



**Annex 1 to the  
Transportation Contract**

# **General Terms and Conditions of**

## **OMV Gas GmbH**

### **for Cross-Border Transportation**

**approved upon certain conditions by**

***Energie-Control Kommission***

**on April 7, 2010**

**pursuant to section 31g GWG (Natural Gas Act) as amended by**

**BGBI. (Federal Law Gazette) I No. 106/2006**

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## Article 1 Subject Matter and Scope

1.1 In connection with the cross-border transportation of natural gas pursuant to section 6(17) and section 31g GWG these General Terms and Conditions govern:

- the injection of natural gas into a Pipeline System;
- the withdrawal of natural gas from a Pipeline System;
- the minimum technical requirements for access to a Pipeline System; and
- the rights and duties of the parties to the Transportation Contract.

1.2 OMV Gas GmbH ("OGG") undertakes to transport natural gas for Shipper on one of the following Pipeline Systems:

- HAG
- MAB
- Penta West
- PVS
- SOL

in accordance with:

- these General Terms and Conditions;
- the fee, calculated in accordance with the method approved pursuant to section 31h GWG, or as the case may be if transportation requires the use of capacity dedicated to the *Regelzone Ost* (Eastern Balancing Area), the fee as determined by *Energie-Control Kommission* in a regulation pursuant to § 31 h (5) GWG, and any legally permissible surcharges.

OGG renders cross-border transportation services on the above Pipeline Systems solely on the basis of these General Terms and Conditions. Where use is made of capacity of the *Regelzone Ost* transportation services shall be subject to the applicable regulations as well as the Market Rules which may be adapted on a case-by-case basis as the circumstances require.

1.3 OGG shall maintain the technical safety, reliability and interoperability of the Pipeline Systems, as well as acquire, store and transfer to other market participants the data as required by the Market Rules.

1.4 Shipper shall undertake in the Transportation Contract to use the Pipeline System in question solely in accordance with these General Terms and

Conditions, and to pay the fee calculated on the basis of the method approved pursuant to section 31h GWG, or as the case may be if transportation requires the use of capacity dedicated to the *Regelzone Ost* (Eastern Balancing Area), the fee as determined by *Energie-Control Kommission* in a regulation pursuant to § 31 h (5) GWG, as well as any legally permissible surcharges.

## Article 2 Definitions

The definitions of the following terms used in these General Terms and Conditions are as follows:

<b>Fee</b>	<i>Netznutzungsentgelt</i> pursuant to GWG.
<b>Commitment</b>	The maximum hourly flow rate of transportation (maximum instantaneous flow rate) agreed under Article 4.5 of these General Terms and Conditions, expressed in Nm <sup>3</sup> /h (i.e. m <sup>3</sup> /h(0°C)).
<b>Delivery Pressure</b>	See "Outlet Pressure".
<b>Gasday</b>	Gasday shall start at 6.00 a.m. local time and shall end at 6.00 a.m. local time of the following day in a certain time-zone.
<b>Inlet Point</b>	The point at which the natural gas is delivered to OGG by the Shipper for transportation. The physical entry point must be stated in the application pursuant to Article 4.5 of these General Terms and Conditions.
<b>Inlet/Outlet Pressure</b>	The pressure, to be maintained between a minimum and maximum level, at which natural gas is to be delivered to the Inlet and Outlet Point. The limit values are determined by Annex 3 (Quality Specification and Pressure) of the respective Pipeline System used. Unless otherwise agreed, the pressure is specified as gauge pressure in bar.
<b>Matching</b>	Matching of the Shipper's nominations with those of shippers using upstream and downstream transportation systems.
<b>Nomination</b>	The actual desired hourly transportation rate notified by the Shipper (planned actual instantaneous flow rate)

expressed in MWh/h with three digits to the right of the decimal point, which may not exceed the maximum hourly transportation rate committed in accordance with Article 4 of these General Terms and Conditions.

<b>Norm cubic meter</b>	The amount of natural gas that fills a cubic meter of space at 0°C and an absolute pressure of 1.01325 bar (abbreviated as Nm <sup>3</sup> or m <sup>3</sup> /h).
<b>Outlet Point</b>	The point at which the natural gas is delivered to the Shipper by OGG. The physical exit point must be stated in the application pursuant to Article 4.5 of these General Terms and Conditions.
<b>Pipeline System</b>	<i>Fernleitung</i> pursuant to the GWG.
<b>Shipper</b>	<i>Netzbenutzer</i> pursuant to the GWG.
<b>Transportation Capacity</b>	The capacity of a Pipeline expressed as an hourly flow rate.
<b>Transportation Contract</b>	<i>Netzzugangsvertrag</i> pursuant to the GWG.
<b>Working Day</b>	Any day other than Saturday, Sunday, Austrian statutory national holidays, and 24 and 31 December.

