

TERMS AND CONDITIONS RELATING TO CONNECTION OF INDUSTRIAL PROPERTIES AND COMMERCIAL PROPERTIES TO THE PHOENIX NATURAL GAS LIMITED NETWORK

BACKGROUND

These Terms and Conditions apply to: (i) any application for an Industrial or Commercial Property to be connected to the Network; and (ii) any Industrial or Commercial Property which is already connected to the Network. They are binding on the Applicant and all subsequent Property owners of an Industrial or Commercial Property.

1. DEFINITIONS AND INTERPRETATION

In these Terms and Conditions the following words and expressions shall have the following meanings:

1.1 '**Acceptance**' means the Applicant's signature on the Gas Connection Application to be bound by the Terms and Conditions for the connection of the Property to the Network.

1.2 '**Affected Party**' has the meaning given to it in clause 9.1.

1.3 '**Applicant**' means the owner, being over 18 years of age, (or his/her appointed Legal Representative) of the Property or, in the case of the owner being a limited company, a director or secretary of that company with authority to act on its behalf. Also referred to as '**owner**', '**you**' and '**your**'.

1.4 '**Connection Policy**' means the statement prepared by Phoenix from time to time which is available on the Phoenix Website and which details the policies and charges relating to connections to the Network and maintenance of our Gas Apparatus.

1.5 The '**Contract**', shall comprise the Quotation, the Acceptance, the Payment, these Terms and Conditions, our Connection Policy, and our agreement to connect the Property to the Network.

1.6 '**Disconnect**','**Disconnected**','**Disconnection**','**Disconnecting**' means that the connection of the Property to the Network is removed in accordance with clause 11.

1.7 '**Downstream Installation**' means meter housing, gas equipment and appliances installed by a Gas Safe registered installer after the meter outlet connection.

1.8 '**Gas Apparatus**' has the meaning given in our Connection Policy and includes but is not limited to the gas service which is laid from the Network to the Property, meter control valve (MCV), pressure regulator, gas meter and associated pipework from the MCV to the meter outlet connection.

1.9 '**Gas Connection Application**' means the standard pro forma application form prepared by us.

1.10 '**Gas Safe**' refers to the register of the official list of gas installers who are registered to work safely and legally on gas equipment and appliances.

1.11 **'Gas Supplier'**, means a company licensed in accordance with the Relevant Legislation to supply natural gas to Gas Users in properties connected to the Network.

1.12 **'Gas User'** means the Applicant, any subsequent Property owner, or any tenant or occupier of the Property who contracts with a Gas Supplier to purchase gas.

1.13 **'Industrial or Commercial Property'** means a property which is not a domestic property, a domestic property being a property where the supply of gas is taken wholly or mainly for domestic purposes.

1.14 **'Isolate'/'Isolated'/'Isolating'/'Isolation'** means that the supply of gas to the Property is interrupted in accordance with clause 12.

1.15 **'Legal Representative'** means one who represents or stands in place of the Property owner under authority recognised by law especially with respect to the Property owner's property or interest and includes a Barrister, Solicitor or an agent/relative having legal status acting under a Power of Attorney or an Enduring Power of Attorney within the Powers of Attorney Act (NI) 1971 and Enduring Powers of Attorney (NI) Order 1987 (as amended).

1.16 **'Network'** means the Phoenix pipeline to which the Property will be connected.

1.17 **'Party'/'Parties'** means Phoenix, the Applicant (including any subsequent Property owner) or both as the context requires.

1.18 **'Payment'** means the payment of the charges detailed in the Quotation to be paid by the Applicant, in advance of the Property being connected to the Network.

1.19 **'Phoenix'** means Phoenix Natural Gas Limited, being a company incorporated and registered in Northern Ireland with company number NI32809 having its registered office at 197 Airport Road West, Belfast, BT3 9ED and includes its successors, assigns, authorised agents and subcontractors and is also referred to in these Terms and Conditions as **'we'**, **'us'** and **'our'**.

1.20 **'Phoenix Website'** means www.phoenixnaturalgas.com.

1.21 **'Property'** means (i) a property which is Readily Connectable to the Network; or (ii) a Property which is already connected to the Network. Reference to the Property throughout these Terms and Conditions means an Industrial or Commercial Property.

