

PEMBROKESHIRE ENERGY LIMITED
TERMS AND CONDITIONS AGREEMENT

1 DEFINITIONS

In this Agreement the following terms shall have the following meanings:

"the Agreement" means the Conditions and the Supply Agreement.

"the Company" means Pembroke energy Ltd, Hamilton house, 44 Hamilton Terrace, Milford Haven, Pembrokeshire, Wales, SA73 3JP, company number 11074289.

"the Customer" means the person who accepts a quotation from the Company for the sale of the Goods or whose order for Goods is accepted by the Company, as identified in the Supply Agreement.

"the Goods" means the goods the Company is to supply in accordance with the Agreement.

"Conditions" means these terms and conditions of sale and any special terms and conditions set out in writing by the Company.

"Gas" means the liquefied petroleum gas (either propane or butane) supplied by the Company.

"Gas Cylinder(s)" means the cylinder(s) supplied by the Company for the storage of the Gas.

"Pipes" means the pipes, valves & regulators including the emergency control valve which form part of the overall gas supply located between the Gas Cylinder and the Premises.

"Premises" means the premises of the Customer at which the Gas Cylinder is located.

"Regulations" means all rules, regulations, legislation, codes of practice and requirements issued by the Government, any County or Local Authority or other regulatory body and in force from time to time.

"Supply Agreement" means the document signed by the parties, containing the individual terms of the agreement between the Company and the Customer.

2 CONDITIONS

2.1 These Conditions shall apply to all contracts for the sale of Goods (including the Gas) by the Company to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document.

2.2 All orders for Gas will be by scheduled deliveries, such deliveries shall be deemed to be an offer by the Customer to purchase Gas subject to the Agreement.

2.3 Acceptance of delivery of the Gas shall be deemed conclusive evidence of the Customer's acceptance of the Agreement.

3 DURATION OF AGREEMENT

3.1 The Agreement shall commence on the start date as specified in the Supply Agreement (or in the absence of such a date, on the date the Gas Cylinder is delivered to the Premises), and unless otherwise mutually agreed by the parties shall continue until the cylinder is returned back to the company by the customer.

4 SUPPLY, CHANGE AND REMOVAL OF THE GAS CYLINDER

4.1 The Customer acknowledges and agrees that the Gas Cylinder(s) shall remain at all times the property of the Company.

4.2 The Company agrees to supply and the Customer agrees to purchase Gas from the Company from time to time for the duration of this Agreement.

4.3 The Company reserves the right to change the size of the Gas Cylinder or exchange for cylinders from time to time to accord with delivery schedules or the Customer's requirements.

4.4 [Should the Customer require the Company to remove the Gas Cylinder at any time and for any reason, the Company may charge the Customer its basic uplift of £25 per cylinder.

5 THE CUSTOMER'S OBLIGATIONS

5.1 The Customer agrees:

5.1.1 to act at all times in a safe and proper manner when dealing with the Gas or the Gas Cylinder;

5.1.2 to provide to the satisfaction of the Company a safe and suitable base site for the Gas Cylinder and to obtain any and all necessary consents, planning permissions and by-law approvals for the storage and use of the Gas Cylinder;

5.1.3 to comply with all reasonable directions and instructions from the Company in relation to the supply, storage and use of the Gas;

5.1.4 to notify the Company immediately if the Customer suspects a leak or if the Gas Cylinder is, in the opinion of the Customer, in need of repair, maintenance or replacement;

5.1.5 to permit the Company, its employees or representatives, with any necessary contractors and workmen, to enter the Premises at all reasonable times upon 24 hours prior notice,

or in the case of an emergency at any time without notice to inspect, maintain, repair or replace the Gas Cylinder;

5.1.6 to comply with the Regulations relating to the storage of liquefied petroleum gas;

5.1.7 to notify the Company of any material external change to the Premises in order that the Company can ensure compliance is maintained with the Regulations relating to the delivery and storage of liquefied petroleum gas;

5.2 The Customer agrees not to do or permit to be done any of the following:

5.2.1 move the Gas Cylinder from the Premises;

5.2.2 remove or interfere in any manner with the Company's marker which appears on the Gas Cylinder;

5.2.3 transfer the Gas from the Gas Cylinder to any other container, or adulterate the Gas in any way;

5.2.4 allow any other supplier or third party to use or take possession of the Gas Cylinder except the Company.

