering User pursuant to a Gas Procurement Tender Invitation Notice and received by National Grid Gas during the Offer Window Period in accordance with the Gas Procurement Tender Invitation Notice, these Gas Procurement Tender Terms, and the Gas Procurement Tender Rules;

**“Gas Procurement Tender Rules”** means the document described on its face as such (bearing the reference number GPTR1.0) and issued by National Grid Gas which relates to and governs the procedure by which a Tendering User may offer and National Grid Gas may accept a Gas Purchase Contract;

**“Gas Purchase Contract”** means a contract between a Tendering User and National Grid Gas under which the Tendering User agrees to sell a quantity of gas to National Grid Gas in accordance with the provisions of Clause 3 and the other provisions of these Gas Procurement Tender Terms and the other Tender Documents;

**“NBP 1997 Terms”** means the Short Term Flat NBP Trading Terms and Conditions 1997;

**“NBP Trade”** has the meaning given to it in the NBP 1997 Terms;

**“Network Code”** means the network code prepared by National Grid Gas pursuant to its gas transporter licence, as such code may be amended from time to time in accordance with the terms thereof;

**“Offer Window Period”** means the period specified as such in the Gas Procurement Tender Invitation Notice, during which a Gas Procurement Tender Offer must be received by National Grid Gas;

**“Price”** means, in relation to a Gas Purchase Contract, the amount in pence per kWh specified as such in the Gas Procurement Tender Offer and Gas Procurement Tender Acceptance relating to that Gas Purchase Contract;

**“Tender Documents”** means these Gas Procurement Tender Terms, the Gas Procurement Tender Rules and each applicable Gas Procurement Tender Invitation Notice, Gas Procurement Tender Offer Notice and Gas Procurement Tender Acceptance Notice;

**“Tendered Quantity”** means, in relation to a Gas Purchase Contract, the aggregate amount in kWh of gas as is offered for sale in the Gas Procurement Tender Offer relating to that Gas Purchase Contract;

**“Tendering User”** means a User under Network Code which submits a Gas Procurement Tender Offer;

**“Tranche”** means such amount in kWh of gas as specified in the applicable Gas Procurement Tender Invitation Notice; and

**“National Grid Gas”** means National Grid Gas plc (Company No. 2006000) whose registered office is at 1-3 Strand, London WC2N 5EH.

## 2. INTERPRETATION

2.1 In these Gas Procurement Tender Terms and the other Tender Documents:

- (a) references to Clauses are references to the clauses of these Gas Procurement Tender Terms unless otherwise stated; and
- (b) the singular shall include the plural and vice versa.

2.2 The headings in these Gas Procurement Tender Terms and each other Tender Document (where applicable) have been inserted for convenience only and shall not affect construction or interpretation.

2.3 Words and expressions defined in the Network Code and which are used in these Gas Procurement Tender Terms or in any other Tender Document capitalised but not defined herein have the meanings ascribed to them under the Network Code where the context permits.

2.4 References in these Gas Procurement Tender Terms and the other Tender Documents to Sections are to sections of the Network Code (and shall be deemed to be amended appropriately in the event of any modification of the Network Code which changes any such Section reference).

## 3. GAS PURCHASE CONTRACT

3.1 Where pursuant to a Gas Procurement Tender Invitation Notice a Tendering User submits a Gas Procurement Tender Offer in a Gas Procurement Tender Offer Notice which is received by National Grid Gas during the Offer Window Period and National Grid Gas returns a Gas Procurement Tender Acceptance in a Gas Procurement Tender Acceptance Notice in relation to that Gas Procurement Tender Offer (or to part of it), in each case pursuant to and in accordance with these Gas Procurement Tender Terms, the Gas Procurement Tender Rules and the Gas Procurement Tender Invitation Notice, that Gas Procurement Tender Offer shall have been accepted by National Grid Gas in the terms set out in the Gas Procurement Tender Acceptance and such Tendering User shall be deemed to have entered into a Gas Purchase Contract with National Grid Gas in accordance with these Gas Procurement Tender Terms and the Gas Procurement Tender Rules under which:

- (a) the Tendering User shall be obliged to deliver to National Grid Gas the Accepted Daily Quantity on each Day in the Delivery Period by the relevant Delivery Method, in each case as specified in the Gas Procurement Tender Acceptance relating to that Gas Purchase Contract;
- (b) National Grid Gas shall pay to the Tendering User a sum equal to the Contract Value subject to and in accordance with the provisions of Clause 4;
- (c) where the Delivery Method is a Storage Gas Transfer in a National Grid LNG Storage Facility, the delivery of the Accepted Daily Quantity on each relevant Day pursuant to paragraph (a) above shall be made in accordance with the then prevailing provisions of Section Z of the Network Code;
- (d) where the Delivery Method is a Storage Gas Transfer in a Storage Facility other than a National Grid LNG Storage Facility the delivery of the Accepted Daily Quantity on each relevant Day pursuant to paragraph (a) above shall be made in accordance with the then prevailing provisions of the relevant Storage Terms; and
- (e) where the Delivery Method is an NBP Trade, the delivery of the Accepted Daily Quantity on each relevant Day pursuant to paragraph (a) above shall be made as a Trade Nomination in accordance with the NBP 1997 Terms.

