

1. Introduction

1.1 These are the terms and conditions on which Coast 2 Coast Gas Company (Northland) Limited agrees to supply LPG and Equipment to the Customer.

1.2 The effective date of these terms and conditions is the commencement date set out on the first page of this Agreement.

1.3 Definitions used for the purposes of these terms and conditions of supply:

“**Agreement**” means these Terms and Conditions and the previous page;

“**Customer**” means the customer party to this Agreement referred to on the previous page;

“**Early Termination Fee**” means the fee calculated in accordance with clause 8.5 where this Agreement is terminated during the Initial Period;

“**Equipment**” means the LPG cylinder(s) and any other LPG supply equipment supplied to the Customer by the Supplier;

“**LPG**” means Liquefied Petroleum Gas supplied to the Customer by the Supplier;

“**Supplier**” means Coast 2 Coast Gas Company (Northland) Limited;

“**Premises**” means the property to which the Supplier will deliver LPG and Equipment under this Agreement as detailed on the first page of this Agreement and in any updated agreed schedule of Premises.

1.4 The Supplier may amend this Agreement (including to pricing) at any time and from time to time. The Supplier will notify the Customer of any changes by writing to the Customer at least two weeks before changes come into effect. The Customer agrees to accept those amendments by the making of or receipt of any order or delivery after the date of the notice.

1.5 Notices and invoices under this Agreement will be delivered to the Customer’s Premises or mailed or sent to the Customer’s last known physical or postal address or emailed to the Customer at the email address notified by the Customer.

2. Price Variation

2.1 The LPG Price per Cylinder or per Litre set out in the Pricing Schedule will vary from time to time as provided by clause 4.2. The Equipment Service Charge set out in the Pricing Schedule will vary from time to time as provided by clause 4.3. Price variations may be based on a number of factors, including variations in the world LPG pricing (presently being Saudi Aramco contract price), exchange rate fluctuations, haulage and transport costs, changes in the law, costs of taxes (including carbon taxes) or emissions trading and other commercial considerations.

3. Equipment and Premises

3.1 The Equipment means all LPG storage or associated equipment lent by the Supplier to the Customer from time to time and includes all LPG Cylinders. The number of items of Equipment lent by the Supplier to the Customer at the commencement of this Agreement is set out in the Pricing Schedule. Following the commencement of this Agreement, the number of items of Equipment lent will be as shown on the Supplier’s invoice for the Equipment Service Charge and the Customer is deemed to accept such number as correct unless the Customer disputes that number, in writing to the Supplier, within 14 days after the Supplier sends the Customer that invoice.

3.2 Where the Premises include more than one address, these terms and conditions apply to each Premise. The Customer shall be solely responsible for identifying the Premise(s), and any order for each Premise. The Customer may seek to add another Premise to this agreement, but this will be on the terms and conditions of this Agreement and will only be accepted if a schedule identifying the Premise is filled out and agreed with the Supplier. If for any reason that does not occur, but delivery is sought and made for another Premise of the Customer, these terms and conditions are deemed to apply.

3.3 The Equipment remains at all times the sole property of the Supplier. The Customer may not sell, rent, charge, transfer or part with possession of the Equipment or create a security interest in the Equipment under the Personal Property Securities Act 1999 without the Supplier’s prior written consent. The Customer must keep legible and visible all trademarks and signs of the Supplier on the Equipment. The Customer must not remove the Equipment from the Premises during the currency of this Agreement.

3.4 The Customer must hire the Equipment from the Supplier for the entire currency of this Agreement. The Customer must only use the Equipment to store and consume the LPG.

3.5 The Customer must account to the Supplier for all items of Equipment lent to the Customer. The Customer must pay to the Supplier the replacement cost of any item of Equipment which is rendered unusable or unsafe by damage or is lost, stolen or removed from the Premises.

- 3.6 The Supplier is irrevocably authorised to enter the Premises at all reasonable times to exercise any of its rights or perform any of its obligations under this Agreement.