### Article 3 Applicable Law

- 3.1 The legal relationship between OGG and Shipper arising from the Transportation Contract shall be subject to Austrian law (with the exception of rules and regulations governing conflict of laws and the UN Convention on the International Sale of Goods) as well as Regulation (EC) No. 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks.
- 3.2 These Terms and Conditions are subject, in particular, to the provisions of the GWG, BGBl. I No. 121/2000, as amended, and the E-RBG (Energy Regulatory Authorities Act), BGBl. I No. 121/2000, as amended.
- 3.3 Without prejudice to the jurisdiction of the arbitration tribunal, both OGG and Shipper may submit disputes or complaints such as disputes arising from the

settlement of fees to *Energie-Control GmbH*. The mediation of disputes by *E-Control GmbH* is carried out in accordance with section 10a E-RBG. Refusal to conclude a Transportation Contract and the prioritization of capacity allocation are subject to the relevant provisions of the GWG and to the regulations (as amended) and decrees enacted under that Act.

#### **Article 4 Inquiries for Transportation Services and the Conclusion of Transportation Contracts**

4.1 Shippers requesting transportation services in a Pipeline System operated by OGG shall address inquiries to OGG for the conclusion of a transportation contract.

4.2 OGG shall be obliged to:

- (a) respond to properly completed inquiries within fourteen (14) working days of receipt;
- (b) compute the available Pipeline capacity;
- (c) disclose the available Pipeline capacity;
- (d) compute the Fee;
- (e) forward the necessary contract documents including the approved General Terms and Conditions (section 31g GWG) to the inquiring shipper.

4.3 In the event that the transportation of natural gas within the geographical area of the Eastern Balance Area requires a contract with more than one transmission system operators or holder of transportation rights the inquiry shall be addressed to OGG in its capacity as a "one-stop shop" in accordance with section 31e(2) GWG. This coordination function undertaken by OGG shall be performed on the basis of a standard service contract published on the internet, and also includes *Sonstige Transporte* pursuant to section 6(46a) GWG where these are required for the desired cross-border transportation.

In this case, the obligations under Article 4.2(a–e) shall be fulfilled not by the transmission system operator / holder of transportation rights concerned but by OGG throughout the entire transportation route, and in fulfillment of its obligations under Article 4.2 OGG shall adopt the calculations of the various transmission system operators / holders of transportation rights without verifying them. Where Pipeline capacity in the Eastern Balance Area is required, OGG shall fulfill its obligations under Article 4.2 (b–c) by forwarding the application to the *Regelzonenführer* (Balance Area Manager) in order to enable it to perform the necessary computation and reporting.

- 4.4 In the event that it rejects an inquiry OGG shall state the reasons in writing. If the information provided in an inquiry is insufficient, OGG shall request the further information required by it as soon as possible.
- 4.5 Inquiries for the conclusion of transportation contracts shall, as a minimum, contain the following information:
- (a) the start-up and end date of the transportation service;
  - (b) the maximum transportation capacity, stated in Nm<sup>3</sup>/h (i.e. m<sup>3</sup>/h(0°C));
  - (c) the Inlet and Outlet Point;
  - (d) the quality of the transportation service (firm/interruptible);
  - (e) a contact person, and address and telephone number of the same;
  - (f) the information to which *Bilanzgruppe* (Balance Group) Shipper belongs as well as the confirmation of the *Bilanzgruppenverantwortlichen* (Balance Group Manager) about Shipper's membership or supplier (AT# and address) if capacity dedicated to the *Regelzone Ost* (Eastern Balancing Area) is used.

In addition to the information listed above, shippers shall inform OGG as to the counterparty relationships, i.e. their partners on the upstream and downstream Pipeline System, respectively, not later than five (5) working days before the start-up of contract performance. In the event that Shipper fails to provide OGG with this information in a timely manner, the earliest possible start-up date for the transportation service shall be delayed by the number of working days by which such information is late in arriving at OGG.