3.2 A Gas Procurement Tender Acceptance may only be given in respect of the whole of the Delivery Period specified for the relevant Gas Procurement Tender Offer but may (unless the Tendering User has expressly indicated otherwise in the relevant Gas Procurement Tender Offer) be given in respect of an Accepted Quantity other than the Tendered Quantity offered in the Gas Procurement Tender Offer provided that the Accepted Quantity is for an amount no greater than such Tendered Quantity.

3.3 Only one Gas Procurement Tender Acceptance may be given in respect of any Gas Procurement Tender Offer.

3.4 Neither a Gas Procurement Tender Offer nor a Gas Procurement Tender Acceptance once served may be withdrawn without the prior written consent of the recipient thereof (which may be given or withheld by that recipient in its sole discretion).

3.5 National Grid may accept or reject a Gas Procurement Tender Offer in its absolute discretion and shall not be obliged to give any reason therefor.

#### 4. CONTRACT VALUE

4.1 Subject to Clause 4.2 and in respect of a Gas Purchase Contract, following the service of a Gas Procurement Tender Acceptance by

National Grid Gas in a Gas Procurement Tender Acceptance Notice and the delivery of the Accepted Quantity of gas to National Grid Gas by the Tendering User in compliance with the terms hereof, a sum equal to the Contract Value as stated in that Gas Procurement Tender Acceptance shall be payable by National Grid Gas to the Tendering User on or prior to the fourteenth Day following the last Day of the Delivery Period. For the avoidance of doubt, no such sum shall be payable if National Grid Gas does not serve a Gas Procurement Tender Acceptance in respect of a relevant Gas Procurement Tender Offer or (without prejudice to any other rights of National Grid Gas) the Tendering User does not deliver the Accepted Quantity of gas to National Grid Gas in compliance with the terms hereof.

- 4.2 In the event that a Tendering User ceases to be a User, these Gas Procurement Tender Terms and the other Tender Documents and the Gas Purchase Contract shall (without prejudice to all and any accrued rights and obligations) terminate on the User Discontinuance Date and no further sums shall be due hereunder or thereunder in respect of the period following the User Discontinuance Date. All sums under Clause 4.1 shall be pro-rated in respect of each Gas Purchase Contract to the User Discontinuance Date having regard to the quantity of gas delivered to and accepted by National Grid Gas pursuant to such Gas Purchase Contract and the Accepted Quantity for that Gas Purchase Contract.
- 4.3 Payments made pursuant to this Clause 4 shall, except as otherwise provided herein and to the extent applicable, be made in accordance with the provisions of Section S of the Network Code.
- 4.4 There is no payment obligation in respect of any Gas Purchase Contract or any Tender Document save as expressly set out in these Gas Procurement Tender Terms.

## 5. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- 5.1 The Tendering User represents, warrants and undertakes to National Grid Gas that:
  - (a) it is a User for the purposes of the Uniform Network Code and has and will have full power and authority to execute, deliver and perform all obligations of it under these Gas Procurement Tender Terms and the other Tender Documents and no limitation on its powers will be exceeded as a result of it entering into these Gas Procurement Tender Terms or into any of the other Tender Documents or the issuance of any of them by or on behalf of it or National Grid Gas;
  - (b) in the event that National Grid Gas issues a Gas Procurement Tender Acceptance in respect of a Gas Procurement Tender Offer all of the Accepted Quantity referred to therein shall (subject only where the gas is in a storage facility to any standard title rights in respect of such gas in favour of the relevant storage operator under its standard storage terms) be transferred to National Grid Gas with full title guarantee and

free from any charge, lien, equity, third party right, option, right of pre-emption or other encumbrance, priority or security of whatever nature and together with all rights attaching thereto; and

- (c) it has all governmental and regulatory authorisations, licences, consents, waivers and permissions, howsoever described, necessary in order to be able to enter into all of the Tender Documents and any Gas Purchase Contracts constituted by them and to be able to perform its obligations under them, and will maintain the same in full force and effect and all conditions of any such authorisations, licences, consents, waivers and permissions have been complied with.