4. LPG Purchases, Price, Equipment Service Charge, Payment

- 4.1 The Customer must purchase and the Supplier must supply (subject to the other terms of this Agreement) all the Customer's requirements for LPG at the Premises. The Customer warrants that it has no other agreements that prevent it from entering into this exclusive purchase agreement.
- 4.2 The Price for the LPG sold to the Customer shall be that applicable as at the time of delivery and shall be in accordance with the Pricing Schedule and shall vary to be the amount set out in the Supplier's delivery docket or invoice or as otherwise notified in writing from time to time by the Supplier to the Customer.
- 4.3 The Equipment Service Charge shall be in accordance with the Pricing Schedule and shall vary to be the amount set out in the Supplier's delivery docket or invoice or as otherwise notified in writing from time to time by the Supplier to the Customer. The Customer must pay the Supplier for any Equipment Service Charge (plus any GST) without deduction within twenty-one days after the date of the Supplier's invoice by way of Direct Debit.
- 4.4 If there is or is likely, in the sole opinion of the Supplier, to be a shortage of the Supplier LPG or delivery facilities, the Supplier may ration its available supply of the Supplier LPG reasonably among its customers (which it may determine in its sole discretion) and is not obliged to replace any affected source of supply or delivery facilities if it involves additional expense.
- 4.5 The Customer must pay, by Direct Debit, the Supplier for the LPG (plus any GST) without deduction within twenty-one days following its delivery by way. The Customer shall provide a relevant Direct Debit Authority to the Supplier before any delivery is made. The Supplier may at its discretion and by notice in writing to the Customer, require payment of the LPG prior to delivery.
- 4.6 Prior to the first delivery of Equipment or LPG to the Customer, the Customer must provide to the Supplier a Direct Debit Authority for payment of the Equipment Service Charge and for the Supplier's LPG and must ensure a valid Direct Debt Authority remains in place during the term of this Agreement.
- 4.7 The Customer must pay the Supplier any Goods and Services Tax (GST) payable in respect of a supply under this Agreement.
- 4.8 Where the Customer fails to pay an amount due to the Supplier for the LPG and/or the Equipment Service Charge it shall pay the Supplier interest on the amount unpaid at the overdue interest rate notified in writing by the Supplier to the Customer from time to time including any notice of the overdue interest rate set out in any invoice issued by the Supplier.
- 4.9 The Customer shall reimburse to the Supplier all costs fees, expenses and/or commissions incurred by the Supplier in collecting any payment which is overdue by the Customer (including but not limited to all legal costs on a solicitor/client basis and all collection agency costs incurred).
- 4.10 The Supplier will be under no obligation to deliver LPG to the Customer if and for so long as the Customer is in default of any obligation under this Agreement (including payment of any amount owing by the Customer to the Supplier plus any interest charged).

5. PPSR

- 5.1 For the purposes of this clause 5, "PPSA" means the Personal Property Securities Act 1999 as amended from time to time.
- 5.2 The Customer grants a security interest to the Supplier in all LPG and the proceeds of that LPG.
- 5.3 Ownership of the LPG delivered in a Cylinder will only pass from the Supplier to the Customer upon payment by the Customer to the Supplier of all the LPG in that Cylinder and until such payment, the Supplier may repossess all the LPG in that Cylinder. The Customer's consumption of LPG in Cylinders will be deemed to have occurred first from Cylinders in which the Customer owns the LPG. If the Customer does not pay any money due to the Supplier or if the Customer intimates that the Customer will not or cannot pay any money yet to become due to the Supplier, the Supplier will not be obliged to deliver the LPG to the Customer and the Supplier may repossess the LPG owned by the Supplier and the Cylinders containing such the LPG.
- 5.4 Until ownership of the LPG passes, the Customer must not pursuant to the PPSA and in respect of a financing statement registered by the Supplier:
- (a) give to the Supplier a written demand, or allow any other person to give to the Supplier a written demand, requiring the Supplier to register a financing change statement; or
 - (b) lodge a change demand or allow any other person to lodge a change demand.
- 5.5 The Customer waives its rights under the PPSA to:
- (a) receive a copy of any verification statement;

- (b) receive a copy of any financing change statement;
- (c) receive any notice that the Supplier intends to sell the Supplier's LPG or retain the Supplier's LPG on enforcement of the security interest (as defined in the PPSA) granted to the Supplier under these terms;
- (d) object to the Supplier proposal to retain the Supplier's LPG in satisfaction of any obligation owed by the Customer to the Supplier;
- (e) receive a statement of account on sale of the Supplier's LPG;
- (f) redeem the Equipment or the Supplier's LPG; and
- (g) where any Equipment becomes an accession, as defined in the PPSA, not apply to the court for an order concerning the removal of the accession, receive notice of removal of the accession and not have any Equipment damaged when the Supplier removes the accession.

