



**GENERAL TERMS AND CONDITIONS  
FOR TRANSPORTATION OF NATURAL GAS  
BY SWISSGAS**

**valid from November 1, 2016**

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## 1 Introduction

These General Terms and Conditions are an integral part of a - Transport Agreement (as defined below) for transportation of natural gas from the Delivery Point to the Re-Delivery Point and describe general duties and rights of the contract partners (SWISSGAS as service provider and the Shipper as service recipient).

## 2 Definitions

<b>Business Day</b>	A day, not being a Saturday, Sunday or a day on which Swiss banks are closed for business.
<b>Contract Capacity</b>	The maximum transport capacity, which may be used by the Shipper according to the Transport Service Confirmation.
<b>Daily Nomination Program</b>	Nomination message send to SWISSGAS indicating for the following Gas Day the Nominated Quantity on an hourly base, expressed in kWh/h (24 hours), to be made available by the Shipper at the Delivery Point at a constant hourly flow rate.
<b>Delivery Point</b>	The place, where the natural gas is handed over by the Shipper to SWISSGAS for transport.
<b>Gas Day</b>	Period commencing at 6:00 a.m. (hereinafter 06.00 hours) Central European Time on any calendar day and ending at 06.00 hours Central European Time on the following calendar day, and the date of any Gas Day shall be the date of its beginning as herein defined.
<b>Gas Month</b>	Period commencing at 06.00 hours Central European Time on the first day of a calendar-month and ending at 06.00 hours Central European Time on the first day of the following calendar-month.
<b>Gas Week</b>	Period commencing at 06.00 hours Central European Time on a Monday and ending at 06.00 hours Central European Time on the following Monday.
<b>Gas Year</b>	Period (or a reference to a period) commencing at 06.00 hours Central European Time on October 1 and ending at 06.00 hours Central European Time on the following October 1.
<b>Interconnection Point Oltingue</b>	The place where the Transitgas System is connected to the pipeline of grtgaz at the border between France and Switzerland in the area of Oltingue.
<b>Interconnection Point Griespass</b>	The place where the Transitgas System is connected to the pipeline of SnamReteGas at the border between Italy and Switzerland in the tunnel under the Griespass.

<b>Interconnection Point Wallbach</b>	The place where the Transitgas System is connected to the TENP-pipeline at the border between Germany and Switzerland in the area of Wallbach.
<b>Nominated Quantity</b>	Quantity nominated daily on an hourly base by the Shipper to be transported at a constant hourly flow rate by SWISSGAS.
<b>Re-Delivery Point</b>	Place, at which the natural gas is returned by SWISSGAS to the Shipper.
<b>Shipper</b>	User of the Transportation Service.
<b>Norm m<sup>3</sup> (Nm<sup>3</sup>)</b>	Volume of gas which occupies a volume of one (1) m <sup>3</sup> under normal conditions (pressure = 1,01325 bar, temperature = 273.15 K (0°C))
<b>Frame Transport Agreement</b>	Agreement between SWISSGAS and the Shipper in which the rights and the duties of the parties are regulated.
<b>Transitgas System</b>	Pipeline either from Wallbach (on the border between Germany and Switzerland) or from Oltingue (on the border between France and Switzerland) to Griespass (on the border between Switzerland and Italy) including all necessary infrastructure and auxiliary equipment.
<b>Transport Agreement</b>	Agreement between SWISSGAS and Shipper in which the rights and duties of the parties are regulated. The Transport Agreement consists of a Transport Service Confirmation, a Frame Transport Agreement and these General Terms and Conditions.
<b>Transportation Service</b>	All related activities in connection with taking over at the Delivery Point, transporting and simultaneously redelivering at the Redelivery Point quantities of natural gas containing the same amount of energy.
<b>Transport Service Confirmation</b>	Agreement between SWISSGAS and the Shipper in which the rights and the duties of the parties according to the Frame Transport Agreement are specified.

### 3 Balancing

SWISSGAS is not in a position to provide to the Shipper any balancing services.

### 4 Information of up- and downstream shippers

The Shipper has to inform SWISSGAS on its upstream and downstream shipper codes latest 5 working days before receiving/redelivering gas from/to its sellers or buyers. As up- or downstream shipper codes only shipper codes assigned by the respective adjacent transport system operator can be setup.