1.22 **'Quotation'** is the quotation in respect of a connection to the Network, pursuant to our Connection Policy.

1.23 **'Readily Connectable'** means a property whose front curtilage is situated within 50 meters of a suitable distribution pipeline as defined in our Connection Policy.

1.24 **'Relevant Legislation'** means the relevant legislation (as amended) applicable to the gas industry in Northern Ireland, including but not limited to: (i) The Gas (Northern Ireland) Order 1996; (ii) The Energy (Northern Ireland) Order 2003; and (iii) The Energy Act (Northern Ireland) 2011; and any order or statute which replaces them.

1.25 **'Terms and Conditions'** means all of the terms and conditions detailed in this document relating to the connection of the Property to the Network and the obligations now, and in the future, of the Applicant and any subsequent Property owner.

1.26 **'Wayleave'** means any agreement (in writing) with the owner of any land/property traversed by our Gas Apparatus or Network which enables the Property to be connected.

1.27 The clause headings in these Terms and Conditions do not form part of the Contract and shall not be taken into account in its construction or interpretation.

1.28 References to clauses are to the clauses of these Terms and Conditions unless otherwise stated.

1.29 Reference to a 'person' includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.30 References in these Terms and Conditions to any costs or charges which are not set out in the Quotation or in these Terms and Conditions shall be calculated in accordance with our Connection Policy.

1.31 In exercising our rights and performing our obligations under the Contract, Phoenix shall act in accordance with all Relevant Legislation.

2. THE CONTRACT

2.1 A Gas Connection Application signed by the Applicant does not commit us or the Applicant to proceed with a connection of the Property to the Network.

2.2 If the Applicant does not request a connection within 365 days of signing the Gas Connection Application the Contract will be automatically cancelled.

2.3 The Contract is formed when the following conditions have been satisfied:

a) The Applicant has signed the Gas Connection Application and we have agreed to connect the Property to the Network;

b) Where required by us a Wayleave is submitted by the Applicant;

c) A verbal or written request is made to us by the Applicant for a connection date and this date has been agreed by us. (Note: where we require access inside the Property to install our Gas Apparatus an AM or PM appointment will be offered, at which you must be present);

d) The Gas Supplier confirms that they are willing to supply the Gas User named on the Gas Connection Application on the understanding that the Gas User will be ready to start using gas immediately from the date the Property is connected to the Network;

e) The Applicant confirms they have engaged a Gas Safe registered installer to fit all gas equipment and appliances at the Property; and

f) Payment of the Quotation has been received in advance of the connection date being agreed.

2.4 Once the Contract is formed the Applicant has 14 days, from the date a connection date is agreed with us, to request that the Contract be cancelled. To cancel your Contract you should notify us in writing by post to the address in clause 1.19 or by email to info@phoenixnaturalgas.com. There will be no penalty or liability for charges incurred if notice to cancel is served within the timeframe specified in this clause unless work has already commenced, on your instruction, whereby you will be liable for any costs incurred by us in meeting your specified requirements. If you cancel the Contract pursuant to this clause 2.4 we will refund your Payment as soon as possible.

2.5 The Contract shall continue indefinitely, unless terminated in accordance with clause 15, and is binding on all subsequent Property owners.

3. CHANGES TO THE TERMS AND CONDITIONS

We may from time to time amend or replace the Terms and Conditions and an amended or replacement version will be posted on the Phoenix Website. The amended or replacement Terms and Conditions will apply to any Property awaiting connection to the Network or any Property already connected to the Network.

4. THE WORKS

4.1 We will, wherever possible, use the least disruptive installation techniques to connect the Property to the Network. Some ground conditions and/or the presence of underground services/obstructions will require a full excavation within the Property along the complete length of the gas service route to the meter termination position.

4.2 Our standard installation method is to use a pneumatic mole to bore a hole underground. As a minimum, two excavations (each approximately 1 metre long) will be undertaken. It will be necessary to excavate every 6 to 10 metres to redirect the mole.