5.6 The Customer agrees to:

- (a) provide the Supplier with any information the Supplier may reasonably require to register a financing statement;
- (b) do anything that the Supplier reasonably requires to always ensure that the Supplier has a continuously perfected security interest over all of its Equipment and the LPG; and
- (c) reimburse the Supplier for all costs and/or expenses incurred or payable by the Supplier in relation to registering, maintaining, or releasing any financing stated under this Agreement.

6. Liabilities

- 6.1 It is agreed that the acquisition of the LPG from the Supplier and the use of the Equipment by the Customer are for the use or consumption in the course of business and, accordingly, the Consumer Guarantees Act 1993 ("Act") shall not apply. If notwithstanding, the provisions of the Act do apply, then these Terms and Conditions will be read subject to the application of that Act. If there is any conflict between these Terms and Conditions and that Act, the provisions of that Act will apply.
- 6.2 It is agreed that because the Customer and Supplier are engaged in Trade, the provisions of the Fair Trading Act 1993 ("FTA") shall not apply. It is further agreed pursuant to section 5D of the FTA, that this exclusion is reasonable.
- 6.3 All warranties, descriptions, representations and conditions as to fitness, suitability for any purpose or otherwise, whether of a like nature or not, and whether expressed or implied by law, trade custom or otherwise, are expressly excluded to the extent permitted by law.
- 6.4 In no case will the Supplier be liable to the Customer or any other person for indirect or consequential loss (including without limitation loss of use of goods and services, loss of income or profits and loss or damage to persons or property) or damage of any kind arising out of or attributable to any breach or negligence of the Supplier or any act or omission by the Supplier. The Supplier shall have no liability to the Customer for events beyond the direct control of the Supplier. Regardless of the legal basis of any claim made against the Supplier in no case shall the extent of the Supplier's liability under that claim exceed the original contract price supplied by the Supplier which gave rise to the claim.
- 6.5 The Customer shall indemnify the Supplier from any claim made by any third party in respect of any damage or loss to any third party caused by the actions or inaction of the Customer in respect of the LPG or the Equipment while they are in the possession of the Customer. All the LPG in the Equipment is at the Customer's risk.
- 6.6 The Supplier is not liable for any loss or damage arising from an event beyond the Supplier's control and which prevents the Supplier from carrying out the Supplier's responsibilities under this Agreement, including the obligation to supply LPG to the Customer.

7. Safety

- 7.1 The Customer will ensure that its LPG installation has been certified by a registered Gasfitter in accordance with regulations under the Gas Act 1992 (and provide the Supplier with reasonable proof of this if requested by the Supplier). If the Customer stores more than 100kgs of LPG on the Property, the Customer must obtain and maintain a current site location certificate in accordance with the Hazardous Substances and New Organisms Act 1996 and associated regulations.
- 7.2 In respect of the LPG and the Equipment, the Customer must:
 - (a) inspect the Cylinders before connection to vehicles or other equipment and notify the Supplier by telephone immediately upon becoming aware of any defect in them;

- (b) ensure that all persons who handle the LPG or use the Equipment are fully trained to do so in a safe and proper manner and are informed of and fully understand all relevant laws and statutory regulations and instructions of the Supplier;
 - (c) handle them only in a safe manner;
 - (d) comply with all laws, including the Hazardous Substances and New Organisms Act 1996 and with the Supplier's reasonable instructions relating to handling or storage;
 - (e) not use or repair the Equipment, if it is not, or appears to the Customer not to be, in good working order;
 - (f) maintain a location test certificate for the Equipment and permit only the Supplier or persons authorised by the Supplier to fill LPG into the Equipment;
 - (g) exercise every care in handling the Equipment and afford it all reasonable protection from misuse and damage (fair wear & tear excepted); and
 - (h) ensure that reasonable and safe access is provided to facilitate the delivery of supplies.
- 7.3 To the extent permitted by law, the Customer must indemnify the Supplier for all losses claims and demands arising in respect of a breach of clauses 7.1 or 7.2.