## 5 Nominations

The Shipper shall transmit to SWISSGAS, not later than 14:00 h Central European Time of each day, the Daily Nomination Program valid for the following Gas Day, starting at 06:00 am Central European Time

The Shipper is authorised to send renominations to SWISSGAS for the hours in a Gas Day occurring after the time of the receipt of the renomination by Swissgas, taking into account the 2 hours lead time.

If the Nominated Quantity exceeds the Contract Capacity SWISSGAS shall reduce the Nominated Quantity to the Contract Capacity.

In case that the nominations and renominations submitted by the Shipper do not match with the corresponding nomination and renomination of the upstream or downstream shipper, the lesser rule will be applied.

Since Swissgas needs to assure that the gas quantities taken over at the Delivery Point and the gas quantities redelivered at the Re Delivery Point are equal on a hourly basis the application of the lesser rule in a Delivery Point can have impact on the matching result in a Re-Delivery Point and vice versa.

Should re-nomination be needed due to a force majeure as defined under Article 13 below the parties shall communicate this as soon as possible.

## 6 Allocation of Natural Gas Quantities

The monthly quantity on a daily base expressed in kWh at the Delivery Point and the monthly quantity on a daily base expressed in kWh at the Re-Delivery Point are allocated on a daily base in accordance with the appropriate procedures in place at the respective Interconnection Point.

At the Interconnection Point Wallbach, the Interconnection Point Oltingue and the Interconnection Point Griespass, gas quantities are allocated to the Shippers on basis of the allocation method ( "allocated as nominated")

If the balancing limits of an operating balancing account are exhausted or if the continuation of such an agreement is not possible for technical network-related reasons, then the adjacent transmission system operators may agree to extend those limits or otherwise to allocate quantities to network users proportionally based on the measured quantity (pro rata allocation) and inform their Shippers accordingly as soon as possible.

## 7 Imbalance Correction

An imbalance correction is only applicable in case that the balancing limits of an operating balancing account is exhausted or if the continuation of such an operation balancing account is not possible for technical network-related reasons.

An imbalance of allocated quantities will occur if the allocation procedure at the Delivery Point is different from the one at the Re-delivery Point. The imbalance correction shall be settled in cash.

The basis for the cash settlement in a Gas Month is the following index:

- arithmetic average, rounded to 3 digits, of the "Bid" and "Offer" quotations published on ICIS Heren ESGM in the NCG Price Assessment Table of

the last trading day of the previous Gas Month for the product of the relevant Gas Month with an add-up of 0.2 €/MWh.

The imbalance correction shall be settled in cash in October for the period March to September and in April for the period October to March.

The average exchange rate of the relevant month published by the Swiss National Bank shall be applied for the conversion from Euro to Swiss francs.

The total difference between the quantities allocated at the Delivery and the Re-Delivery Point shall be corrected accordingly.

The aforementioned method for the imbalance correction shall be without prejudice for the future.

Should the imbalance exceed 2% of the nominated monthly quantity, the Parties reserve the right to reconsider the imbalance correction method.

## 8 Payment Conditions

The Transportation Charge and any other amounts payable under this Agreement are stated inclusive of all taxes other than value added tax (VAT). If VAT is payable on any such amounts, the Shipper shall pay to SWISSGAS an amount equal to the VAT at the applicable rate from time to time. An amount equal to VAT payable by the Shipper shall only be required to be paid once SWISSGAS provides it with a valid VAT invoice in relation to the amount.

In case of interruptions or reductions of the Transportation Service performed by SWISSGAS as well as in case of Force Majeure affecting the TRANSITGAS-pipeline, the Monthly Transportation Charge shall be reduced in proportion to the reduction of the capacity and for the period of such reduction.

## 9 Delayed Payments

Delayed payments are subject to a default surcharge at an interest rate of a LIBOR rate for 3-month depots in Swiss Francs plus 400 bp.

## 10 Gas Quality Specifications

### 10.1 Delivery Point

The Gas Quality at the Delivery Point shall always be according to the latest valid Gas Quality Specification defined in the Interconnection Agreement of the involved Transport System Operator for said point.