4.3 A connection to the Network is deemed to be complete when our Gas Apparatus has been installed and commissioned.

4.4 Reinstatement of any excavation, whether at the time of connection or subsequently, will not include it being restored to its original state and will not include clearing residual staining arising from the excavation and reinstatement process. We shall repair excavations with a suitable constituent, as determined by us, but any reinstatement will always remain visible. We shall not carry out the reinstatement of any fences, walls, landscaping, drainage or special surface finishes. The Applicant can elect to undertake their own reinstatement on private property, at their expense, providing it is completed to an appropriate safe standard and they assume full liability for the work undertaken.

4.5 Where we install Gas Apparatus or any other equipment below ground and require access in the future for maintenance purposes, we will arrange reinstatement in order to facilitate access.

4.6 Whilst we may supply meter housing (box) at the point of connection to our Gas Apparatus, you shall own the meter housing thereafter as it will form part of the fabric of the Property. Repairs, maintenance and retention of the meter housing are the responsibility of the Property owner.

4.7 Only Phoenix has the authority to undertake:

- a) Works on the Network; and
- b) The installation and maintenance of Gas Apparatus.

4.8 Phoenix is not responsible for the installation or maintenance of any gas pipes, apparatus or appliances not installed by us on the Property.

4.9 Further information on the facilities for connection to the Network is set out in our Connection Policy.

5. WARRANTIES AND TITLE

The Applicant warrants that he/she is the Property owner, through which our Gas Apparatus will be laid and has the authority to permit the works specified in clause 4 and will secure any planning permissions or building warrants that maybe required.

6. ACCESS

You or any Gas User at the Property shall allow Phoenix safe and unrestricted access to your Property for the purpose of:

- a) Enabling us to fully perform the Contract and as required or permitted by the Relevant Legislation and any other statute (including any rules or regulations made pursuant to any statute);
- b) Connecting the Property to the Network;
- c) Undertaking any inspection, repairs, maintenance, removal, disconnection, isolation or replacement of our Gas Apparatus in accordance with our Connection Policy, other operational procedures and legal obligations;
- d) Averting imminent danger to persons or property or securing the safety of the Network; and
- e) Connecting any other property to the Network without requiring any further permission from you.

7. POST CONNECTION RESPONSIBILITIES

7.1 Misuse or abuse of Gas, the Network or Gas Apparatus

7.1.1 You, any Gas User at the Property or any third party shall not in any way:

- a) Use, or allow others to use gas in an unsafe way;
- b) Interfere with the integrity of the Network or compromise its safe operation; or
- c) Interfere, misuse, tamper with, steal or damage our Gas Apparatus or any other equipment installed by us.

7.1.2 The person liable or deemed liable by Phoenix for the costs associated with a breach of clause 7.1.1 above (i.e. the Property owner or Gas User) must pay all resultant costs

incurred by us. The ownership of the Network, Gas Apparatus or any other equipment repaired or replaced remains as it was before the breach of clause 7.1.1 occurred.

7.1.3 Should you, the Gas User or any third party compromise the integrity or safety of, the Network, Gas Apparatus, the meter housing or the Downstream Installation, the Property may on discovery, be Disconnected from the Network without advance notice and clauses 11.2 and 11.3 below shall apply.

7.2 Building Alterations

Depending on meter size and operating pressures our Gas Apparatus at the Property will be sited and installed in compliance with BS6400 and/or other Relevant Legislation. Gas Apparatus will also be installed in accordance with the Gas Safety (Installation and Use) Regulations Northern Ireland 2004 (as amended). If you plan to extend the Property or undertake construction work in close proximity of our Gas Apparatus or the Network you must contact us to arrange a survey. If your building alterations are considered unsafe, the Property will be Isolated from the Network as detailed in clause 12 and you will be charged for the Isolation and restoration of supply. No restoration of supply can take place until all remedial works have been completed.

7.3 General

All aspects of post connection activities and the costs associated with them will be dealt with in accordance with our Connection Policy.

8. EMERGENCIES

8.1 If there is a gas escape or the Network or Gas Apparatus is damaged you must immediately notify the Northern Ireland Gas Emergency Control Centre on 0800 002 001.

8.2 You or the Gas User at the Property shall immediately comply with all requests:

- a) For the purpose of averting or reducing danger to life or property; and
- b) In relation to the use of gas at the Property.

