

## Chapter 3.2 - CAPACITY TRANSACTIONS

### 3.2.1 No assignment

The User may not assign, mortgage, charge, pledge, dispose of, or otherwise transfer all or part of its rights and/or (if applicable) obligations under the Capacity Agreement, nor grant any right or interest under the Capacity Agreement to any person without the prior written consent of the Operating Company, such consent not to be unreasonably withheld.

### 3.2.2 Transfer of regasification capacity

#### 3.2.2.1 Regasification capacity transfer process

a) Prior to the start and/or in the course of each Gas Year each User may transfer the regasification capacity which it holds under a Capacity Agreement executed with the Operating Company. Transfer of capacity shall mean the transfer to another User or third party other than the User (**Transferee**) of a certain quantity of regasification capacity held by a User of the Terminal (**Transferring User**) and of all the rights and obligations associated with such regasification capacity. The transfer of regasification capacity shall be requested, upon penalty of cancellation, according to the procedures and timing specified below:

- (i) the interested parties, Transferring User and Transferee, shall send the Operating Company the request form for the transfer of regasification capacity (Annex 3), duly completed and signed by them, specifying:
  - the volume of LNG, expressed in cubic metres of LNG, and the relevant Maximum Number of Permitted Berthing Slots being transferred;
  - the Delivery Slots or Monthly Slots in the event that the transfer takes place after the process that determines the Annual Unloading Schedule. Transfer of Delivery Slots or Monthly Slots shall mean the transfer by the Transferring User to the Transferee of all the rights and obligations associated with one or more Delivery Slots or Monthly Slots being transferred (each Delivery Slot or Monthly Slot to be deemed inclusive of the Berthing Slot, the relevant regasification capacity and the relevant right to use the User's Regasification Service which, insofar as applicable have been determined in the Annual Unloading Schedule, together with all the rights, obligations and liability envisaged by Clause 3.2.2.2).
- (ii) In order for the regasification capacity transfer request to be accepted, the Transferee must meet the Service Conditions envisaged by Clause 2.1.1 and shall have sent the signed Capacity Agreement and provided the adequate financial guarantees envisaged by Chapter 3.1 by and not later than 12:00 on the second (2<sup>nd</sup>) Business Day prior to the deadline envisaged by Clause 3.2.2.1a)(iii), which is deemed to be a condition of the effectiveness of the transfer.
- (iii) The regasification capacity transfer request (Annex 3) shall reach the Operating Company:
  - by fifth (5<sup>th</sup>) August for the transfer of Continuous Capacity starting on 1<sup>st</sup> October of the subsequent Gas Year; and/or
  - by the seventh (7<sup>th</sup>) Business Day before the start of the Month in which the Delivery Slot(s) or Monthly Slot(s), to be transferred, are scheduled.

The transfer request will be irrevocable and shall contain a declaration in which the Transferring User and the Transferee acknowledge that its effectiveness is subject to the express acceptance of the Operating Company which will assess the adequacy of the documentation and the data contained therein. It being understood that at the time of the transfer request, no material breach or material default shall have been made by the Transferring User, or even the Transferee in the event that the latter is already a User, under the Capacity Agreement, including the non-payment of any amount payable under such Capacity Agreement or of any other amounts. Transfers of regasification capacity will not be accepted if the requests are received after the indicated deadlines and/or are incomplete and/or non-compliant and/or the Transferring User does not hold the capacity to be transferred.

b) By the third (3<sup>rd</sup>) Business Day subsequent to the expiry of the deadline envisaged by Clause 3.2.2.1a)(iii), the Operating Company will inform the Transferring User and the Transferee of:

- (i) the acceptance of the transfer request for regasification capacity and will return to the applicants a copy of the transfer requests duly countersigned as a sign of acceptance and, if the Transferee has sent the duly signed Capacity Agreement together with the transfer request, the Operating Company will also send the Transferee a copy of the Capacity Agreement duly signed by the Operating Company by the second (2<sup>nd</sup>) Business Day following its receipt; or
- (ii) the rejection of the transfer request.

### **3.2.2.2 Effect of a transfer of regasification capacity**

- a) Save as provided in Clause 3.2.2.2b), with effect from the date on which the Operating Company accepts the regasification capacity transfer request pursuant to Clause 3.2.2.1b):
  - (i) the Transferring User will transfer to the Transferee, and the Transferee, which will assume for all intents and purposes the status of User, will take over all the rights and obligations arising from the Capacity Agreement, insofar as they refer to the capacity to be transferred. To ensure the clarity of the relationship between the Transferring User and the Transferee, such rights and obligations will be reflected in the new Capacity Agreement envisaged by Clause 3.2.2.1b)(i).;
  - (ii) the Transferring User will retain all its rights and obligations in respect of the Operating Company under the Capacity Agreement, including the obligation to pay the Charges for the non-transferred regasification capacity;
  - (iii) the commitments envisaged by Capacity Agreement signed by the Transferring User will be appropriately adjusted to the extent and for the duration required to consider the effects of the transfer;
  - (iv) the Operating Company will add the Transferee to the Annual Unloading Schedule and the Ninety Day Unloading Schedule (where applicable);
- b) the transfer of regasification capacity will not result in the transfer of (and the Transferring User and the Operating Company will not exempt from) the obligations or liability arising from the Capacity Agreement before the Transferee enters into the Capacity Agreement.