8. Period, Continuation and Termination

- 8.1 Subject to clause 8.2, this Agreement is for the Initial Period. It shall continue thereafter unless one month's written notice is given before the end of the Initial Term to end the Agreement, or thereafter on one month's written notice to end the Agreement.
- 8.2 The Supplier may terminate this Agreement by notice to the Customer forthwith if:
- (a) the Customer breaches this Agreement and that breach is incapable of remedy, or fails to rectify any breach within seven (7) days of written notice from the Supplier to the Customer requiring the breach to be remedied, or
 - (b) the Customer breaches clause 3.4 or its undertaking that it has no other commitments which would preclude the Customer from making this Agreement with the Supplier;
 - (c) The Customer makes any assignment of any of its assets to, or enters into an arrangement or composition for the benefit of, its creditors (other than for the purposes of a solvent restructuring); or
 - (d) The Customer (if the Customer is a partnership) is dissolved or (if the Customer is a company) is placed in liquidation; or
 - (e) The Customer ceases or threatens to cease to carry on business.
- 8.3 On termination of this Agreement whether by expiry of time or otherwise and without limiting the Supplier's right to claim damages, the Supplier shall be immediately entitled to possession of the Equipment together with any the LPG owned by the Supplier, and:
- (a) the Customer must make the Equipment together with any the LPG owned by the Supplier, available for collection by the Supplier at the Premises; and
 - (b) the Customer must pay to the Supplier the then current replacement cost of such of the Equipment which is not made available for collection by the Supplier.
- 8.4 To repossess the Equipment and any the LPG owned by the Supplier, the Supplier may enter upon the Premises or any other premises on which the Supplier reasonably believes the Equipment or the Supplier's LPG to be and to effect any such entry or repossession may remove or open any obstruction or entrance and sever detach and dismantle the Equipment from the Premises or any vehicles land or property to which the Equipment may have become affixed. Upon repossession of the Equipment, the Supplier shall pay or credit to the Customers' account the value of the Customer's LPG in the Equipment.
- 8.5 If the Supplier terminates this Agreement during the Initial Term pursuant to clause 8.2 or the Customer purports to terminate the Agreement during the Initial Term for any reason other than the default of the Supplier, the Customer will pay to the Supplier an Early Termination Fee. The Early Termination Fee will be calculated using the following formula:

$$\text{Early Termination Fee} = A \times B \times \$80.00$$

Where:

A = the average number of LPG Cylinders delivered to the Customers Premises per month for the three months prior to the termination date.

B = the number of months or part months remaining from the termination date to the end of the Initial

Term.

The Early Termination Fee is not a penalty, but rather a charge to compensate the Supplier for the early termination of this Agreement. The parties are agreed that the above formula produces a reasonable payment in the circumstances and is not a penalty.

- 8.6 The Customer's business at the Premises includes the rights granted to the Customer under this Agreement. The Customer must assign this Agreement to any new operator or owner of Customer's business at the Premises. The Customer must immediately notify the Supplier of any impending sale or transfer of ownership of the Customer's business. Any invalidity of a provision in this clause 8.6 shall not affect the validity of any other provision. A waiver of an obligation is not a continuing waiver.

9. Privacy Policy

- 9.1 The Supplier is authorised by each of the Customer, and the partners or directors of the Customer (each an Applicant) to:
- (a) collect retain and use information about the Customer and the Applicant from such sources (including credit references agencies and other credit service providers) as the Supplier may require for the purposes of administering the Customer's Account, assessing the Applicant's credit worthiness, enforcing any rights or marketing any goods and services provided by the Supplier and to use the information in any dealings with the Customer or the Applicant and authorises any person to provide the Supplier such information about the Customer or the Applicant as the Supplier may require in response to its queries and for any of the purposes set out above; and
 - (b) disclose any information about the Customer or the Applicant to credit reference agencies, or credit and service providers, or enforcement agencies.
 - (c) loading of any defaults against the Customer where the Customer does not comply with the Supplier payment terms set out in clause 4.
- 9.2 The Customer or the Applicant has the right of access to, and correction of their personal information held by the Supplier.
- 9.3 The Customer confirms that the above Privacy Act clause has been read and understood.

10. Dispute Resolution

- 10.1 In the event of a dispute between the parties, they agree to negotiate with each other to resolve the dispute. If they fail to reach an agreement within 10 working days. This agreement is not a pre-condition to the taking of any proceedings or applications for urgent relief, but shall at least proceed in parallel with such actions.