- 4.6 After having assessed the inquiry OGG shall send the Shipper either an offer to conclude a transportation contract or — upon conclusion of the standard service contract under Article 4.3 — the collected information and documentation.
- 4.7 OGG provides a website for inquiries about and **Online Capacity Booking (OCB®)**. Use of this website by Shippers shall be conditional on registration on the OMV website ([www.omv.com](http://www.omv.com)) which is free of charge.
- 4.8 When using the OCB® system Shippers shall select the type of services required, and input their capacity requirements and the desired contract duration. Provided that the capacity required is available, Shipper shall be sent a binding offer, valid for a limited period, via the system. Upon electronic confirmation by the Shipper of receipt of such offer it shall be sent a corresponding Transportation Contract via the OCB®. Upon electronic confirmation of receipt of the Transportation Contract by Shipper, the latter shall print out the Transportation Contract, execute it and return it to OGG.

The Transportation Contract shall enter into effect upon being countersigned by OGG. The performance of the transportation services is possible after a processing period of a maximum of five (5) working days. If OGG pursuant to Article 24 requires Shipper to provide a deposit, the maximum processing period shall be included in the five (5) day maximum period subsequent to conclusion of the Transportation Contract allowable in this case.

## **Article 5 Standard Transportation Services**

- 5.1 Shipper shall be entitled to conclude long or short-term transportation contracts. OGG offers and concludes short-term transportation contracts (on a one or multi-month basis) and long-term contracts (on an annual basis). The conclusion of longer-term contracts is possible provided that these are compliant with Austrian and European competition law.
- 5.2 Where technically feasible, OGG shall offer transportation services whose actual or contractual flow is reverse to the original flow direction of the Pipeline System in question ("reverse flow").
- 5.3 If the amount of firm transportation capacity requested by an inquiring shipper is not available OGG shall offer interruptible capacity. If the Shipper has booked interruptible capacity, such may be interrupted at any time and insofar as this is necessary in order to render transportation services on a firm basis.
- 5.4 OGG shall notify any interruption of interruptible services promptly, in any case at least two (2) hours before such interruption.
- 5.5 In the event that transportation services provided on an interruptible basis must be interrupted in order to carry out firm transportation services, the extent of interruption shall be proportionate to the contractually agreed transportation capacity ("pro rata").

## **Article 6 Performance of Transportation Services**

- 6.1 OGG undertakes to accept and match Shipper's nominations provided that they conform to the templates shown in **Annex 2** (Nomination [including contacts]).
- 6.2 OGG undertakes to accept natural gas up to the maximum agreed transportation capacity at the Inlet Point of its Pipeline System, and to deliver



it to the Outlet Point. OGG shall not be obliged to accept natural gas quantities in excess of the maximum agreed transportation capacity at the Inlet Point. Rendering of the transportation services shall always be conditional on the transmission of nominations to OGG in accordance with **Annex 2**.

- 6.3 OGG shall accept the natural gas delivered by shipper to the agreed Inlet Point — subject to Article 8.3 — and deliver it to the agreed Outlet Point subject to the agreed flexibility and in accordance with the provisions of **Annex 2**. The amount of energy delivered shall correspond to that delivered by Shipper at the Inlet Point, less any fuel gas which Shipper may be required to provide in kind.
- 6.4 OGG shall not acquire any title to the natural gas to be transported for Shipper.
- 6.5 OGG shall maintain the pressure in the Pipeline System, and balance natural gas injection and withdrawal, having due regard to economic operation.
- 6.6 OGG undertakes to make best endeavours to avoid reductions of the agreed transportation capacity in the event of temporary interruptions affecting a Pipeline System. If a reduction of capacity is unavoidable, the reduced capacity shall be allocated to shippers in proportion to the contractually agreed transportation capacity (“pro rata”).
- 6.7 If OGG is unable to render the transportation services with respect to the contractually agreed quantity of natural gas due to scheduled repair or maintenance works it shall only be released from its contractual obligations if Shipper has been notified of the beginning, end and extent of the expected curtailment of the contractually agreed transportation capacity in accordance with the provisions set forth below:
  - (a) OGG shall post on its website information on scheduled repair and maintenance work in the following calendar year which will result in a reduction of the contractually agreed transportation capacity.
  - (b) OGG shall notify shippers affected of the actual beginning and duration of repair or maintenance works, and the extent of the resulting reduction of the contractual transportation capacity on an ongoing basis during the calendar year in question, in accordance with the information currently available to it.
- 6.8 In the event of scheduled repair or maintenance works Shipper shall be released from its obligation to pay the Fee under Article 11 to the extent and

for the duration of the booked but unavailable capacity.