### **3.2.3 Release of regasification capacity**

#### **3.2.3.1 Release of Continuous Capacity pursuant to article 8, paragraph 2 TIRG**

- a) The Continuous Capacity User is entitled to release all or part of its Continuous Capacity on an annual and/or multi-annual basis.
- b) In order to release Continuous Capacity, the User shall send the Operating Company a Statement of Release (Annex 2A1), thereby granting the Operating Company the right to offer such capacity as Secondary Capacity. Such Statement of Release shall reach the Operating Company at least ten (10) Business Days prior to the deadlines by which the Operating Company is required to publish the regasification capacity available for the annual and multi-annual envisaged by Clauses 2.1.5.2 and 2.1.5.3. It being understood that any released Continuous Capacity which is not allocated in the context of the relevant allocation processes will remain the responsibility of the User. The released Continuous Capacity may be allocated by the Operating Company in whole or in part.
- c) In any case releases of Continuous Capacity will not be accepted if:
  - i. the requests are received after the indicated deadlines and/or are incomplete and/or non-compliant;
  - ii. the Continuous Capacity User that requests the release is not the holder of the capacity to be released.
- d) In the event that the Continuous Capacity User has informed the Operating Company of the released Continuous Capacity and the latter has been allocated pursuant to allocation process envisaged by Clauses 2.1.5.2 and 2.1.5.3, all the User's rights relating to such released Continuous Capacity will be deemed to have been waived and will cease to have effect. The User will cease to claim any right in relation to such released Continuous Capacity and the commitments envisaged by the User's Capacity Agreement will be appropriately adjusted to the extent and for the duration required to consider the effects of such allocation.

e) The Continuous Capacity User will continue to be subject to any obligation and liability arising from or associated with the released Continuous Capacity (including the obligation to pay the Charges) to the Operating Company unless such Continuous Capacity is subsequently allocated; in the case of allocation, the Continuous Capacity User that released the capacity will in any case be required to pay the difference, where positive, between the Charges that it would have paid if it had not released the capacity and the Charges that the User (or the Users) that were awarded the released capacity will pay (as a whole) to the Operating Company. If the difference is negative, the Operating Company will pay the User that released the capacity the higher proceeds arising from the release of the Continuous Capacity.

f) Each Continuous Capacity User that has released regasification capacity pursuant to Clause 3.2.3.1, and such capacity has not already been allocated to other Users, may recover the released Continuous Capacity by submitting a Statement of Withdrawal (Annex 2A3) to the Operating Company, which the Operating Company must receive by the fifth (5<sup>th</sup>) Business Day before the deadlines by which the Operating Company is required to publish the regasification capacity available for the annual or multi-annual allocation envisaged by Clauses 2.1.5.2 and 2.1.5.3.

### **3.2.3.2 Release of Delivery Slots and Monthly Slots**

a) The User may release one or more Delivery Slots and Monthly Slots starting from Month M until the end of the Gas Year.

b) In order to release one or more Delivery Slots or Monthly Slots, the User shall send the Operating Company a Statement of Release (Annex 2A2), thereby granting the Operating Company the right to offer such capacity as Secondary Capacity. Such Statement of Release shall reach the Operating Company by 12:00 on the second business day (2<sup>nd</sup>) prior to that of publication of the Delivery Slots that will be made available for the subsequent interim allocation envisaged by Clauses 2.1.8 and 2.1.9. If the Statement of Release is received by the Operating Company after such deadline, the relevant regasification capacity that is the subject of the Statement of Release will in any case be made available as Secondary Capacity in the following interim allocations. It being understood that any released Continuous Capacity which is not allocated in the context of the relevant allocation processes will remain the responsibility of the User.

c) Releases of Delivery Slots or Monthly Slots will not in any case be accepted if:

- i. the requests are received after the indicated deadlines and/or are incomplete and/or non-compliant;
- ii. the User that requests the release is not the holder of the capacity to be released.

d) If the User has informed the Operating Company of the Delivery Slots or Monthly Slots to be released, all rights and obligations associated with such Delivery Slots or Monthly Slots will only be transferred provided that they are subsequently allocated by the Operating Company to another User. The User may not claim any right in relation to the released and allocated Delivery Slots or Monthly Slots and the commitments envisaged by the User's Capacity Agreement will be appropriately adjusted to the extent and for the duration required to consider the effects of such allocation.

e) The User will continue to be subject to all the liability and obligations arising out of or in connection with the released Delivery Slot or Monthly Slot (including the obligation to pay the Charges) to the Operating Company unless such Delivery Slot or Monthly Slot is subsequently allocated; in the case of allocation, the User that has released the slot will in any case be required to pay the difference, where positive, between the Charges that it would have had to pay if it had not released the slot and the Charges that the User awarded the released capacity will pay to the Operating Company even if the allocated capacity is lower than that released. If the difference is negative, the Operating Company will pay the User that released the slot the higher proceeds arising from the release of the Continuous Capacity.