## 10.2 Re-Delivery Point

The Gas Quality at the Re-Delivery Point shall always be according to the latest valid Gas Quality Specification defined in the Interconnection Agreement of the involved Transport System Operator for said point.

## 11 Property and Risk of Gas

The property and risk of the gas shall remain at the Shipper during the transport from the contractually appointed Delivery Point to the contractually appointed Re-Delivery Point.

## 12 Liability

Each Party shall only be liable for gross negligence or wilful misconduct. Any liability for consequential damages, indirect damages, lost business opportunities or lost profits is hereby explicitly excluded.

In the event a Party is liable under the provisions of these General Terms and Conditions, all liability to the other Party for whatever kind of damage shall be limited to a maximum of 3 monthly Transportation Charges.

## 13 Force Majeure

In case of Force Majeure, either Party (hereinafter, "the Affected Party") may be prevented from meeting its obligations arising here from in whole or in part. However, the Transport Agreement shall remain valid. The Affected Party shall be released from its liability due to non-performance of the relevant obligations (i.e., such obligations shall not be merely deferred), insofar as the force majeure state persists, provided (i) the Affected Party shall inform the other Party in writing of the existence and precise circumstances of such force majeure immediately following its occurrence, and (ii) the Affected Party shall make every reasonable effort to remedy such non-performance. Obligations due prior to the occurrence of such force majeure shall not be prejudiced hereby.

Force Majeure with respect to either Party shall mean any event or circumstance beyond the control of such Party as a consequence of which such Party is prevented from meeting its obligations in accordance herewith.

## 14 Suspension and Reduction of Transportation Services

SWISSGAS has the right to reduce or suspend the Transportation Services in the following cases:

- to prevent persons or equipment from direct, even just assumed danger
- in case of Force Majeure
- in case of an imminent or already occurred breakdown of the system or part of it or of systems connected to it
- if it is required in order to comply to requests by authorities
- in case of maintenance, repair works, inspections etc., which require a reduction of the flow rate

Furthermore a partial interruption of the Contract Capacity could occur in case of

	Reduction up to
- the non-availability of one of the 20 MW compressor units at the Ruswil compressor station	12 %
- incidents, maintenance, repair works, inspections etc. on the Swiss regional transmission grid, which would make it necessary to increase the off-takes at the Obergesteln station	41 %

In such a case, firm Transportation Services shall have precedence over any interruptible and short term services.

SWISSGAS shall, however, use its best efforts to minimize such impacts and inform the Shipper thereof as soon as possible.

SWISSGAS shall inform the Shipper on planned suspension/reductions latest five Business Days before the event, if possible.

## 15 Termination

Without prejudice to the right to claim damages, each Party shall be entitled to terminate the Transport Agreement immediately if the other Party:

- (a) is declared bankrupt or is granted a (provisional) suspension of payment or is declared in a similar legal status affecting the rights of creditors generally, or
  - (b) fails to fulfil its payment obligations including the down payment after receiving a reminder with an appropriate deadline, or
  - (c) fails to fulfil any other material obligation under the Transport Agreement after receiving a reminder with an appropriate deadline,
- all without prejudice to that Party's obligation to pay judicial and extra judicial costs, damages and interest.

The Shipper's right to terminate the Transport Agreement in accordance with Article 21 remains reserved.

In any other case than those referred to above, the Transport Agreement terminates at the end of the contracted Transportation Period with all rights and duties pertaining thereto.

## 16 Language

All exchange of information shall be in the English language.

## 17 Exchange of Information

At all time, the Parties shall keep each other informed as well and as early as possible about all data and events which are of importance for the implementation of the Transport Agreement.

The Parties hereto shall undertake to co-operate in good faith with any third parties directly or indirectly affected by the performance of the Transport Agreement.



## 18 Form of Correspondence

Unless otherwise stipulated in these General Terms and Conditions any notice to be given herein shall be in writing and shall be deemed given and effective

- (a) upon receipt by the Party addressed; or
- (b) if posted "Priority" in Switzerland, postage prepaid, to an address in Switzerland on the second Business Day subsequent to posting; or
- (c) if posted outside Switzerland or to an address outside Switzerland, via airmail and postage prepaid, on the fifth (5th) Business Day subsequent to posting; or
- (d) if given by fax after the dispatch thereof, if a transmission report confirms correct transmission.

