

**GENERAL TERMS AND CONDITIONS OF PARTICIPATION IN AND ACCESS TO  
CAPACITY OF ALLOCATION OF INCREMENTAL CAPACITY ON THE BORDER  
BETWEEN UKRAINE AND POLAND**

**(hereinafter the 'INC GT&C')**

1. General provisions

- 1.1. This INC GT&C regulates the general terms and conditions that the System User must accept in order to participate in the Auction and to gain access to the incremental capacity made available in the Auction. In accordance with sub-point 2 of point 1 of subsection 3 of section XX of the Gas Transmission System Code, which was approved by the resolution of the National Energy and Utility Regulatory Commission of 30 September 2015 No. 2493, this INC GT&C shall be approved by the Regulator.
- 1.2. Transmission services for the capacity allocated under the Auction will be provided in accordance with the transportation agreement, this INC GT&C, as well as in accordance with the Code of the gas transmission system applicable at any given time (hereinafter: "Code"), Tariff and the Methodology for Determining and Calculating Tariffs for Natural Gas Transmission Services for Entry Points and Exit Points on the basis of long-term incentive regulation (hereinafter: "Methodology"). This INC GT&C, after allocating capacity resulting from the Auction, will regulate the specific rules for the provision of transmission services by LLC "Gas Transmission System Operator of Ukraine" to the System User in terms of capacity allocated to that System User as part of the Auction. This INC GT&C does not exclude the GTS Code provisions.
- 1.3. By submitting an offer in the Auction, the System User accepts without reservation the conditions set out in the GTS Code, the transmission agreement, Tariff, the Methodology for Determining and Calculating Tariffs for Natural Gas Transmission Services for Entry Points and Exit Points on the basis of long-term incentive regulation and in this INC GT&C.
- 1.4. This INC GT&C was prepared in Ukrainian and English language versions. In the event of a discrepancy between the Ukrainian and

English language versions of this INC GT&C, the Ukrainian version shall prevail.

## 2. Definitions

- 2.1. Auction — annual yearly capacity auction conducted on the terms set forth in the CAM Network Code, under which the incremental firm capacity of the GCP GAZ-SYSTEM/UATSO (towards UA) interconnection point shall be made available.
- 2.2. LLC “Gas Transmission System Operator of Ukraine” — company that provides transportation of natural gas to the consumers in Ukraine and in countries of the European Union, acting as the transmission-system operator within Ukraine;
- 2.3. GTS Code — is a regulatory document of the gas transmission system of Ukraine and defines legal, technical, organizational and economic principles of operation of the gas transmission system of Ukraine. GTS Code is published on LLC “Gas Transmission System Operator of Ukraine” website ([Regulatory framework - Transmission System Operator of Ukraine \(tsoua.com\)](http://Regulatory framework - Transmission System Operator of Ukraine (tsoua.com)));
- 2.4. GAZ-SYSTEM — company under the name of Operator Gazociągów Przesyłowych GAZ-SYSTEM S.A. with its seat in Warsaw, acting as the transmission-system operator within Poland;
- 2.5. GSA Platform — platform to offer capacity in the relevant transmission systems at the GCP GAZ-SYSTEM/UATSO interconnection point by LLC “Gas Transmission System Operator of Ukraine” and GAZ-SYSTEM;
- 2.6. Project — project to create a new technical capacity at the existing GCP GAZ-SYSTEM/UA interconnection point based on capacity allocation in a preceding incremental capacity procedure;
- 2.7. Tariff — currently applicable list of prices, fee rates and their application rules, compiled by LLC “Gas Transmission System Operator of Ukraine” and introduced as binding in settlements with the System User, published on the LLC “Gas Transmission System Operator of Ukraine” website ([Transmission tariffs - Transmission System Operator of Ukraine \(tsoua.com\)](http://Transmission tariffs - Transmission System Operator of Ukraine (tsoua.com))).
- 2.8. System User — private entrepreneur or legal entity that orders the provision of one or several components of the services of gas transmission according to the transportation agreement concluded with the gas transmission system operator.

