



Effective 1 November 2005

Terms and conditions
for the sale and supply of

*Contact Rockgas LPG
to commercial
reticulated
customers*



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01

Definitions

In this Agreement, unless the context otherwise requires:

- 1.1 “you” and “your” means the company or body taking gas as our customer
- 1.2 “we”, “us”, “our” or “Rockgas” means Rockgas Limited
- 1.3 “Application Form” means our Customer Application Form for commercial reticulated supply signed by you and by one of our Representatives on our behalf
- 1.4 “gas” means LP Gas as defined in New Zealand Standard 5435 or any standard substituted for that standard
- 1.5 “PPSA” means the Personal Property Securities Act 1999
- 1.6 “premises” means the location occupied by you to which gas is to be supplied under this Agreement
- 1.7 “prescribed tolerances of accuracy” means a level of accuracy as defined in the relevant legislation and/or regulations applicable from time to time
- 1.8 “Rockgas Equipment” means the equipment supplied by Rockgas as listed in the Application Form
- 1.9 “Site” or “Sites” means the address where supply is required in the Application Form.

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Gas supply

- 2.1 We will supply gas through our gas reticulation system to your premises and you shall take it on the terms and conditions of this Agreement.
- 2.2 If you wish to increase gas consumption above the levels specified in the Application Form, we will use our best endeavours to meet your needs, provided we receive sufficient prior notification.

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Price

- 3.1 You will pay the Price for the gas supplied as set out in the Application Form. The Price will have two elements:
 - 3.1.1 The Supply Charge

The Supply Charge shall be determined in accordance with the provisions of clause 5.3 and the pricing bands set out in the Application Form as amended from time to time by us.
 - 3.1.2 The Gas Energy Charge

The Gas Energy Charge per gigajoule is as specified in the Application Form as amended from time to time in accordance with clause 4.
- 3.2 In addition to the Price described in clause 3.1, we reserve the right to impose a fixed monthly charge if the gas off-take in any 12 month period falls below 15GJ per annum, as assessed on an annual basis. The fixed monthly charge is as specified in the Application Form, as amended from time to time, and will be payable together with the Supply Charge and the Gas Energy Charge.
 - 3.2.1 A deposit or bond, an application fee and final meter reading fees may be payable as specified in the Application Form.
- 3.3 A deposit is payable as specified in the Application Form. We will refund the deposit on termination of this Agreement subject to a deduction for any amounts owing to us.

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Gas Energy Charge: Tariff Revision

- 4.1 The Gas Energy Charge Tariff as published from time to time by us shall be reviewed annually and adjusted annually.
- 4.2 In the event that the cost of gas supplied to us from our South Island suppliers increases or decreases, Rockgas will pass on that price increase/decrease for the period up to the annual Tariff Review.
- 4.3 Any changes in the tax or duties component of the Tariff will be passed on at the time those tax or duties changes are introduced.

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Gas quantity

- 5.1 You agree to purchase from Rockgas a minimum quantity of gas in each period of 12 months as specified in the Application Form (“the Annual Contract Quantity”).
- 5.2 If you fail to purchase the Annual Contract Quantity over a period of 12 months (or any applicable proportion thereof in the event of a shorter period of supply), you will pay Rockgas 25% of the Price plus GST in respect of the difference between the Annual Contract Quantity and the actual quantity (or proportion thereof) taken during the period of supply.
- 5.3 Where the gas off-take in any one period of 12 months:
 - 5.3.1 Exceeds the highest level of the specified pricing band on the basis of which the Supply Charge was determined, that charge will for the following period of 12 months be reduced to the charge applicable to the relevant pricing band, unless otherwise agreed in writing;
 - 5.3.2 Is less than the lowest level of the specified pricing band on the basis of which the Supply Charge was determined, that charge will for the following period of 12 months be increased to the charge applicable to the relevant pricing band, unless otherwise agreed in writing.
- 5.4 If any of the situations set out in clause 15.3 arise and we end this Agreement, then, in addition to any other action we may elect to take:
 - 5.4.1 We may invoice you in respect of the undelivered Annual Contract Quantity for each calendar year (or proportionate part in any broken period) until the end of the Term of this Agreement, or until the end of any subsequent term, as if this Agreement had not been so ended; and
 - 5.4.2 You must immediately pay us a sum equal to twenty-five percent (25%) of the Price for the gas supplied as set out in the Application Form (plus GST on the Price) that would have been payable to us had such Annual Contract Quantity been delivered to you in each such period. We will have no obligation to deliver any of the Annual Contract Quantity invoiced. You and we acknowledge that such payment to us constitutes liquidated damages and is a genuine pre-estimation of the loss which we will suffer as a consequence of early termination of this Agreement.