- 6.9 In the event of unforeseen repair works which are essential for safety reasons the procedure provided for by Article 6.7 may be dispensed with. Shipper shall, without exception, be notified of such repair works as soon as possible in writing, and Article 6.8 shall apply.

## **Article 7 Optional Services**

Apart from transportation services, OGG offers additional services related to natural gas transportation. Such optional services shall be standardized, and shall be provided on a non-discriminatory basis. The terms and conditions for such optional services shall be posted on the OMV website.

## **Article 8 Inlet and Outlet – Gas Quality**

- 8.1 Shipper undertakes not to exceed the maximum agreed transportation capacity at the agreed Inlet and Outlet Point.
- 8.2 Shipper further undertakes to deliver only natural gas conforming to the specification for the Pipeline System used, set forth in **Annex 3** (Quality and Pressure Specification), to the Inlet Point. OGG and Shipper undertake to inform each other immediately upon becoming aware of non-conformance with the quality specification set forth in **Annex 3** ("Off-Spec Gas").
- 8.3 OGG shall be entitled to refuse to accept Off-Spec Gas at the Inlet Point. In such case, the natural gas delivered by Shipper shall be deemed not to have been delivered. The decision as to whether to transport Off-Spec Gas is at the sole discretion of OGG; in case of such transportation, Shipper shall be liable under Article 25.4.
- 8.4 Shipper shall be entitled to refuse to accept Off-Spec Gas at the Outlet Point unless it itself delivered such natural gas to the Inlet Point and OGG did not refuse to transport it. In the event of such refusal by Shipper the natural gas delivered by OGG shall be deemed not to have been delivered.
- 8.5 Shipper is aware and acknowledges that it is possible that natural gas delivered by it to the Inlet Point may be mixed with gas delivered by other shippers, and that the natural gas supplied to it at the Outlet Point may not be identical to that delivered by it to the Inlet Point. OGG undertakes to transport natural gas conforming to the specification set forth in **Annex 3** to the Outlet

Point if the natural gas delivered to it by Shipper at the Inlet Point conforms to the specification set forth in the said Annex.

## **Article 9 Determination and Allocation of Quantities**

- 9.1 In the event of the conclusion of Interconnection Agreements (IAs) including Operational Balancing Accounts at the Inlet and/or Outlet Point with the operators of upstream and/or downstream Pipeline Systems, the energy delivered or withdrawn by Shipper at an Inlet and/or Outlet Point shall be accepted together with other amounts of energy as part of a common stream, and such amounts of energy shall be deemed to be accepted as indicated by the respective confirmed nominations made in accordance with **Annex 2**.
- 9.2 The allocation of amounts of energy delivered/withdrawn shall otherwise be in accordance with the provisions of the Transportation Contract. The potential allocation rules are listed in **Annex 4** (Allocation Rules). OGG undertakes to treat all shippers at a given Inlet/Outlet Point equally in accordance with the allocation rule applied, i.e. to apply the same allocation rule to all shippers.
- 9.3 OGG shall provide Shipper access to its online database **Gas Management System** ("GMS") so as to enable it to view the monthly reports and daily data. Registered shippers can access the monthly reports and daily information on OMV's website at:

[www.omv.com](http://www.omv.com)

The daily data represent preliminary data. The data contained in the monthly reports will be released by OGG on the third working day of the following month, and are final and binding from such time.

- 9.4 Shipper shall use the standard form shown in **Annex 5** (GMS Application Form) to apply for access to the GMS. The data required for access, i.e. the names, telephone numbers and e-mail addresses of authorized users, shall be notified by Shipper. The maximum number of authorized users per Shipper is three (3). Shipper shall be obliged to enjoin the nominated users to keep the access data secure in order to prevent abuse. Shipper shall be obliged to notify any changes in the persons nominated by it, so as to enable OGG to block nominated users who are no longer authorized, thereby preventing abuse of the GMS. Shipper shall indemnify and hold harmless OGG with respect to such abuse.