## 6. LIABILITY

6.1 Subject to the further provisions of this Clause 6, National Grid Gas and the Tendering User agree and acknowledge that:

- (a) neither shall be liable to the other for loss arising from any breach of these Gas Procurement Tender Terms or any other Tender Document, other than (but without prejudice to any other provision of these Gas Procurement Tender Terms or any other Tender Document which excludes or limits liability in respect of any breach) for loss directly resulting from such breach and which at the relevant date was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
  - (i) physical damage to the property of the other; and/or
  - (ii) the liability (at law) of such other to any other person for loss in respect of physical damage to the property of such person;
- (b) neither shall in any circumstances be liable in respect of any breach of these Gas Procurement Tender Terms or any other Tender Document to the other for:
  - (i) any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working; or
  - (ii) any indirect or consequential loss; or
  - (iii) except as provided in Clauses 6.1(a)(ii) and 6.5, loss resulting from the liability of the other to any person howsoever and whensoever arising; and
- (c) the rights and remedies of the parties pursuant to these Gas Procurement Tender Terms and the other Tender Documents exclude and are in place of any rights or remedies of either party in tort (including negligence and nuisance) or (subject to

Clause 8) misrepresentation in respect of the subject matter of these Gas Procurement Tender Terms or any other Tender Document; and accordingly, but without prejudice to Clause 6.5 and Clause 6.6(b), each party (to the fullest extent permitted by law):

- (i) waives any rights or remedies; and
- (ii) releases each other from any duties or liabilities,

arising in tort or (subject to Clause 8) misrepresentation in respect of the subject matter of these Gas Procurement Tender Terms or any other Tender Document.

- 6.2 For the purposes of Clause 6.1(a), the “**relevant date**” is the date of the relevant Tender Document.
- 6.3 The amount or amounts for which either National Grid Gas or the Tendering User may be liable to the other pursuant to Clause 6.1(a) in respect of any one event or circumstance constituting or resulting in that first party’s breach of a provision of these Gas Procurement Tender Terms or any other Tender Document shall not exceed £1,000,000 (one million pounds sterling).
- 6.4 Clause 6.1 is without prejudice to any provision of these Gas Procurement Tender Terms or any other Tender Document which provides for an indemnity, or which provides for either National Grid Gas or the Tendering User to make a payment to the other.
- 6.5 Nothing in these Gas Procurement Tender Terms or in any other Tender Document shall exclude or limit the liability of either National Grid Gas or the Tendering User for death or personal injury resulting from its negligence.
- 6.6 Nothing in this Clause 6 shall:
  - (a) prevent either National Grid Gas or the Tendering User from or restrict it in enforcing any obligation (including suing for a debt) owed to it under or pursuant to these Gas Procurement Tender Terms; or
  - (b) constitute a waiver by National Grid Gas or the Tendering User of any right or remedy it may have (other than pursuant to these Gas Procurement Tender Terms or any other Tender Document) in respect of a breach by the other of any Legal Requirement.
- 6.7 Each provision of this Clause 6 shall be construed as a separate and severable contract term, and shall as respects any Discontinuing User survive that User’s ceasing to be a User under the Uniform Network Code.
- 6.8 Each of National Grid Gas and the Tendering User agree that the provisions of this Clause 6 are fair and reasonable having regard to

the circumstances at the date of the relevant Gas Procurement Tender Invitation Notice.

## 7. NOTICES

Notices and other communications to be served under the Tender Documents shall be served as follows:

- (a) Gas Procurement Tender Invitation Notices shall be sent by National Grid Gas by facsimile to such facsimile number as National Grid Gas shall maintain for each User for the purposes of gas procurement tenders. Such notices will be deemed received by each User on completion of despatch provided National Grid Gas receives a transmission report showing transmission in full without any error message;
- (b) Gas Procurement Tender Offer Notices shall be submitted in the manner and to the address or facsimile number (as appropriate) as shall be specified in the Gas Procurement Tender Invitation Notice. The time and date of receipt of such notices shall (save in the case of manifest error by National Grid Gas) be that determined by National Grid Gas; and
- (c) Gas Procurement Tender Acceptance Notices shall be sent by National Grid Gas to the Tendering User by facsimile to such facsimile number and marked for the attention of such person as shall be specified in the relevant Gas Procurement Tender Offer Notice. Such notices will be deemed received by the Tendering User on completion of despatch provided National Grid Gas receives a transmission report showing transmission in full without any error message.