## 3. Binding phase of incremental capacity allocation

- 3.1. In the binding phase of incremental capacity allocation under the Project, LLC "Gas Transmission System Operator of Ukraine" shall make available incremental capacity for the GCP GAZ-SYSTEM/UATSO interconnection point, in the flow direction from Poland to Ukraine and in the form of fifteen (15) yearly incremental capacity products, covering fifteen (15) gas years, from 1 October 2030 07:00 a.m. to 1 October 2045, 07:00 a.m.
  - 3.2. During the binding phase of incremental capacity allocation, each yearly product shall be made available through separate Auctions for incremental capacity at the levels corresponding to the two Offer Levels specified in the Project:
    - 3.2.1. Offer Level I: 3 095 890 kWh/h/year,
    - 3.2.2. Offer Level II: 4 620 557 kWh/h/year.
  - 3.3. The yearly incremental capacity products covering the period from 1 October 2030, 07:00 a.m. to 1 October 2045, 07:00 a.m. shall be made available through an Auction for the GCP GAZ-SYSTEM/UATSO interconnection point, in the flow direction from Poland to Ukraine.
  - 3.4. LLC "Gas Transmission System Operator of Ukraine" shall take the investment decision to implement the Project provided that LLC "Gas Transmission System Operator of Ukraine" and GAZ-SYSTEM shall have obtained positive economic test results and entered into an agreement for the implementation of the Project.
  - 3.5. Capacity allocation to System Users that acquired the capacity in the Auction depends on the LLC "Gas Transmission System Operator of Ukraine" investment decision to implement the Project.
  - 3.6. In the event of a positive economic outcome for both Offer Levels, i.e. Offer Level I and Offer Level II, LLC "Gas Transmission System Operator of Ukraine" and GAZ-SYSTEM will continue to work on the Project based on the capacity specified in Offer Level II.
  - 3.7. Subject to clause 3.4, capacity allocation shall be made in an amount corresponding to the Offer Level for which a positive investment decision is made.
4. Terms of participation in an Auction
    - 4.1. LLC "Gas Transmission System Operator of Ukraine" shall conduct the binding phase of incremental capacity allocation on the GSA Platform, in accordance with the terms and conditions for using

the platform binding on the day of conducting the Auction, and with the TNC.

- 4.2. The following is required in order to participate:
- a) entering into a transmission contract with LLC "Gas Transmission System Operator of Ukraine" in accordance with the provisions of the TNC;
  - b) do not have an overdue debt to the LLC "Gas Transmission System Operator of Ukraine" for previously provided services;
  - c) successful from LLC "Gas Transmission System Operator of Ukraine" perspective registration on the GSA Platform.

no later than one week before the Auction starts.

- 4.3. In order to participate in the Auction, the System User must also meet the participation conditions defined by LLC "Gas Transmission System Operator of Ukraine".
- 4.4. Transmission services in respect of the capacity allocated in the Auction shall be provided in accordance with the concluded transmission contract, as well as in compliance with the TNC and the Tariff, both as binding at each such time. Following to the capacity allocation as a result of the Auction, this INC GT&C shall constitute an appendix to the transmission contract concluded between LLC "Gas Transmission System Operator of Ukraine" and the System User.

#### 5. Financial Security (any mortgage by System User)

- 5.1. In order to participate in the Auction, the System User shall not submit any financial security or any mortgage.