- 9.5 In order to provide him/her with access to the GMS via the above website each nominated user shall be assigned two usernames and two passwords (one for each of the two registration steps, i.e. registration on the OMV website and the GMS). Shipper's employee shall be authorized to access the system as soon as the usernames and passwords are sent to him/her by e-mail. The passwords may be changed by authorized users at any time. It is recommended to change the passwords when registering for the first time. A maximum of three attempts is permitted for the entry of passwords. If a false password is input at the third attempt, the account is automatically blocked (username and password). An account can only be unblocked by the OMV IT service desk (it-servicedesk@omv.com) on receipt of an e-mailed request.
- 9.6 OGG logs access by shippers to the GMS. The data thus acquired is used to correct any system errors. Should Shipper gain access to data not intended for it, for any reason whatsoever, it undertakes not to store or transmit such data in any way whatsoever. Shipper, further, undertakes to inform OGG of such circumstances. OGG reserves the right to assert any claims for damages arising from failure to do so.
- 9.7 OGG excludes any liability whatsoever for damages arising from access to the daily data – e.g. due to incorrect data, inability to access data or utilization of the data provided – unless caused by wilful misconduct or gross negligence. The limitations to liability set forth in Article 25.3 shall apply to all damages incurred by Shipper within the duration of the contract under any circumstances whatsoever.
- 9.8 OGG excludes any liability for malfunctioning of the internet.
- 9.9 In the event of technical problems within the control of OGG which prevent access by Shipper to the GMS, OGG shall endeavour to repair such problems as quickly as possible, and within five (5) working days at the latest. Should such technical problems occur on or after the third working day of the following month, OGG shall fax the monthly report in question to Shipper.
- 9.10 OGG reserves the right to modify the mode of access to the system. In the event of such modification Shipper shall be informed thereof in writing. Two (2) weeks' notice before the first day of the following month shall be given of such modifications.
- 9.11 Shipper's access authorization shall terminate one (1) month after expiration of the last transportation contract between OGG and itself.

## **Article 10 Utilization of Unused Committed Transportation Capacity**

- 10.1 Shipper undertakes to make unused transportation capacity which has been committed in accordance with Article 4 available to third parties. Without prejudice to section 19(2) GWG, Shipper shall offer unused committed capacity on the secondary market. Shipper undertakes to offer unused committed capacity exclusively via the trading platform set up pursuant to section 31e(7) GWG and at reasonable prices. Shipper shall inform OGG in writing about any unused transportation capacity as offered via the trading platform within reasonable time.
- 10.2 If Shipper does not offer unused committed capacity on the secondary market in accordance with Article 10.1 within one month of the determination of non-utilization of committed capacity, OGG shall be entitled to withdraw from such Shipper wholly or partially unused capacity committed in accordance with Article 4 ("use it or lose it" principle), unless this would directly violate provisions of existing transportation contracts, and such provisions comply with Austrian and European competition law. Shipper shall then lose an amount of committed capacity equal to some or all of the non-utilization, subject to the following conditions:
- (a) OGG is unable to meet even a single inquiry due to lack of available firm transportation capacity at the Inlet Point concerned; and
  - (b) Shipper has failed to utilize transportation capacity committed in accordance with Article 4 to the extent defined by Article 10.1.
- 10.3 In the event that unused committed capacity is withdrawn from Shipper, this shall be without prejudice to said Shipper's right to renew utilization of capacity in the amount of the transportation capacity committed under Article 4 at any time. The rights of third parties to whom the unused committed transportation capacity is reallocated shall be limited to the extent of the non-utilization by original Shipper. OGG shall be entitled to interrupt transportation services rendered on an interruptible basis in the event of renewed usage by original Shipper, subject to Articles 5.3–5.6.

## **Article 11 Fee**

- 11.1 Shipper shall be obliged to pay OGG the Fee calculated in accordance with the method approved as set forth in section 31h GWG, or – as the case may

be if transportation requires the use of capacity dedicated to the *Regelzone Ost* (Eastern Balancing Area) – the fee as determined by *Energie-Control Kommission* in a regulation pursuant to § 31 h (5) GWG, plus any statutory surcharges.

- 11.2 OGG shall round the Fee payable under the Transportation Contract to integer digits.

## **Article 12 Invoicing**

- 12.1 OGG shall send invoices to Shipper by fax not later than the fifth (5<sup>th</sup>) working day of the month after that in which the agreed transportation service was rendered.
- 12.2 OGG shall invoice and Shipper shall pay the applicable value added tax and any future tax or levy payable in consequence of or in connection with the Transportation Contract, in addition to the Fee for the transportation services, in accordance with the provisions of this Article. All invoices shall be issued including value added tax. If the Shipper requires an invoice excluding value added tax it shall inform OGG thereof in writing prior to the execution of the Transportation Contract.