f) Each User that has released regasification capacity pursuant to Clause 3.2.3.2, and such capacity has not already been allocated to other Users, may recover a released Delivery Slot or Monthly Slot:

- i) by submitting a Statement of Withdrawal (Annex 2A4) to the Operating Company, which the Operating Company must receive by the Business Day prior to the deadlines envisaged for the publishing of the Delivery Slots or the available Monthly Slots envisaged by Clauses 2.1.8.2 and 2.1.9.1; or

- ii) through the Regasification Auction Platform in case the revocation is expressed by the User during the bids submission envisaged by Clause 2.1.9.2.
- g) In the event that all regasification capacity envisaged by its Capacity Agreement is released and subsequently allocated, the User will be discharged from any obligation arising from the Capacity Agreement in relation to the released regasification capacity.

### **3.2.4 Exchange of regasification capacity between Users**

#### **3.2.4.1 Right to exchange regasification capacity between Users**

The Users have the right to exchange the regasification capacity they hold under the respective Capacity Agreements, in accordance with the provisions contained in Clause 3.2.4.

#### **3.2.4.2 Regasification capacity exchange process**

- a) Before the beginning and/or during each Gas Year the Users will be entitled to exchange the regasification capacity which they hold. Exchange of regasification capacity means the exchange of a certain quantity of regasification capacity held by two Users in the Terminal including all the rights and obligations that are connected to such regasification capacity. The exchange of regasification capacity shall be requested, upon penalty of rejection, according to the procedures and timing specified below:
  - i) the interested Users shall send the Operating Company the form for requesting the regasification capacity exchange (Annex 3A), duly filled in and signed, stating:
    - the volume of LNG, expressed in cubic meters of LNG, and the relevant Maximum Number of Permitted Berthing Slots being exchanged;
    - the Delivery Slots or the Monthly Slots, in the event that exchange takes place after the process that determines the Annual Unloading Schedule. Exchange of Delivery Slots or of Monthly Slots means the exchange between two Users of all the rights and obligations associated with the Delivery Slots or to the Monthly Slots to be exchanged (each Delivery Slot and each Monthly Slot to be deemed inclusive of the Berthing Slot, the relevant regasification capacity and the relevant right to use the User's Regasification Service which, insofar as applicable, have been determined in the Annual Unloading Schedule, together with all the rights, obligations and liability envisaged by Clause 3.2.4.3);
  - ii) in order for the exchange of regasification capacity to be accepted, the Users requesting the exchange must meet the Service Conditions under Clause 2.1.1 and must have provided the adequate financial guarantees envisaged by Chapter 3.1;
  - iii) the requests for the exchange of regasification capacity shall reach the Operating Company:
    - by thirty-first (31<sup>st</sup>) January for the transfer of Continuous Capacity starting on the 1st October of the subsequent Gas Year; and/or
    - by the seventh (7<sup>th</sup>) Business Day prior to the start of the Month in which the Delivery Slot(s) or Monthly Slot(s), to be exchanged, are scheduled.

The exchange request will be irrevocable and shall contain the declaration whereby the Users acknowledge that its effectiveness is subject to the express acceptance of the Operating Company, which will verify the adequacy of the documentation and of the data contained therein. It being understood that at the moment of the request neither a material violation nor a material default of the Capacity Agreement shall have been made by the Users, including the non-payment of any amount payable under such Capacity Agreement or under the other Capacity Agreements. In any event, exchanges of regasification capacity will not be accepted, if the requests are received after the deadlines set out above and/or they are incomplete and/or they not-compliant and/or Users do not hold the capacity to be exchanged.

- b) By the third (3°) Business Day subsequent to the expiry of the deadline envisaged by Clause 3.2.4.2a)iii), the Operating Company will inform the Users requesting the exchange of regasification capacity:
  - i) the acceptance of the exchange request and will return a copy of the request duly countersigned as a sign of acceptance; or
  - ii) the rejection of the exchange request.

#### **3.2.4.3 Effect of the exchange of regasification capacity between Users**

- a) Save as provided in Clause 3.2.4.3b), with effect from the date on which the Operating Company accepts the regasification capacity exchange request pursuant to Clause 3.2.4.2b):
  - i) the Users requesting the exchange of regasification capacity will take over all the rights and obligations arising from the relevant Capacity Agreement, insofar as they refer to the capacity to be exchanged;
  - ii) the Users interested in the exchange of regasification capacity will retain all their rights and obligations in respect of the Operating Company under the Capacity Agreement, including the obligation to pay the Charges for the non-exchanged regasification capacity;
  - iii) the Operating Company will update the Annual Unloading Schedule and the Ninety Day Unloading Schedule (where applicable) with the outcome of the exchange of regasification capacity.
- b) The exchange of regasification capacity will not result in the transfer of (nor the Users will be exempted from) the obligations and the liability that arose from the Capacity Agreement in relation to the regasification capacity not to be exchanged.