Delivery and continuity of supply

- 6.1 We will use our best endeavours to ensure a continuous and uninterrupted supply of gas to you but cannot and do not guarantee this. Our ability to supply gas to you may be affected by such factors as unforeseen weather conditions, natural disasters and other Force Majeure events as set out in clause 16. We may also be prevented from supplying some or all of your needs by transmission supply faults, transportation delays, lack of stock or supply, interruption to gas production facilities and accidents, and due to other reasons that are beyond our reasonable control.
- 6.2 We will deliver gas to you at the outlet of the gas meter (“Point of Delivery”) and at this point risk in gas passes from us to you and you shall bear all risk of loss or damage arising out of or in any way directly or indirectly connected with the gas after the passing of risk to you. We will retain all property and title in gas until you have paid for the gas.
- 6.3 We may ration gas in the way we believe is best if there is a shortage, reduction, interruption or delay of supply to us.
- 6.4 You must not take gas before it reaches the Point of Delivery or otherwise without use of the gas meter provided.
- 6.5 Rockgas will endeavour to inform you as soon as practicable after it has been informed that:
 - 6.5.1 the owner or operator of a gas transmission or distribution system considers it necessary to undertake maintenance of the system or any component; or
 - 6.5.2 a gas producer considers it necessary to undertake maintenance of its gas production facility, if such maintenance will curtail or stop the delivery of gas to you and will be entitled to curtail or interrupt the delivery of gas during any period of such maintenance.

- 6.6 You acknowledge that the supply of gas may be disconnected:
 - 6.6.1 if you breach any of your obligations under this Agreement;
 - 6.6.2 if Rockgas, in its absolute discretion, determines that the supply should be disconnected for health or safety reasons, during any emergency or for maintenance;
 - 6.6.3 if Rockgas is instructed to do so by a person authorised under a regulatory instrument; or
 - 6.6.4 upon termination of this Agreement.
- 6.7 While this Agreement applies to you, the only gas product you may purchase for use in connection with your home or business or by use of the Rockgas Equipment is gas supplied by us. This restriction applies unless and to the extent that we are unable to supply your requirements and we give our prior consent to you purchasing other gas product.

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Quality and purity

- 7.1 Gas supplied shall be of merchantable quality complying with the standard of heating value required by the applicable legal requirements.
- 7.2 We do not make any warranty as to the fitness of gas for your purposes or any other purpose, and except as stated no warranties shall be implied.

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Condition of gas supply and equipment

- 8.1 We will install and maintain a gas meter and associated equipment upstream of the meter in a mutually acceptable location on your premises.
- 8.2 Any additional Rockgas Equipment assigned to the Site will be installed and maintained by you.
- 8.3 The gas metering and associated equipment and the Rockgas Equipment shall remain our property. We shall be entitled at any time to inspect, maintain or work on the meter, associated equipment and Rockgas Equipment or to recover possession of such equipment for such purpose or on termination of this Agreement and for that purpose we may enter and remain on your premises. We will make good any damage to your premises caused by us in doing this. The Rockgas Equipment remains at all times our sole property. You must not try to sell, create a security interest over, part with possession or control of or otherwise do anything prejudicial to our title to the Rockgas Equipment.
- 8.4 You shall at your expense take all reasonable precautions to provide adequate protection to safeguard our measuring and associated equipment and the Rockgas Equipment, and you shall indemnify us against any claim, loss or cost resulting from damage to, loss or failure of, the measuring and associated equipment or the Rockgas Equipment caused in any manner other than due to fair wear and tear or negligence on our part.