5.3 The Pipes installed at the Premises shall remain the property and responsibility of the Customer at all times.

6 LIMITATIONS ON USE OF GAS

6.1 Gas supplied by the Company to the Customer is solely for the use of the Customer and the Customer undertakes not to:

6.1.1 use the Gas as a fuel in any mechanically propelled vehicle for use on the public highway unless the relevant road fuel duty is charged from time to time by the Company;

6.1.2 resell or otherwise deal or dispose of it to any third party without the Company's prior written consent.

7 THE COMPANY'S OBLIGATIONS

7.1 The Company agrees to maintain the Gas Cylinder to a safe and reasonable standard to comply with the Regulations and to repair or replace the Gas Cylinder if deemed necessary by the Company.

7.2 Whether the Gas Cylinder is in need of repair, maintenance or replacement at any time shall be at the absolute discretion of the Company. The Company's decision will be final.

7.3 Any repair or replacement necessitated by the Customer's breach of clause 5 shall be at the discretion of the Company and the Company may charge the Customer for carrying out such repairs.

8 PRICE AND PAYMENT

8.1 In consideration of the Company allowing the Customer to use the Gas Cylinder, the Customer agrees to pay to the Company its standard bottle rental charge of £100 for each 47kg, £60 for each 19kg and £55 for each 13kg. The price is exclusive of VAT which shall be due at the rate ruling on the date of VAT invoice.

8.2 In the case of the company giving the customer free rental of the cylinder, this is on a weekly rolling basis and may be cancelled by the company at any time if the customer fails to purchase gas in a 3 week period. In the case of free rental being cancelled then the standard bottle rental charge shall be due immediately on invoice.

8.3 The price of the Gas shall be the price quoted by the Company. The price is exclusive of VAT which shall be due at the rate ruling on the date of VAT invoice.

8.4 Outside of any written fixed price agreement between the parties, the Company reserves the right to change the price of the Gas from time to time and shall notify the customer before delivering.

8.5 Unless otherwise agreed in writing by the Company, the Customer shall pay any amount due up front before delivery of the Gas, or on the due date of payment as specified in the Supply Agreement (as applicable).

8.6 Payment shall not be deemed to be made until the Company have received either cash or cleared funds in respect of the full amount outstanding.

8.7 The Company reserve the right to ask for payment in advance.

8.8 If the Customer fails to make any payment on the due date then without prejudice to any of the Company's other rights the Company may:

8.8.1 terminate this Agreement;

8.8.2 suspend or cancel any deliveries of Gas or Gas Cylinders due to the Customer;

8.8.3 pursue all additional costs incurred in the recovery of the debt;

8.8.4 appropriate any payment made by the Customer as the Company may in its sole discretion think fit.

8.9 If the Customer fails to make any payment due to the Company under the Agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due

date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. This clause shall not apply to payments the Customer disputes in good faith.

9 ORDERS OF GAS

- 9.1 Where the Customer selects in the Supply Agreement to have the Gas delivered at certain frequencies and quantities, the Company shall use its reasonable endeavours to deliver the Gas in accordance with such scheduled deliveries. If the Customer requires additional deliveries of Gas, then subject to the Company's normal delivery schedule, the Customer shall follow the process set out in clause 9.2. The Customer may be liable to an additional delivery charge if it requests delivery of an order outside the Company's normal delivery schedule.
- 9.2 Subject to clause 9.1, when the Customer wishes to make an order for Gas, it shall contact the Company to place such an order confirming the amount of Gas required. The Company may at its discretion accept or reject any such order placed.
- 9.3 For the avoidance of doubt, clause 2.2 and clause 2.3 shall apply to all such orders.

