

**TERMS AND CONDITIONS FOR THE SUPPLY OF LP GAS BY MIDSTREAM ELECTRICAL SUPPLIES (PTY) LTD (No 2003/018629/07) TO CONSUMERS IN MIDSTREAM BUSINESS AREA WITHIN THE LOCAL COUNCIL BOUNDARIES AND APPLICABLE BYLAWS WILL APPLY**

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**1. Definitions**

**In these term and conditions**

**%Consumer+**shall mean the name of the entity appearing on the application form;

**+Gas+**refers to liquefied petroleum gas (LPG or LP Gas);

**“MES”** means Midstream Electrical Supplies (Pty) Ltd (no 2003/018629/07) which may, for the purpose of these conditions, also be the service authority;

**“Meter Installation”** shall mean an instrument installed at the premises by us for the measuring of the volume of gas passing through a pipe.

**"owner"**, in relation to any premises, means the person in whose name the premises is registered and includes (a) if the owner is deceased, insolvent, mentally ill, a minor or under any legal disability, the person in whom the custody or administration of such premises is vested as executor, trustee, curator, guardian or in any other capacityL(b) If the premises are leased and registration in a deed registry is a prerequisite for the validity of the lease, the lesseeL(c) The owner's authorised agent or a person receiving the rent of the premises in question

on behalf of the ownerLor (d) Where the premises are beneficially occupied under servitude or similar right, the person in whom such right is vestedL

**"service agreement"** means a contract concluded between MES and any person in terms of section 2 for the supply of gas by MES to such personL

**%Storage+** means the holding of gas piped into a storage facility for the transmission and distribution thereof at a later stage, and any other activity incidental thereto, and **%store+** and **%storing+** have corresponding meanings.

**-Supply point+** refers to the point where our equipment is connected in the premises to our external gas pipe lines;

**%We+, +us+, +our+** and **%ourselves+** refers to Midstream Electrical Supplies (Pty) Ltd its servants and agents, and successors and assigns;

**%You+, %your+, %yourself+** and **%yourselves+** refers to the person or persons who sign the application;

**%Your Equipment+** shall mean all gas installations and/or appliances (as defined in the Gas By-Laws) occurring or situated at, in, on or under your premises, excluding our meter installation. Premises shall be deemed to include those portions of land and buildings located within the perimeter walls and/or boundary of the premises referred to in the application form.

All references made to the Gas Supply By-laws include those by-laws as amended from time to time.

Words and expressions used in this agreement shall have their ordinary meaning.

The headings to these terms and conditions will not be taken into account in the interpretation of this agreement.

## 2. Agreement to supply and start date.

**2.1.** Subject to the conditions set out in condition 2.2, we agree to supply you, and you agree to buy from us, your requirements of liquefied petroleum gas (**%LPG+**) at the low / high pressure flange of the meter applicable to your supply (the **%Supply Point+**) with effect from the date (the **%Start Date+**) that the conditions set out in condition 2.2 are fulfilled to our satisfaction and until this agreement (the **%Agreement+**) constituted by these terms and conditions, your application, and any other terms and conditions we may expressly agree with you in writing, is terminated or the gas supply is disconnected, cut-off, prohibited or restricted pursuant to the terms and conditions of this agreement.

**2.2.** The supply of gas is conditional upon:

**2.2.1.** a completed and signed application form being submitted to Midstream Electrical Supplies (Pty) Ltd;

**2.2.2.** the supply point being connected to our gas supply system;

**2.2.3.** payment of any initial charges and connection fees agreed to by you; and

**2.2.4.** the amount of any deposit that Midstream Electrical Supplies (Pty) Ltd may request (as set out in clause 4) is paid by yourself.

**2.3.** We shall verify the meter reading on the anticipated start date. You will be required to sign a certificate of acceptance stating that you are satisfied that the equipment at your supply point has been installed and that the equipment so installed is in a full working order at the date of installation. The certificate of acceptance shall furthermore state the meter reading at the time of installation. By signing the certificate of acceptance, you will be deemed to have agreed to the meter reading at the time of installation.

**2.4.** These terms and conditions are subject to and without prejudice to the Gas Supply By-laws promulgated by Greater Johannesburg Transitional Metropolitan Council on 28 June 2000 (**%the Gas Supply By-laws+**).

## 3. Payments

**3.1.** The tariffs applicable to the supply of gas are the amount equal or less than the monthly published tariff on the department of labour website.