## **Article 13 Payments, Default, Reminder**

- 13.1 Shipper shall be obliged to transfer, to an account nominated by OGG, the amounts stated in the invoice issued by OGG plus any bank charges incurred, in such a timely manner that the amounts are credited to such account not later than the 15<sup>th</sup> day of the following month (the “Due Date”). In the event of late invoicing by OGG the Due Date shall be delayed by the same number of days.
- 13.2 If the Due Date is not a banking day in Austria, then the Due Date shall be the next banking day.
- 13.3 Objections to invoices by Shipper shall not entitle it to delay or refuse payment of the invoiced amounts. If an invoice is found to be incorrect, then Shipper shall be entitled to invoice OGG for interests on the incorrect part of the amount. Such interest shall be computed on the basis of the higher of the three-month Euribor rate plus four (4) percent or the legal rate of interest on the day of recalculation of the invoice.

- 13.4 Invoices to which no objection is made within three (3) months of the Due Date shall be deemed accepted.
- 13.5 Interest on defaults shall be payable from the day after the Due Date up to and including the day on which the amount due is credited to the account of OGG. Such interest shall be computed on the basis of the higher of the three-month Euribor rate plus four (4) percent or the legal rate of interest on the day of the calculation of the interest on defaults. Shipper shall compensate OGG for expenses actually incurred for reminders, resubmissions and other reasonable collection efforts.
- 13.6 Without prejudice to the provisions of Article 13.5, OGG undertakes to give Shipper written notice of defaults and to accord it a further period of ten (10) days to make payment. In the event of continued default after expiry of said ten (10) days, OGG shall be entitled to terminate the Transportation Contract with immediate effect, and to meet any outstanding claims against Shipper by recourse to the deposit provided by the latter. This shall be without prejudice to the right of OGG to claim damages for outstanding amounts not covered by such deposit.

#### **Article 14 Duty to Inform**

- 14.1 OGG and Shipper shall provide each other with the information needed to fulfill their contractual duties and to maintain the Pipeline System interoperability.
- 14.2 All correspondence regarding operational requirements in respect of the Pipeline System in question shall take place directly between the contacts at OGG and Shipper as set forth in **Annex 2**.
- 14.3 Shipper shall be obliged to inform OGG in writing of the customs status of the natural gas delivered by it to OGG for transportation prior to contract execution and upon any change to this status.

#### **Article 15 Transmission of Data to Third Parties – Confidentiality**

- 15.1 OGG shall use data provided by Shipper for the performance of its contractual duties only and in accordance with the relevant legal provisions, and shall only, to the necessary and legally permissible extent, transmit such data to those requiring it to perform their duties – in particular, the Manager of the Eastern Balance Area.

- 15.2 OGG shall provide market participants with the data particularly required by them to perform their functions and to operate Pipeline Systems safely and efficiently, coordinate system upgrading, and maintain Pipeline System interoperability. Analogous duties to inform apply to every shipper in respect of OGG.
- 15.3 The data transfers provided for by these General Terms and Conditions shall be effected in the manner specified by the Technical Rules and the Market Rules as amended.
- 15.4 OGG and Shipper shall treat business and trade secrets becoming known to them in the performance of their activities in confidence, and may not disclose them to third parties. This provision does not apply to the transmission of information and data to the regulatory authority to the extent required by the law.
- 15.5 OGG is subject to the DSG 2000 (Data Protection Act 2000). The resultant rights of Shipper shall not be affected by these General and Terms and Conditions.

## **Article 16 Miscellaneous**

- 16.1 Shipper shall only be entitled to offset claims against counterclaims if such claims have been acknowledged by OGG or a court of law.
- 16.2 OGG's obligations regarding operation of the Pipeline System, nominations, dispatching and the determination of natural gas quantities and quality shall be fulfilled by the operator acting on behalf of OGG.
- 16.3 Shipper is aware and acknowledges that telephone conversations with the operator's dispatching centre are recorded.
- 16.4 Any amendments and/or additions to the Transportation Contract shall be made in writing, and shall not be valid unless they expressly refer to the provision so amended. Any deviation from this requirement shall not be valid except as agreed in writing. Postal communications shall be duly delivered if sent to the address stated on the cover sheet of the Transportation Contract. Any change of address shall be notified to the counterparty in writing within fourteen (14) days of such change.