The main form of correspondence shall be by fax.

The form of correspondence concerning nomination shall be in accordance with the relevant system in place by SWISSGAS.

## 19 Confidentiality

The Parties agree that all information obtained under the Transport Agreement by one Party from the other, including all engineering and operational data, shall be held strictly confidential by the Parties. The Parties declare that neither they nor their legal successors shall make or have made public any information with regard to the contents of the aforementioned documents under the Frame Transport Agreement without prior written consent of the other Party.

However, the Parties may make available said information without such prior written consent to:

- (a) its employees or employees of affiliated companies or shareholders to the extent reasonably necessary for the approval and performance of the Transport Agreement, provided that such employees and shareholders shall be bound by equivalent provisions of confidentiality, or
- (b) any governmental authority or recognised security exchange, where such disclosure is required by law, order or regulation; in such case, the disclosing Party shall inform the other Party in advance of such disclosure and of its extent, or
- (c) banking and financial institutions and their consultants, where such disclosure is necessary in connection with financing arrangements, provided that such Party shall first obtain a similar written undertaking of confidentiality from such banking and financial institutions and their consultants, or
- (d) independent consultants or contractors nominated by a Party, provided that such Party shall first obtain similar written undertaking of confidentiality from each consultant or contractor, or
- (e) any legal successors or Party, to which any right or obligation under the Transport Agreement has been or shall be assigned as a consequence of the Transport Agreement, provided that such Party shall first obtain similar written undertaking of confidentiality from such assignee, or
- (f) the upstream company or downstream company, where the disclosure of nominations is necessary in connection with gas flow procedures at the Delivery Point or the Re-Delivery Point respectively.

Notwithstanding the provisions above, the Party receiving information may disclose such information without the other Party's prior written consent to the extent, but only to the extent, that such information:

- (a) is already lawfully known to the Party receiving the information, or
- (b) is already in the public domain or becomes available to the public other than through an act or omission on the part of the Party receiving the information, or
- (c) is acquired independently from a third party that is entitled to disseminate such information at the time it is acquired by the Party receiving the information.

## 20 Transfer of Rights

It is assumed that the capacity allocated by SWISSGAS to the Shipper is used for the Shipper's own purposes. The re-allocation of capacity by buying or selling capacity to or from other Shipper in form of a sublease is only allowed on the condition that such transportations do not have a negative impact on SWISSGAS or TRANSITGAS AG. The Shipper must inform SWISSGAS in advance about such transactions.

In order to avoid doubt, in case the Shipper has sublet capacity to another party, all its liabilities related to the contract shall remain unaffected.

Transfer of all rights and obligations existing under the Transport Agreement by the Shipper to another party shall require the previous written agreement of SWISSGAS. SWISSGAS and the Shipper are entitled to transfer this Transport Agreement with all its rights and obligations to a legal successor.

## 21 Changes to these General Terms and Conditions

SWISSGAS must announce changes to the General Terms and Conditions to the Shipper at least two weeks prior to their becoming effective.

If such change has a negative impact for the shipper, the shipper has the right to terminate the Frame Transport Agreement by giving written notice to SWISSGAS. In the event that the shipper does not terminate the Transport Agreement prior to the effective date of the change, such change becomes valid and binding on the shipper.

Necessary adaptations to the General Terms and Conditions due to legal regulations remain in every case reserved.

If an article or a part of it should be deemed invalid or ineffective, or should the General Terms and Conditions prove to be incomplete, the legal effectiveness of the other articles remains unaffected. Invalid or ineffective articles or parts thereof shall be replaced (and, in the event of incompleteness, the General Terms and Conditions shall be completed) by provisions which, while valid and effective, reflect the original articles (or, in the event of incompleteness, the spirit and contents of the General Terms and Conditions as a whole) to the fullest extent possible.

## **22 Jurisdiction and Governing Law**

The Transport Agreement shall be governed and construed in accordance with Swiss law.

All disputes arising out of or in connection with this agreement, including disputes on its conclusion, binding effect, amendment and termination shall be under the exclusive jurisdiction of the Courts of the Canton Zurich.