- 8.5 We shall test the measuring equipment for accuracy whenever reasonably required but shall not be obliged to do so more than once every 12 calendar months at our cost. If on any additional test made at your request measuring equipment is found to be within the prescribed tolerances of accuracy, you shall reimburse us for the expense of such test.
- 8.6 If upon any test of the measuring equipment the meter is found to be within the prescribed tolerances of accuracy, there shall be no adjustment to the amount charged by us for gas supplied before the test. If the error is outside the tolerance range then charges for gas supplied shall be adjusted accordingly. The adjustment shall be made for such a period of inaccuracy as is known or reasonably estimated by us.
- 8.7 You must not interfere with or damage the gas meter, pipes or the Rockgas Equipment or any associated equipment.
- 8.8 You may request to be present at the time the gas meter is installed, maintained or tested.
- 8.9 Prior to connection into our gas supply system you must provide us with a current Gasfitting Certification Certificate (Gas Supplier Copy) as evidence that your system and appliances meet the required Regulations, Standards and Codes of Practice. Further, any changes within your system made subsequent to this Agreement must be advised to us, and you must supply to us a Gas Certification Certificate (Gas Supplier Copy), verifying compliance with Regulations, Standards and Codes of Practice.
- 8.10 You must ensure that the Rockgas Equipment is covered by your insurance for its replacement value, and provide us with copies of certificates of currency of insurance in relation to the Rockgas Equipment upon request. You shall ensure that the interest of Rockgas Limited as owner of any gas metering and associated equipment and the Rockgas Equipment on your premises is noted on any relevant insurance policies.

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Measurement

9.1 Our measuring equipment shall measure the volume of gas delivered to you and the volume of gas so measured may be corrected to standard pressure, altitude and temperature at our discretion.

The quantity of gas delivered to you shall be expressed by the amount of heat it produces in gigajoules using the following formula:

Number of gigajoules = **G.V. x H.V.**

where **G.V.** = the corrected gas volumes in cubic metres, and

H.V. = the heating value of gas in gigajoules per cubic metre as nominated by us from time to time.

9.2 Should the meter cease to measure correctly then, until corrected by us, we may estimate the volume of gas supplied in consultation with you and charge you accordingly. Estimations will be based on previous consumption history and/or estimated usage of gas equipment installed and actual operating patterns.

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Accounts and payments

We will invoice you on a regular basis and the amount of the invoice will be payable by the 20th of the month following the date of invoice. Any amounts not paid by the due date will incur interest at the rate of 2.5% above the overdraft rate quoted to us by our New Zealand bankers on a monthly basis until payment is made. You will also be responsible for all debt collection charges we may incur. These obligations will survive the end of this Agreement. You are responsible for payment of GST on all goods and services supplied by us to you, and for any other taxes levied on gas supply.

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Additional appliances/equipment

You must advise us of the installation of any other gas appliances or equipment installed from time to time at your premises to enable us to check that the capacity of the gas meter or the reticulation system can meet your increased demand without causing inconvenience, and the appliances and/or equipment meet the standards required.

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Safety

12.1 You must ensure that you and all pipes, equipment and appliances on your premises which use gas comply at all times with all relevant legal requirements and Codes of Practice and with all written instructions from us concerning safety.

You will indemnify us in relation to any claim, loss or cost in connection with your failure to do so.

12.2 All installation, conversion or service work or commissioning carried out by you or your agents on your pipes, equipment or appliances must be certified by a craftsman gas fitter.

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Exclusion of liability

- 13.1 We shall not be liable for any claim, loss or damage suffered by you or made against you by any third party in connection with any failure or malfunction of our gas meter, pipes or other equipment or of the Rockgas Equipment; or any curtailment or interruption in the supply of gas or variation in its pressure or heating value or any loss relating to your liability to any other person. In no event will we be liable for any economic or consequential loss including but not limited to loss of use, contract, goodwill, revenue or profit. Notwithstanding any other provision of this Agreement, our liability shall in no event exceed:
- 13.1.1 in respect of any one event or series of related events an amount equal to 25% of the Price payable by you in respect of Gas Energy Charges for gas supplied in the relevant period of 12 months prior to the commencement of that event or series of events; and
- 13.1.2 in the aggregate in any one period of 12 months an amount equal to the amount of Gas Energy Charges paid by you in that period of 12 months for gas supplied in that period of 12 months.
- 13.2 To the extent permitted by law we exclude all terms, conditions and warranties that would otherwise be implied into these terms of supply by operation of law. In particular, you acknowledge that you are acquiring gas from us pursuant to this Agreement for the purposes of a business, and that the provisions of the Consumer Guarantees Act 1993 shall not apply to that supply of gas or other service provided by us under this Agreement.
- 13.3 You shall indemnify us, our representatives, agents, employees and officers against any actions, claims, damages, losses and expenses incurred by us or for which we may be liable in connection with any breach of or non-compliance by you or any other person with any law or other obligation applicable to you, your premises, pipes or other equipment or the use or operation of those items or the gas supplied to you and against any claim, loss, damage, accident or injury of any kind and howsoever sustained which arises out of or in connection with this Agreement and whether on or outside your premises. However, you shall not be required to indemnify us to the extent such event arises directly from our failure to comply with our express obligations under this Agreement.