#### 6. Delays in the provision of the capacity, and/or disruption in the implementation of the Project

- 6.1. LLC "Gas Transmission System Operator of Ukraine" shall notify System Users sufficiently in advance of any delays in making available the incremental capacity allocated in the Auction and/or any disruption in the implementation of the Project.
- 6.2. The starting date for the provision of gas transmission services in respect of the incremental capacity provided under the Auction may be postponed (delayed) by LLC "Gas Transmission System Operator of Ukraine" for a period no longer than 24 (say: twenty-four months), subject to a notification provided to the System User in writing. The notification, setting out the reason for postponing the

starting date and the new starting date for the provision of gas transmission services in respect of the incremental capacity made available in the Auction, shall be sent to the System User at least 6 (say: six) months before the planned date and time of starting the provision of gas transmission services in respect of the incremental capacity made available in the Auction. In such a case, the date of commencement of the provision of gas transmission services in the scope of incremental capacity made available under the Auction will change in accordance with the notification of LLC "Gas Transmission System Operator of Ukraine" (new date). The System User shall not be entitled to any claims against LLC "Gas Transmission System Operator of Ukraine" on this account. The notification on postponing the starting date for the provision of gas transmission services in respect of the incremental capacity made available in the Auction may be given more than 1 (say: one) time, provided that the total deferment of the starting date for the provision of gas transmission services in respect of the incremental capacity made available in the Auction does not exceed 24 (say: twenty-four) months. The System User shall have no claims against LLC "Gas Transmission System Operator of Ukraine" on account of any such deferment of the date and time of starting the provision of gas transmission services in respect of the incremental capacity made available in the Auction.

- 6.3. In the event of delays in implementing the Project, the capacity allocated in the binding phase of incremental capacity allocation available for the relevant gas year shall be prorated and reduced among the System Users having acquired capacity within the relevant yearly product in the Auction. LLC "Gas Transmission System Operator of Ukraine" shall reduce the capacity allocated in the Auction to the bid level implemented in the Project, so that the sum total of capacity levels offered to the individual System Users within the relevant yearly product does not exceed 100% of the technical capacity for relevant gas year.
- 6.4. Within 14 (say: fourteen) days after receiving initial information from LLC "Gas Transmission System Operator of Ukraine" about the proposed capacity reduction, the System User shall be entitled to surrender all or part of the proposed reduced capacity allocation, as well as to transform the whole or part of the capacity allocated to that System User in the Auction for the relevant yearly product into interruptible capacity. In the absence of a prompt response

from the System User to LLC "Gas Transmission System Operator of Ukraine" initial information about the proposed capacity reduction, the System User shall be deemed to have accepted the proposed reduction.

- 6.5. The System User that has surrendered all or part of the proposed reduced capacity allocation shall not be required to pay transmission fees.
- 6.6. Depending on the number of confirmations received, LLC "Gas Transmission System Operator of Ukraine" shall through the Information Platform provide System Users, that accepted the proposed capacity reduction with initial information about such additional available capacity which may be allocated to them, pro rata based on the capacity already allocated to them. System Users shall have 14 (fourteen) days to confirm or reject the allocation of additional capacity proposed to them.
- 6.7. In the event of any delays in implementing the Project and/or in making the incremental capacity available, the System User shall not have any right to use the capacity that was not made available at a later date.
- 6.8. LLC "Gas Transmission System Operator of Ukraine" shall not be liable for the System User's lost profits or any special, indirect and/or consequential damage arising from delays in implementing the Project and/or making the incremental capacity available. Moreover, LLC "Gas Transmission System Operator of Ukraine" shall not be liable for any of the System User's damage, including loss of profits, special, indirect and/or consequential damage, arising from impossibility in implementation of the Project and/or making the incremental capacity available being a result of circumstances: (i) for which LLC "Gas Transmission System Operator of Ukraine" or acting in its behalf entities are liable, (ii) caused by force majeure. In the absence of a prompt response from the System User to LLC "Gas Transmission System Operator of Ukraine" initial information about the proposed capacity reduction, the System User shall be deemed to have accepted the proposed reduction.
- 6.9. In the event of delay in LLC "Gas Transmission System Operator of Ukraine" commencement of provision of gas transmission services in respect of the capacity allocated in the Auction, the System

User shall have the obligation to exercise necessary care to minimize the loss.