10 DELIVERY AND ACCESS

- 10.1 The Company shall endeavour to deliver the Gas Cylinder and/or Gas to the Premises, and in accordance with the Customer's reasonable requirements. Dates for delivery are estimates only and are not guaranteed and time of delivery is not of the essence. The Company shall not be liable for any loss suffered by the Customer as a result of delayed delivery.
- 10.2 The Customer shall make all arrangements to take delivery of the Gas Cylinder or Gas whenever they are tendered for delivery.
- 10.3 The Customer shall ensure that there is appropriate access to the Premises for inspection and delivery by the Company, its employees and representatives and that in particular all access points are reasonably wide and situated on firm ground. Roads, gateways, driveways, manholes etc. should be of suitable construction to accommodate H.G.V. vehicles. The Company reserves the right to refuse delivery if the Company, its employees or representatives deem that access is not appropriate or reasonable.
- 10.4 Should the Customer not be present at delivery to ensure that the quantity of Gas delivered is in accordance with the Company's delivery advice, a delivery note showing quantity of litres delivered will be provided and the quantity supplied shall be deemed to be correct.
- 10.5 The Customer must notify the Company of any material changes made to the Premises which might affect access.
- 10.6 If the Company is unable to deliver or inspect due to a breach by the Customer of clauses 10.2 or 10.3, the Company may at its discretion charge the Customer a delivery charge.
- 10.7 Should the Customer require a delivery out of the Company's scheduled times, due to previously refusing delivery or breach of this clause 10, the Company may at its discretion charge the Customer a delivery charge.

11 RETENTION OF TITLE AND RISK

- 11.1 Title in the Gas Cylinder shall at all times remain with the Company irrespective of whether ownership of the Premises has been transferred.
- 11.2 The Customer shall be responsible for the safekeeping of the Gas Cylinder whilst at the Premises and in the Customer's possession. The Customer will be liable for any damage to or theft of the Gas Cylinder whilst at the Premises and will be liable for any damage to people or property as a result of the operation of the Gas Cylinder at the Premises and the storage of Gas in the Gas Cylinder.
- 11.3 The Gas shall be at the Customer's risk as from delivery.
- 11.4 Notwithstanding the earlier passing of risk under clause 11.3, title in the Gas shall remain with the Company and shall not pass to the Customer until the amount due under clause 8 has been paid in full.
- 11.5 Until title passes the Customer shall hold the Gas as bailee for the Company and shall store it in the Gas Cylinder so that it can at all times be identified as the property of the Company.
- 11.6 The Company may at any time before title passes and without any liability to the Customer:
- 11.6.1 repossess and use or sell all or any of the Gas and by doing so terminate the Customer's right to use or otherwise deal in it;
- 11.6.2 for that purpose (or determining what if any Gas is held by the Customer and inspecting it) enter the Premises.

- 11.7 The Company may maintain an action for the price of any Gas notwithstanding that title in it has not passed to the Customer.

12 TERMINATION

- 12.1 The Company may by written notice (in addition to any other rights) terminate this Agreement immediately and without liability for compensation or damages if:
- 12.1.1 the Customer fails to make any payment to the Company when due;
- 12.1.2 the Customer fails to comply with any of the terms of this Agreement and the failure (if capable of being remedied) remains unremedied for 14 days after being called to the Customer's attention by written notice from the Company;
- 12.1.3 the Customer, being a company, becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Customer (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Customer's assets or business, or if the Customer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt;
- 12.1.4 the Customer, being an individual, becomes bankrupt, has a receiving order made against him, makes any arrangement with his creditors generally or takes or suffers any similar action as a result of debt;
- 12.1.5 any execution is levied upon the Customer's goods or premises;
- 12.1.6 the Customer ceases, or threatens to cease trading; or
- 12.1.7 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 12.2 Upon termination or expiry of this Agreement for any reason, the Customer shall:
- 12.2.1 pay to the Company forthwith all sums outstanding under this Agreement;
- 12.2.2 permit the Company, its employees or representatives to access the Premises in order to remove the Gas Cylinder and any remaining Gas therein;
- 12.3 In the event that a bottle charge is paid by the Customer in accordance with clause 8.1. If the Company is of the view that the Gas Cylinder(s) are not returned or are not of satisfactory quality upon such return, the Company reserves the right to charge the customer a bottle replacement fee of £180 + vat.
- 12.4 Clause 12.4 shall survive termination of the Agreement.