**3.2.** You will be presented with a monthly invoice for your gas consumption. This invoice shall serve as a written record on which, inter alia, the following will be recorded; a description of the volume of gas consumed, the unit price of consumption, the total price of consumption (including taxes), the total amount (including taxes) and the date upon which payment is required from you.

**3.3.** You shall make payment of the amount stated in your invoice by no later than the date stipulated for payment in the invoice, failing which you will be in breach of your obligations to us.

**3.4.** We shall be entitled to charge you interest at an amount equal to 2% per month on all amounts not paid on or before the date that such payment fell due.

**3.5.** Midstream Electrical Supplies is bound by the price as per prescribed monthly LPG regulations

#### 4. Deposits

- 4.1. We may, upon receipt of your application form, request you to pay a deposit.
- 4.2. The amount of the deposit will depend on our estimate of your gas consumption.
- 4.3. %Deposit+means money deposited by you which has not been used to pay off charges due from you in respect of the supply of gas.
- 4.4. Should your gas consumption increase we retain the right to require you to increase the deposit so held on your behalf. You will be notified of this in writing.
- 4.5. Should this agreement be terminated by notice, as elsewhere provided the deposit will be repaid within 30 days after this agreement has been terminated.
- 4.6. No interest shall be payable by MES on the amount of a deposit held by it in terms of this section.
- 4.7. The provisions of this clause do not apply in the event of you breaching the terms of the agreement, in which case we may apply the deposit, or part of it to recover any amounts or charges due to us.

#### 5. Gas Consumed

- 5.1. The quantity of gas consumed by you monthly will be determined by reference to the meter applicable to the Supply Point which will be, prima facie, evidence of the quantity of gas consumed by you.
- 5.2. Should the meter not have been read in any one month at the time at which invoices are to be generated, we will be entitled to invoice you, and you shall be obliged to pay us, on the basis of estimated consumption, which estimate shall be based on your average consumption for the preceding 3 months. In such instances appropriate adjustments vis-à-vis your actual consumption as opposed to your estimated consumption will be made to the invoice submitted following the next meter reading.
- 5.3. You will be invoiced for gas consumed at or below the price prescribed monthly by the department of Energy.
- 5.4. The price of gas will also appear on your monthly invoice.
- 5.5. You are not entitled to resell gas supplied to you.
- 5.6. You must notify us immediately of any substantial change in your anticipated consumption of gas for any 6 month period.

#### 6. Cancellation

##### 6.1. Your Right to Cancel

- 6.1.1. You may cancel this agreement at any given time by giving us 20 business days written notice of your intention to do so. Notwithstanding the cancellation of the agreement, you shall remain liable to us for any unpaid charges due to us.
- 6.1.2. Should you cease to occupy the premises in respect of which you have concluded this agreement, and you fail to cancel your Consumer Agreement, you shall remain liable to pay for all gas consumption of such premises up to and including the date of cancellation of this agreement.

##### 6.2. Our Right to Cancel

- 6.2.1. Should you breach any term of this agreement, all of which are deemed to be material, then in such event you shall be required, subject to 6.2.2 below, to remedy such breach within 3 days of receipt of a written notice failing which, we shall be entitled to terminate this agreement upon written notice;
- 6.2.2. In the event of a breach which, in our sole and absolute discretion, is deemed to constitute a threat to the health or safety of any person or the environment, and/or integrity of the gas line, then in such event you shall be required immediately upon receipt of a written notice addressed to you by us or our authorised agents, to implement such remedial steps as are detailed in such notification. In addition to any other claim for damages, we may in such event immediately suspend and/or terminate the supply of gas to you pending implementation of the required remedial steps. Provided that should a breach of this nature not be remedied within 72 hours of receipt of the aforementioned notification, we shall be entitled to cancel the agreement without further notice to you. For avoidance of doubt, safety and health issues shall include, but not be limited to, such conduct as is detailed in Clause 8.4 below.
- 6.2.3. If it comes to our attention, subsequent to us having concluded an agreement with you for the supply of gas, that you have provided us with materially incorrect information, we shall have the right to cancel this agreement subject to furnishing you with 24 hours notice of our intention to do so.
- 6.2.4. In the event that we disconnect the gas supply to your premises pursuant to a breach of your obligations arising here from and you rectify your breach and wish to be reconnected to our main gas supply pipeline you shall be responsible to pay to us a reconnection fee being the standard fee then charged by us to our consumers from time to time.