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Notices

- Any notice given by us to you under this Agreement may be given in any one of the following ways:
- 14.1 In writing delivered to you at the address set out in this Agreement or to your premises (where those addresses are different) or posted by prepaid mail addressed to you at such address and is deemed to have been delivered 48 hours after the time of posting.
- 14.2 By facsimile to you or to any person or machine answering your facsimile at your premises.
- 14.3 Personally to you or any of your employees or representatives specified in the Application Form.

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Commencement and termination

- 15.1 This Agreement shall begin on the date that we sign the Application Form, and shall continue for the Term specified in the Application Form.
- 15.2 Unless a party gives written notice to the other three months before the end of the Term that it wishes to terminate this Agreement, this Agreement and the Term will be extended for a further period of the same length, commencing on the last date of the initial Term, on the same conditions, and this clause will continue to apply (with the required changes) at the end of each such extension of the Term.
- 15.3 Either party may terminate this Agreement with immediate effect by notice in writing to the other party:
- 15.3.1 If a provision of this Agreement is being breached and the party at fault fails to remedy the breach within 7 days of receiving written notice requesting remedial action from the other party;
- 15.3.2 If a receiver and/or manager is appointed to the other party or the other party is unable or is presumed to be unable to pay its debts as they fall due or a resolution is passed or application is made to liquidate that party.

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- 15.4 If we terminate this Agreement pursuant to clause 15.3, you shall pay all costs associated with the removal of our gas meter and associated equipment and the Rockgas Equipment from your premises.
 - 15.5 Any termination of this Agreement shall be without prejudice to any rights you or we accrued prior to or in connection with such termination.
 - 15.6 To enable us to repossess the Rockgas Equipment we will be entitled to sever the Rockgas Equipment (if necessary) from any other property. You must pay all costs associated with the removal of any Rockgas Equipment from your Site(s).

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Force Majeure

- 16.1 If the performance or observance by a party of its obligations (or any of them) is prevented restricted or interfered with by reason of Force Majeure, that party shall, upon prompt notice of such Force Majeure being given to the other party, be excused from such performance or observance to the extent of such Force Majeure, provided that such party shall use its best efforts to avoid or remove the cause or causes of nonperformance and observance.
- 16.2 In this Agreement the term “Force Majeure” shall mean Act of God, strike, lockout, ban and limitation of work or other industrial disturbance, act of the public enemy, war, blockade, riot, lightning, fire, storm, flood, washout, earthquake, explosion, restraint by government or by any other public authority or court, shortage, breakdown or unavailability of pipelines and/or other equipment or supplies, partial or entire failure of the supply of gas to us and/or the supply by us to you (not resulting from our fault or negligence) whether due to Force Majeure claimed by our suppliers or otherwise, and any other cause not reasonably within the control of the party relying on such event of Force Majeure, and includes a failure to deliver gas where this is due to your being unable to take gas as a result of any such event of Force Majeure.
- 16.3 Notwithstanding the preceding clauses the settlement of any strike, lockout, ban and limitation of work or other industrial disturbance affecting us shall be entirely within our discretion.

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Assignment

You may not assign any of your rights and obligations under this Agreement without our prior consent and for the purposes of this clause any proposal to amalgamate with any other company or any change in control of a company shall be deemed to be an assignment. We may withhold our consent if we form the reasonable opinion that the proposed assignee will not be able to comply with the terms of this Agreement. We may assign or novate any of our rights and obligations under this Agreement. If we do so we will give you written notice.

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Agreement variation

We shall have the right at any time, by giving you at least three months prior notice in writing, to vary these standard terms and conditions (including clauses 4 and 5) and such variation shall take effect from the date specified in the notice.

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Minimum pressure of gas

We shall use our best endeavours to supply gas at a pressure of no less than 28 kpa at our meter.