## 8. ENTIRE AGREEMENT

In respect of any Gas Purchase Contract and save as otherwise expressly provided herein, these Gas Procurement Tender Terms and the relevant other Tender Documents shall be read as one and constitute the entire agreement between National Grid Gas and the Tendering User (subject always to the Network Code and Ancillary Agreements thereunder) with respect to the matters referred to herein and therein and shall prevail over and supersede all prior agreements, understandings, statements, representations, commitments, warranties, and communications between National Grid Gas and the Tendering User (including, without limitation, any information provided by telephone pursuant to paragraph 12 of a Gas Procurement Tender Invitation Notice) with respect to such matters and neither National Grid Gas nor the Tendering User shall rely on or be bound by any of the foregoing not appearing in or incorporated by specific reference into these Gas Procurement Tender Terms or the relevant other Tender Documents. Nothing in these Gas Procurement Tender Terms or any relevant other Tender Document shall operate to exclude either National Grid Gas's or the Tendering User's liability to the other for fraudulent misrepresentation in respect of any Gas Purchase Contract.

9. VARIATION AND WAIVER

- 9.1 No variation of these Gas Procurement Tender Terms or any of the other Tender Documents in relation to a Gas Purchase Contract shall be effective unless made in writing and signed by or on behalf of both National Grid Gas and the Tendering User for that Gas Purchase Contract.
- 9.2 None of the provisions of these Gas Procurement Tender Terms or of the other Tender Documents shall be considered waived by National Grid Gas or the Tendering User unless such waiver is given in writing and signed by a duly authorised representative of the party making the waiver. No such waiver shall be a waiver of any past or future default or breach or modification of any term, provision, condition or covenant of these Gas Procurement Tender Terms or of the other Tender Documents or any of them unless and to the extent expressly set forth in such waiver.

10. ASSIGNMENT ETC.

Neither National Grid Gas nor the Tendering User may assign, trade or transfer any of its rights or obligations under any Gas Purchase Contract or under these Gas Procurement Tender Terms or otherwise under any of the other Tender Documents without the prior written consent of the other party provided that National Grid Gas may assign or transfer any such rights or obligations to any company succeeding it with respect to its rights and obligations under the Network Code (or any successor document) without the consent of the Tendering User.

11. CONFIDENTIALITY

Each of National Grid Gas and the Tendering User shall keep confidential and shall not disclose to any third party any information provided by the other party in any Tender Document or in connection with the performance of these Gas Procurement Tender Terms or any of the other Tender Documents (whether or not a Gas Purchase Contract is entered into). Provided that:

- (a) this restriction shall not apply to any information which at the time of disclosure is in the public domain or thereafter comes into the public domain otherwise than as a consequence of a breach by National Grid Gas or the Tendering User of its obligations under this Clause 11;
- (b) nothing in these Gas Procurement Tender Terms or the other Tender Documents shall prevent the disclosure of information to any government department or any governmental or regulatory agency having jurisdiction over either National Grid Gas or the Tendering User (including but not limited to the Gas and Electricity Markets Authority), or as required by law or any lawful subpoena or recognised stock exchange or regulatory authority or other process in connection with any judicial arbitration or administrative proceeding, or where reasonably necessary to effect the purpose of these Gas Procurement Tender Terms or of any or all of the other Tender Documents; and
- (c) nothing in these Gas Procurement Tender Terms or in any other Tender Documents shall prevent the disclosure by National Grid Gas

to third parties of the relevant prices and quantities contained in any Tender Document but only to the extent that such information is disclosed in aggregate or otherwise averaged or combined with other Users' prices and quantities or (whether or not aggregated, averaged or combined) as may be required from time to time pursuant to the provisions of the Network Code (as the same may be modified from time to time) or in accordance with the Gas Transporters Licence in respect of the NTS.

12. THIRD PARTY RIGHTS

Subject to any rights which may accrue to any successor or permitted assign of National Grid Gas or the Tendering User, no provision of these Gas Procurement Tender Terms or of any other Tender Document shall, or may, be construed as creating any rights enforceable by a third party and all third party rights as may be implied by law are hereby excluded to the fullest extent permitted by law from these Gas Procurement Tender Terms and the other Tender Documents.

13. SEVERABILITY

If any term or provision of these Gas Procurement Tender Terms or of any of the other Tender Documents shall be held to be illegal or unenforceable in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of these Gas Procurement Tender Terms or such other Tender Document but the validity and enforceability of the remainder of these Gas Procurement Tender Terms and the other Tender Documents shall not be affected.

14. GOVERNING LAW AND JURISDICTION

14.1 These Gas Procurement Tender Terms and the other Tender Documents shall be governed by and construed in accordance with English law.

14.2 National Grid Gas and the Tendering User hereby submit to the exclusive jurisdiction of the courts of England.