## 7. Consequences of Cancellation

**7.1.** Even if the Contract is terminated, you must pay for all gas consumed at the Supply Point to the date of termination and you will remain liable for the consequences of any other previous breach of the agreement on your part, as we will remain liable in respect of any previous breach on our part.

**7.2.** If you cease to occupy the premises served by the Supply Point and fail to terminate this agreement as per Clause 6.1 you will be liable to pay for any gas consumed at the Supply Point and associated service charges until the first to occur of the following:

**7.2.1.1.** The 7th day after you give us notice that you have ceased to own or occupy the premises;

**7.2.1.2.** The time from which we supply gas to the Supply Point in pursuance of a request made by a person other than yourself.

**7.3.** We shall be entitled to claim damages by us as a result of your breaching any term of the agreement which entitled us to cancel the agreement.

## 8. Safety and use of gas

**8.1.** Due to the fact that we shall be supplying you with LP gas through our gas supply pipelines, your attention is drawn to the underlying principals in connection with the use of gas at your supply point.

**8.2.** You will be required to apply your signature next to this clause at the back of your application.

**8.3.** In so doing you will accept the important terms of this clause and acknowledge that you understand the implications thereof.

**8.4.** You are required to read and understand the stipulations set out hereunder:

**8.4.1.** Only employees or authorized agents of Midstream Electrical Supplies are authorized to install, repair, connect, disconnect or perform any work of whatsoever nature on any equipment in connection with your gas supply point. Our employees and agents are clearly identifiable by their clothing and identification tags.

**8.4.2.** You are not permitted to tamper or allow anyone else to tamper in any way whatsoever with the equipment at the supply point as this may result in serious injury and/or loss. Should you therefore not adhere to the above, we shall absolve ourselves from any loss, damage or injury that you or anyone else may suffer as a result of your failure to adhere to our safety standards.

**8.4.3.** Our equipment at the supply point are clearly marked so as to make you or anyone else on the premises aware of the risk involved in unauthorized tampering with the equipment.

**8.4.4.** Should you at any point become aware of the escape or the expected escape of gas, you are required to immediately inform us of the above so as to enable us to take steps to avoid the further flow of gas to the premises. The emergency service number appears on your most recent invoice.

**8.4.5.** If you are unsure as to the application of our gas to your equipment, you are required to contact us immediately for advice on the application.

### **Limitation of Liability**

**8.4.6.** We shall not be held liable for any loss suffered by you if we are unable to comply with any provisions of this agreement due to circumstances beyond our control. If such circumstances arise we shall take all reasonable steps, so far as practicable, to comply with such obligations.

**8.4.7.** We shall not be held liable for any loss suffered by yourself or anyone else, whether such loss is claimed in direct or otherwise as a result of you not adhering to the conditions set out above.

## 9. Equipment at your supply point

**9.1.** The equipment installed at your supply point is the property of Midstream Electrical Supplies. At no time during or at the expiry of this agreement for whatsoever reason will you or anyone else acquire ownership of the equipment.

**9.2.** Your attention is drawn to the provisions relating to the equipment stated under the heading Safety and use of gas and your attention is drawn to the strict stipulations thereof.

**9.3.** Since the equipment is installed on or near your premises we shall require your permission from time to time to inspect, remove or affect repairs to the equipment. The consumer shall ensure that MES has access to the isolating valve, installed on his own premises at the consumer meter, so that it may be operated at all times.

**9.4.** Should you unreasonably withhold such permission we reserve the right to take whatever action in law to gain access to your premises for the above purposes.

**9.5.** Should you dispose of, damage or otherwise tamper with the equipment in contravention of the stipulations of this agreement, we reserve the right to claim damages suffered by ourselves, which includes but is not limited to the replacing of any or part of the equipment. In the event that we have to replace the equipment or reconnect your gas supply we shall present you with a written quotation of the reasonable cost to repair or replace the

equipment and the costs of reconnecting your gas supply. Only on acceptance of our quotation by yourself shall we conduct the necessary service.

**9.6.** You must properly maintain, and repair when necessary, all gas pipes and other apparatus on your side of the supply point by employing persons with appropriate expertise and skill to carry out the required work.

**9.7.** If you become aware of any defects or damage to our equipment you are required to bring this to our attention immediately.

**9.8.** Should a gas leak occur either because of your failure to maintain the gas pipes and apparatus on your side of the supply point or as a result of your failure to inform us of defects to our equipment, you shall be required to pay for the gas so consumed as per your meter reading at the time.