Disputes

20.1 If you are not happy with any aspect of our service, please contact us. We have a free internal complaints process and you can contact us by:

Calling our Customer Care team on 0800 762 542 any time from 7.30am to 8pm Monday to Friday and 8.30am to 5pm on Saturdays.

Emailing us at LPGenquiries@contactenergy.co.nz

Faxing us on 0800 420 021

Or, you can write to us at:

Customer Care Manager,
Contact Rockgas LPG
PO Box 7195
Christchurch 8240

20.2 If you wish to dispute an account, you must advise us before the due date for payment, and provide details of what you believe is incorrect. You must still pay any amount not in dispute by the due date.

20.3 We will use our best endeavours to resolve any dispute by good faith negotiation within 10 working days.

20.4 Making a complaint

We are committed to improving our customer service, but sometimes things can go wrong. If this happens, we want to know, so please tell us. Once we hear from you, we will:

20.4.1 try to resolve your problem as soon as possible and will acknowledge your complaint within two business days of receiving it

20.4.2 refer it to more senior personnel for resolution if the problem is too difficult to resolve immediately (if the matter is complex, we may ask you to put it in writing), and

20.4.3 after assessing the situation, we will get back to you within seven business days. If it is going to take longer than that, we will write to you to explain why.

We are currently a member of the Electricity and Gas Complaints Commissioner Scheme (EGCC). The Electricity and Gas Complaints Commissioner's office provides a free and independent complaint handling service for electricity and gas complaints. We are committed to maintaining the standards contained in the EGCC codes of practice. Provided the EGCC has the jurisdiction to consider your particular complaint, you can refer your problem with us to the EGCC if your complaint has reached deadlock, that is, if:

20.4.4 we have taken longer to resolve your complaint than 20 business days and we have not notified you in writing that we have a good reason to extend the time for resolving your complaint and what that good reason is; or

20.4.5 we have taken longer to resolve your complaint than 40 business days; or

20.4.6 the EGCC is satisfied that:

- we have made it clear that we do not intend to do anything about the complaint
- you (as the complainant) would suffer unreasonable harm from waiting longer, or
- it would be otherwise unjust to wait any longer.

You have two months to refer the matter to the EGCC for investigation if you consider your complaint has reached deadlock.

If, for some reason, you remain unsatisfied with the way your complaint has been dealt with, even after the intervention of the EGCC, you can pursue the matter in another forum (for example, the Disputes Tribunal or the court system).

If we become a member of any other industry dispute resolution scheme, then this agreement will be deemed to be subject to the terms of that scheme.

Contact details for EGCC

Electricity and Gas Complaints Commissioner

Phone 0800 22 33 40

Email info@egcomplaints.co.nz

Address Freepost 192682

PO Box 5875

Lambton Quay

Wellington 6145

PPSA

- 21.1 The parties agree that the terms of this Agreement will apply to all gas supplied by us to you in the future, and such goods supplied will be described as inventory.
- 21.2 To the extent that our provision of the Rockgas Equipment to you is a “lease for a term of more than one year” you acknowledge that this is deemed to create a security interest in our favour in the Rockgas Equipment under the PPSA.
- 21.3 Nothing contained in sections 114(1)(a), 117(1)(c), 133 or 134 of the PPSA applies to this Agreement. Your rights as “debtor” contained in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA do not apply to this Agreement.
- 21.4 You waive your right to do any of the following:
- 21.4.1 to object to our proposal to retain any gas or Rockgas Equipment under section 121 of the PPSA;
 - 21.4.2 to receive notice of a removal of an accession under section 129 of the PPSA;
 - 21.4.3 to apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA;
 - 21.4.4 to redeem any gas under section 132 of the PPSA; or
 - 21.4.5 to receive a copy of a verification statement confirming registration of a financing statement or a financing change statement relating to any security interest created by this Agreement.

More information

For further information or assistance with your LPG supply, call us.

Customer service centre

Telephone **0800 762 542**
 Facsimile 0800 420 021
 Email LPGenquiries@contactenergy.co.nz

Head office

Address Level 1
 Harbour City Tower
 29 Brandon Street
 Wellington

Telephone 04 499 4001
 Facsimile 04 499 4003

Postal Address PO Box 38721
 Wellington Mail Centre
 Lower Hutt 5045

Email LPGenquiries@contactenergy.co.nz
 Website contactenergy.co.nz



contact