13 EXTENT OF LIABILITY

- 13.1 Except where the Customer is dealing as a consumer (as defined in the Consumer Rights Act 2015) all warranties, conditions or terms whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 13.2 Subject as expressly provided in this Agreement, and except for death or personal injury resulting from the Company's negligence, the Company shall have no liability for any loss (including loss of profit or other economic loss (direct or indirect), indirect or consequential loss) or damage of any nature (howsoever caused) or loss or damage (contractual, tortious, breach of statutory duty or otherwise) arising from any breach of any express or implied warranty or condition of this Agreement or any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform this Agreement.
- 13.3 The Company's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods supplied under the Agreement in the 1 month period prior to the date that the loss arose.

14 ASSIGNMENT

- 14.1 The Customer may not assign, transfer or otherwise deal with its rights under this Agreement without the prior consent of the Company in writing.
- 14.2 The Company may assign, transfer or deal with its rights as it sees fit.

15 WAIVER

The Company may release or compromise the Customer's liability under this Agreement or grant the Customer time or other indulgence without affecting the Customer's liability.

16 FORCE MAJEURE

- 16.1 Save for the Customer's obligation of payment under clause 8, neither party shall be liable for any default due to any act of God, war, civil disturbance, malicious damage, strike, lockout, industrial action, fire, flood, drought, extreme weather conditions, compliance with any law or governmental order, rule, regulation, direction or other circumstance beyond the reasonable control of either party ("Force Majeure Event").
- 16.2 Each party shall give notice forthwith to the other upon becoming aware of a Force Majeure Event, the notice to specify details of the circumstances giving rise to the Force Majeure Event.

17 NOTICES

- 17.1 Any notice under or in connection with this Agreement shall be in writing and shall be served by first class post or by hand other party or sent by recorded delivery, facsimile transmission or e-mail at or to the address of the party set out in this Agreement or at or to such other address as may be subsequently notified by one party to the other.
- 17.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served:
- 17.2.1 if delivered personally when left at the address set out in this Agreement;
 - 17.2.2 if sent by post 48 hours after posting;
 - 17.2.3 if sent by facsimile transmission or e-mail, at the time of transmission.

18 LAW AND JURISDICTION

- 18.1 The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of England and Wales.
- 18.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

19 MISCELLANEOUS

- 19.1 In this Agreement:
- 19.1.1 references to statutory provisions shall be construed as references to those provisions as amended or re-enacted;
 - 19.1.2 word expressed in any gender shall where the context so requires or permits include any other gender;
 - 19.1.3 words importing persons shall include bodies corporate and partnerships and other incorporated bodies and vice versa;
 - 19.1.4 words expressed in the singular shall where the context so requires or permits include the plural; and
 - 19.1.5 where the Customer is more than one person, the Customer's obligations shall take effect as joint and several obligations.
- 19.2 Except where the context renders it absurd or impossible every reference to the Customer shall include his or her successors in title and personal representatives, by and against whom this Agreement shall be enforceable as if they had originally been named as parties.
- 19.3 The headings to clauses are inserted for ease of reference only and shall not affect the construction of this Agreement.
- 19.4 References in this Agreement to anything which any party is required to do or not to do shall include acts, defaults and omissions, whether direct or indirect, on his own account, or for or through any other person and those which he permits or suffers to be done or not done by any other person.
- 19.5 The invalidity or unenforceability of any provision of this Agreement will not affect the validity or unenforceability of any other provision and any invalid or unenforceable provision will be severable.
- 19.6 This Agreement embodies the entire understanding of the parties in respect of the of the matters contained or referred to in it and there are no promises, terms, conditions or obligations oral or written, express and implied other than those contained in this Agreement.
- 19.7 A person who is not a party to the Agreement shall not have any rights to enforce its terms.
- 19.8 Except as expressly provided for in this Agreement no variation or amendment of this Agreement shall be valid unless committed to writing and signed by or on behalf of both parties.

If you have any questions or complaints, please contact our team on sales@pembs.energy between the hours of 9.00am and 5:00pm Monday – Friday.