**9.9.** If you are not the owner of the property where our equipment is installed you are required to inform your landlord of our right, title and interest in and to the equipment.

**9.10.** Should you vacate the premises, be evicted from the premises or should a third party attach upon our equipment or lay a claim to our equipment you are required to inform us of this immediately.

## **10. Disconnecting your Gas Supply**

**10.1.** Your gas supply may only be disconnected by ourselves or a duly authorised officer or agent of Midstream Electrical Supplies (Pty) Ltd. The aforesaid provision shall apply irrespective of the reason for the disconnection.

**10.2.** In the event that a disconnection becomes necessary, we will endeavour to give you reasonable notice thereof.

## **11. Limitation of Liability**

**11.1.** MES shall not be held liable for any loss suffered by you arising out of or relating to force majeure. Should a situation deemed as ~~force majeure~~ arise, MES shall take all reasonable steps to continue to comply with its obligations in terms of this agreement.

**11.2.** We shall not be held liable to injuries for any loss and/or damage to any property situate at your premises, arising from your failure to adhere to the condition set out above.

**11.3.** MES shall not be held liable for any consequences to the consumer or another person for any stoppage, failure, variation, surge or other deficiency in the supply of gas from whatever cause.

## **12. Assignment**

**12.1.** We will be entitled to assign and cede any or all of our rights and liabilities under this agreement. You will not be entitled to assign your rights under this agreement without our prior written consent.

## **13. Notices / Domicilium Address**

**13.1.** Any notices which you are required or wish to give us under this agreement should be delivered or sent to our address stated overleaf or to such other address as we may notify you in future should be used.

**13.2.** Your domicilium address shall be deemed to be the address chosen by you at which you agree to receive all correspondence, accounts, and in the case of litigation, all notices, pleadings, applications and the like, relating to the supply of gas to your premises from us. You shall be deemed to have received all correspondence and legal documents once they are delivered and/or transmitted to your nominated address notwithstanding that you may not physically have received such correspondence or legal documents.

## **14. Terms and Conditions to be amended from time to time**

**14.1.** MES shall be entitled to and shall, if deemed necessary, amend our terms and conditions from time to time. Such amended terms and conditions will be published and brought to your attention by MES from time to time. Upon notification being provided to you of such amended terms and conditions, the amended terms and conditions shall supercede the terms and conditions previously in place at such time which shall be deemed to constitute the whole agreement then in place between yourself and ourselves, same where 14.2 is applicable

**14.2.** Where gas is currently supplied to you subject to existing terms and conditions as well as a separate further agreement, the separate further agreement shall continue to govern our relationship notwithstanding that the further separate agreement may contradict these terms and conditions. These terms and conditions shall become binding on the parties only to the extent permitted by the separate further agreement.

## **15. Separate undertakings**

**15.1.** Each provision in these terms and conditions shall be deemed to be and shall be construed as being separate and several from every other provision contained in these terms and conditions.

**15.2.** No provision shall be limited or restricted by reference to or inference from any other separate provision.

**15.3.** If any provision of these terms and conditions is or become illegal, invalid or unenforceable, such provision shall be divisible and be regarded as pro non scripto, the remainder of the terms and conditions to be regarded as valid and binding and of full force and effect.

## **16. Non-waiver**

**16.1.** Should we not have insisted that you comply strictly with any of the terms and conditions at any previous stage, you may not assume that the terms and conditions have been altered. These terms and conditions will continue to apply and we will at any time thereafter be entitled to enforce these terms and conditions strictly without further notice to you.

## **17. Previous Agreements**

**17.1.** This agreement supersedes any previous agreement as the agreement and amendments to any previous agreement are done with the main object to comply with the Consumer Protection act 68 of 2008 and the National Credit Act 34 of 2005

## **18. Law to apply and Jurisdiction**

**18.1.** This agreement will be interpreted and operated in accordance with the law of the Republic of South Africa.

**18.2.** You hereby agree that we shall be entitled, at our option, to institute any legal proceedings which may arise from this agreement in the High Court of South Africa or any magistrate's court having jurisdiction over you, notwithstanding the fact that the claim or value of the matter in dispute may otherwise exceed the jurisdiction of such magistrate's court.

## **19. Costs**

**19.1.** Should you breach any of the terms of this agreement, then you will be held liable to us for payment of the costs incurred by ourselves as a result of your breach of all legal costs on attorney and client scale, including collection commission and tracing agents' fees.