8.3 Phoenix may Isolate the Property from the Network or take other action to protect the integrity and safety of the Network and Phoenix shall not have any liability in respect of any loss or damage arising as a result of any action taken by us.

8.4 If the Property has been Isolated from the Network, we may make a charge for any subsequent restoration of supply, as calculated in accordance with our Connection Policy.

9. FORCE MAJEURE

9.1 "**Force Majeure**" means any event or circumstance, or any combination of events and/or circumstances, the occurrence of which is beyond the reasonable control of, and could not have been avoided by steps which might reasonably be expected to have been taken by a Party ("**Affected Party**") and which causes or results in the failure of the Affected Party to perform or delay in performing any of its obligations owed to the other Party under the Contract.

9.2 Subject to clause 9.3, neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from Force Majeure. In such circumstances the Affected Party shall be entitled to a reasonable extension of the time for performing such obligations.

9.3 The Parties acknowledge that "Force Majeure" shall not release any Party from any obligation to pay amounts due under the Contract.

10. PRICE AND PAYMENT

10.1 The Quotation is valid for 28 days from the date of issue, although this may be extended at our sole discretion.

10.2 Following payment in full we shall agree a date to connect the Property to the Network.

10.3 If natural gas is not used at the Property within 12 months of the actual connection date, you shall pay the cost of connecting the Property to the Network. The amount charged will be as determined in accordance with our Connection Policy.

10.4 Details of all applicable charges for works undertaken at the Property are detailed in our Connection Policy.

11. DISCONNECTING YOUR PROPERTY FROM THE NETWORK

11.1 A Property may be Disconnected from the Network:

- a) At your request where the Gas Apparatus is no longer required;
- b) Without notice if the making or maintaining of the connection involves danger to the public and / or a risk to the safety of the Network;
- c) Without notice where there is no Gas Supplier registered against the Property by us; or
- d) In accordance with the requirements detailed in clause 7.1.3 above.

11.2 Costs for Disconnecting the Property from the Network may be charged to the Property owner in accordance with our Connection Policy.

11.3 From the date that the Property is Disconnected from the Network the Contract shall terminate. Any subsequent request for connection of the Property to the Network will be subject to a new Gas Connection Application and applicable charges in accordance with our Connection Policy may apply.

12. ISOLATING YOUR GAS SUPPLY

12.1 A Property may be Isolated from the Network:

- a) At your request to enable the Property owner to undertake works at the Property. For the avoidance of doubt this is a temporary interruption of supply at the Property;
- b) At the request of the Gas Supplier registered at the Property (for example to enable the Gas Supplier to recover any accrued debt);

c) By us where access to the Property or any adjoining property over which we have a Wayleave is denied to undertake maintenance on our Gas Apparatus; or

d) In accordance with clauses 7.2 and 8.3 above.

12.2 Costs for Isolating the Property may be charged to the Property owner in accordance with our Connection Policy.

12.3 Where a Property is Isolated the Contract shall not terminate but shall continue in full force and effect.

13. LIMITATION OF LIABILITY

13.1 We shall not be liable to you for any loss or damage arising from our breach of the Contract, other than for loss or damage which was reasonably foreseeable.

13.2 We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or for fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.2, provided that and to the extent that the law permits, you shall not be entitled to reimbursement of expenses or compensation for any loss or damage in respect of any disruption or inconvenience, charges from any Gas Safe registered installer or other third parties employed by you or any other associated costs resulting from anything outside of our control in relation to the installation, repair, replacement or failure of our Gas Apparatus.

13.4 Subject to clause 13.2, Phoenix shall not have any liability in respect of any loss or damage arising as a result of Disconnection or Isolation of the Property in accordance with these Terms and Conditions.

13.5 Subject to clause 13.2, we shall not in any circumstance be liable to you in respect of any breach of the Contract for any loss of profit, sales, business, revenue, goodwill, construction delay, increased cost of working or any indirect or consequential loss.

13.6 If we are undertaking works at the Property, subject to clause 4.4, we will make good any damage to the Property caused by us while doing so. However, we are not responsible for the cost of repairing any pre-existing faults or damage to the Property that we discover while undertaking the works.