## **Article 17 Transportation Contract – Annexes to the Transportation Contract**

The Transportation Contract, which shall be uniformly applied to all Pipeline Systems – with the exception of the MAB Pipeline System - in two versions, for firm and interruptible transportation services, shall include the following annexes:

- Annex 1:** General Terms and Conditions of OMV Gas GmbH for Cross-Border Transportation;
- Annex 2:** Nomination (including contacts);
- Annex 3:** Quality and Pressure Specification;
- Annex 4:** Allocation Rules;
- Annex 5:** GMS Application Form;
- Annex 6:** Model Bank Guarantee.

All Annexes shall form integral parts of the Transportation Contract. Annexes 3 and 4 vary according to the Pipeline System utilized.

## **Article 18 General Terms and Conditions of Cross-Border Transportation**

- 18.1 In case future laws, regulations or decrees of authorities lead to an increase or decrease of the costs of network use, the resulting change of prices shall become applicable as from the effectiveness of the mentioned circumstances to the resulting amount.
- 18.2 These General Terms and Conditions shall form an integral part of the Transportation Contract. Both the Transportation Contract and these General Terms and Conditions are published on the internet ([www.omv.com](http://www.omv.com)). In the event that Shipper uses its own general terms and conditions, it hereby acknowledges that the present General Terms and Conditions shall prevail in any conflict between the two. Fulfilment by OGG of its obligations under the Transportation Contract shall not be deemed to constitute acceptance of the general terms and conditions of Shipper. Any matter not governed by the Transportation Contract and/or these General Terms and Conditions shall be settled by the parties in accordance with common industry practice.
- 18.3 The Standard Transportation Contracts and these General Terms and Conditions exist in both German and English language versions; any differences in meaning are unintentional. Any German language transportation contract is subject to the General Terms and Conditions for Cross-Border Transportation as approved by *Energie-Control Kommission*,

and any English language transportation contract is subject to the certified translation of such approved version.

- 18.3 In the event that amendments to these General Terms and Conditions for Cross-Border Transportation are approved after the conclusion of the Transportation Contract, OGG shall notify Shipper thereof by registered letter, and send Shipper such amended General Terms and Conditions on request. Unless Shipper objects in writing to the application of the amended General Terms and Conditions for Cross-Border Transportation within four (4) weeks of notification – significant is the arrival of the disagreement at OGG -, the Transportation Contract shall be subject to such amended General Terms and Conditions. Silence on the part of Shipper shall be deemed to constitute consent. The amended General Terms and Conditions for Cross-Border Transportation shall enter into effect on the first day of the month following the end of the notice period for objections. If Shipper objects in writing to the application of the amended General Terms and Conditions for Cross-Border Transportation, then OGG shall be entitled to terminate the Transportation Contract in writing upon three (3) months' prior notice. OGG shall expressly inform Shipper of the consequences of its objection in writing.

### **Article 19 Severability**

In the event that any provision of the Transportation Contract, including any part of these General Terms and Conditions, should be or become ineffective the remaining provisions of the Transportation Contract shall remain in full effect. The Parties undertake to replace the ineffective or void provision with a valid provision which approximates to it as closely as possible in economic, technical and/or legal terms.

### **Article 20 Force Majeure**

- 20.1 In the event that contractual obligations become unfulfilable or that they cannot be met in a due and timely manner owing to force majeure (as defined below) or to statutory regulations on emergency measures in the energy industry, such contractual duties shall be suspended until the obstacles to performance and their effects have been overcome. "Force Majeure" means any event or circumstance or chain of events and/or circumstances affecting the Pipeline System of OGG named in the Transportation Contract which could not have been foreseen, was beyond the control of the Party, could not have been predicted or averted by

exercising reasonable, ordinary or due care, and prevents such affected Party from fulfilling its obligations to the other, or delays such fulfilment.

- 20.2 Shipper's inability to pay the fee under Article 11 shall not be deemed to constitute a Force Majeure event.
- 20.3 The Party affected by Force Majeure shall notify the other Party thereof immediately, and inform it of the reasons for, and anticipated length of the interruption of performance.
- 20.4 The Party affected by Force Majeure shall immediately take all actions that can be reasonably expected of it in technical and economic terms in order to recommence performance of its obligations under the Transportation Contract.
- 20.5 OGG shall be released from the fulfilment of its obligations under the Transportation Contract to the extent and for the duration of its inability to do so due to Force Majeure. In such a case Shipper shall, to the same extent, be released from its corresponding obligation to pay the Fee.
- 20.6 If a Force Majeure event persists for more than six (6) months the Parties shall make best endeavours to agree amendments to the Transportation Contract.