- 6.10. In case of a delay in the commencement of provision of gas transmission services by LLC "Gas Transmission System Operator of Ukraine", LLC "Gas Transmission System Operator of Ukraine" liability shall be limited to the value of the lowest loss the System User could have objectively incurred and duly proven by the System User.
- 6.11. By submitting a bid in the Auction, the System User undertakes to ensure that the transmission contract concluded with LLC "Gas Transmission System Operator of Ukraine". Along with the appendix to the the transmission contract setting out the capacity period and level allocated to the System User in consequence of the Auction is maintained in force, throughout the duration of the capacity allocation made in accordance with the principles set out in this INC GT&C. If the transmission contract and/or the aforesaid appendix is terminated before the expiry of their term of duration the System User shall pay to LLC "Gas Transmission System Operator of Ukraine" a contractual penalty calculated in accordance with clause 6.12.
- 6.12. The contractual penalty shall be equal to a part of Project implementation costs incurred by LLC "Gas Transmission System Operator of Ukraine", calculated as follows:

$$\mathbf{K = C \times M}$$

Where:

K — expenditures incurred by LLC "Gas Transmission System Operator of Ukraine" in Project implementation that the System User is obliged pay (in UAH);

C — sum of expenditures incurred by LLC "Gas Transmission System Operator of Ukraine" and estimated expenditures LLC "Gas Transmission System Operator of Ukraine" has to pay toward Project implementation (in UAH) in particular any compensation due to the Project's contractors for design and construction works and/or other TSOs due to resignation from the implementation of the Project, with the exception of cases where the termination by the System User of the transmission contract or the attachment specifying the level and period of the capacity allocated to a given System User as a result of the Auction is a consequence of force majeure;

M — ratio of the sum total of capacity (contracted capacity) allocated to the System User throughout its duration to the sum of the total capacity of the Entry/Exit Point allocated by LLC “Gas Transmission System Operator of Ukraine” in the Auction throughout its duration.

- 6.13. The value of project-implementation costs incurred by LLC “Gas Transmission System Operator of Ukraine” that the System User has to pay shall be adjusted, after the commissioning of the Project, pro rata to the positive or negative difference between the planned and actual project implementation costs.
- 6.14. IF the the transmission contract entered into between the System User and LLC “Gas Transmission System Operator of Ukraine” and/or the appendix setting out the capacity period and level allocated to the User in the Auction is terminated after the commissioning of the Project, the value of the costs determined in accordance with clause 6.12 shall be reduced pro rata as at the moment of termination, in accordance with the following formula:

$$\mathbf{SK = K \times (1 - R/Z)}$$

where:

SK — adjusted value of expenditures incurred by LLC “Gas Transmission System Operator of Ukraine” in Project implementation and costs of Project implementation that the System User is obliged to pay (in UAH);

K — 100% of the expenditures toward the implementation and costs of implementation of the Project by LLC “Gas Transmission System Operator of Ukraine” that the System User is obliged to pay (in UAH);

R — sum of capacity allocated to the System User and consumed during the period from Project commissioning to the submission of termination notice by the System User;

Z — sum of capacity (contracted capacity) allocated to the System User in the binding phase of incremental capacity allocation.

- 6.15. If LLC “Gas Transmission System Operator of Ukraine” damage arising from the early termination by the System User of the transmission contract and/or the appendix setting out the capacity level and period allocated to the System User as a result of the Auction exceeds the value of the cost reimbursement due



as calculated in accordance with the provisions of clauses 6.12. and 6.14., LLC "Gas Transmission System Operator of Ukraine" shall have the right to claim compensation in excess of the value of the cost reimbursement due.

- 6.16. After the commissioning of the Project, the System User shall have the right to resell the capacity acquired in the Auction, on terms set forth in the TNC, on condition that the buyer shall accede to the System User's rights and obligations set forth in this INC GT&C.