13.7 Subject to clause 13.2, the maximum amount for which we may be liable to you, in respect of any event or circumstance or series of events constituting or resulting in a breach of a provision of the Contract, shall not exceed £5,000.

13.8 Except as expressly stated in these Terms and Conditions, we do not give any representation, warranties or undertakings in relation to the works or services provided by us under the Contract and all terms that may be incorporated or implied into the Contract by statute, common law or otherwise are to the fullest extent permitted by law excluded from this Contract.

14. ASSIGNMENT AND SUBCONTRACTING

14.1 Phoenix shall be entitled to assign or otherwise transfer all or part of our rights and obligations under the Contract to any person or company who is licensed to convey gas to the Property and to subcontract performance of our obligations to our authorised agents or third party subcontractors.

14.2 Excluding the automatic transfer of title to a new owner on sale of the Property, you may not amend, transfer or otherwise encumber all or part of your rights under the Contract without our prior written consent.

15. TERMINATION

15.1 Should you wish to terminate the Contract you will need to arrange for the Disconnection of the Property from the Network through the Gas Supplier registered against the Property by Phoenix and the costs referred to in clause 11.2 shall apply.

15.2 The Contract shall automatically terminate in the event that the Property is Disconnected from the Network in accordance with clause 11.

15.3 We may terminate the Contract and Disconnect the Property at any time if you:

a) do not give us access to the Property in accordance with clause 6; or

b) are unable to pay your debts or become insolvent or an order is made or a resolution passed for your administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of your assets or you enter into or propose any composition or arrangement with your creditors generally;

and the costs referred to in clause 11.2 shall apply.

15.4 On termination of the Contract for whatever reason, clause 7 shall continue in full force and effect.

15.5 For the avoidance of doubt, the Contract will not terminate on a sale of the Property to a new owner and the new Property owner shall also be bound by the Contract. The outgoing Property owner shall remain liable for all costs incurred under the Contract up to the date of sale of the Property and the incoming Property owner shall be liable for all costs incurred under the Contract after the date of sale.

16. NOTICES

16.1 Any notices we are required to give you under the Contract shall be accepted by you as properly given if (i) published on the Phoenix Website, (ii) sent to you by email, or (iii) delivered by hand or by post to the Property or to such other address as you may notify us.

16.2 Any notices you are required or wish to give to us under the Contract shall be accepted by us as properly given if (i) sent to us by email at info@phoenixnaturalgas.com, or (ii) posted or delivered by hand to the address in clause 1.19.

16.3 This clause 16 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, other method of dispute resolution.

17. WAIVER

No waiver of any default or delay in enforcing rights under the Contract by us shall be construed as a waiver of any rights or remedies. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

18. SEVERANCE

If a court finds part of this Contract illegal, the rest will continue in force. Each of the clauses of these Terms and Conditions operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

19. THIRD PARTY RIGHTS

The Contract is between you and us. Save for subsequent Property owners to whom this Contract automatically transfers on sale of the Property, no other person shall have any rights to enforce any of its terms.

20. USE OF INFORMATION

The information you provide to us shall only be used as set out in our Privacy Policy, which is available on the Phoenix Website or you may request a copy at info@phoenixnaturalgas.com or by calling us on 03454 555555.

21. COMPLAINTS AND GUARANTEED STANDARDS OF SERVICE

21.1 If you are dissatisfied with any aspect of our service you may initiate our complaints handling procedure by writing to the Service Delivery Manager, Phoenix Natural Gas Ltd, 197 Airport Road West, Belfast, BT3 9ED. However, if you remain dissatisfied you may wish to contact the Consumer Council, Floor 3 Seatem House, 28-32 Alfred Street, Belfast, BT2 8EN. Telephone: 0800 121 6022.

21.2 The Gas (Individual Standards of Performance) Regulations (Northern Ireland) 2014 requires us to offer compensation to you should we fail to meet the standards of service we are required to achieve under these regulations. Details of the compensation and refund arrangements applicable are detailed in our Notice of Rights which can be obtained from our website or provided to you upon request.

22. LAW OF NORTHERN IRELAND

This Contract will be governed by and construed in accordance with the law of Northern Ireland and, subject to clause 21, the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract, its subject matter or formation.

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