## **Article 21 Termination for Important Reason**

- 21.1 Both Parties shall be entitled to terminate the Transportation Contract with immediate effect for an important reason.
- 21.2 An important reason for termination by OGG shall, for example, exist in the event of:
- (a) material breach of contract by Shipper; or
  - (b) Shipper's insolvency.

Under such circumstances OGG shall be entitled to have recourse to the deposit provided by Shipper.

## **Article 22 Legal Succession**

If a Transportation Contract concluded on the basis of these General Terms and

Conditions is assigned to a third party, OGG shall be entitled to require the new Shipper to provide a deposit under Article 24.

### **Article 23 Warranties and Representations**

- 23.1 Shipper warrants and represents that it possesses an unconditional and undisputed right to have the natural gas delivered by it to the Inlet Point transported, and that the natural gas so delivered is free from all liens, encumbrances and other rights of third parties representing obstacles to its transportation. Shipper shall be obliged to indemnify and hold harmless OGG with respect to such obstacles.
- 23.2 OGG warrants and represents that the gas delivered to the Outlet Point will be free from all and any liens, other encumbrances or entitlements of third parties.

### **Article 24 Deposit**

- 24.1 OGG shall be entitled to require Shipper to furnish a deposit for the latter's payment obligations under the Transportation Contract. Such deposit may, at the discretion of Shipper, take the form either of a bank guarantee or of a cash deposit.
- 24.2 If Shipper furnishes a bank guarantee in accordance with **Annex 6** (Model Bank Guarantee), it shall deliver such guarantee to OGG not later than five (5) days before the start-up of contractual performance. The bank guarantee has to be consistent with the model; otherwise Article 24.5. applies.
- 24.3 If Shipper makes a cash deposit, it shall do so, undiscounted, not later than five (5) days before the start-up of contractual performance, to an account nominated by OGG. Such cash deposit to OGG, which shall not be interest bearing, shall be repaid after expiration of the Transportation Contract, not later than 25 days after Shipper has notified OGG in writing of the account to which the amount is to be transferred.
- 24.4 The amount of the cash deposit or bank guarantee shall depend on the duration of the Transportation Contract, and shall be calculated as follows:
- (a) In case of a Transportation Contract with a duration of less than one month the cash deposit shall be equal to the contractually agreed Fee for the transportation service.

- (b) In the case of a Transportation Contract with a duration of between one (1) and six (6) months the cash deposit or bank guarantee shall be equal to the Fee payable for one month, computed at the time of the offer made.
  - (c) In the case of a Transportation Contract with a duration of between seven (7) and twelve (12) months the cash deposit or bank guarantee shall be equal to twice the Fee payable for one month, computed at the time of the offer made.
  - (d) In the case of a Transportation Contract with a duration of more than twelve (12) months the cash deposit or bank guarantee shall be equal to fifteen percent (15%) of the Fee payable for the entire duration of the transportation services, computed at the time of the offer made.
- 24.5 In the event that Shipper fails to fulfil its obligations under this Article or to do so in a timely manner, or does not furnish the deposit in the required amount or form, the Transportation Contract shall automatically and with immediate effect be terminated, and OGG shall be released from its obligations under such contract.

## **Article 25 Liability, Indemnity**

- 25.1 Each Party shall be solely liable for the fulfilment of the obligations arising from the Transportation Contract.
- 25.2 Each Party shall be liable to the other in accordance with the statutory provisions on tort. With the exception of personal injury and claims under section 19(6) GWG, culpable liability shall be restricted to cases of willful misconduct or gross negligence.
- 25.3 In the event that OGG is liable, liability for consequential damages, loss of profits or indirect damages shall – to the extent legally permissible – be excluded. The liability of OGG shall be limited to twelve (12) times the monthly Fee for the transportation services to be rendered within a calendar year.
- 25.4 Shipper shall be liable without limitation for damages suffered by OGG or third parties (e.g. other shippers) in question under **Annex 3** due to off-specification natural gas or biogas, or to the delivery of natural gas failing to correspond to the pressure requirements of the Pipeline System, and shall

indemnify and hold harmless OGG in respect of such damages.

These General Terms and Conditions shall enter into effect as of publication in the Internet.