

# Gas Sale and Purchase Agreement

This Gas Sale and Purchase Agreement (hereinafter referred to as the “**Agreement**”) is made by and between the following Parties:

## **Seller:**

Company name: [FILL IN]  
Registered Office: [FILL IN]  
Registered in: [FILL IN]  
Company ID: [FILL IN]  
VAT ID: [FILL IN]  
Banker details: [FILL IN], Bank Account No [FILL IN], SWIFT: [FILL IN], IBAN [FILL IN]

Represented by: [FILL IN]

(hereinafter the “**Seller**”)

## **Buyer:**

Company name: POZAGAS a.s.  
Registered office: Malé námestie 1, 901 01 Malacky, Slovak Republic  
Registered in: the Commercial Register, City Court Bratislava III, section Sa, file No. 1271/B  
Company ID: 31 435 688  
VAT ID: SK2020357372  
Banker details: Tatra banka, a.s., Bank Account No 262 000 3092 / 1100, SWIFT: TATR SK BX, IBAN SK1111000000002620003092  
Represented by: [FILL IN]

(hereinafter the “**Buyer**” and jointly with Seller referred to as the “**Parties**” and individually referred to as a “**Party**”)

## **Preamble**

*WHEREAS* Buyer has expressed its need to purchase Natural Gas in period between [FILL IN] and [FILL IN] through a public tender [FILL IN];

*WHEREAS* Seller has submitted to Buyer binding offer for delivery of Natural Gas (Appendix I of this Agreement);

*WHEREAS* Buyer has accepted the Seller’s binding offer for delivery of Natural Gas;

**Therefore, the Parties agree as follows:**

## **1 Definitions**

For the purpose of this Agreement, besides definitions in other stipulations of this Agreement, the following definitions shall apply:

- “**Allocated Quantity**” shall mean the quantity of Natural Gas determined by the interconnected network operator as off-taken by the Buyer during the Delivery Period at the Delivery Point.
- “**Bank Holiday**” shall mean Saturdays, Sundays, and any other calendar day on which the banks are closed for the business in Slovak Republic.

- “**Banking Day**” shall mean a calendar day which is not a Bank Holiday in Slovak Republic.
- “**Day**” shall mean the period from 06:00 a.m. CET of a calendar day until 06:00 a.m. CET of the following calendar day, and “**Daily**” shall be construed accordingly.
- “**Delivery Period**” shall mean the period as specified in Appendix I of this Agreement.
- “**Delivery Point**” shall mean the delivery point as specified in Appendix I of this Agreement.
- “**Hour**” shall mean a full time hour, and “**Hourly**” shall be construed accordingly.
- “**Natural Gas**” or “**Gas**” shall mean any hydrocarbons or a mixture of hydrocarbons and non-combustible gases consisting primarily of methane which when extracted from the subsoil of earth in its natural state, separately or together with liquid hydrocarbons, is in the gaseous state.
- “**Pricelist**” shall mean document “Pricelist for Services Provided by POZAGAS a.s. and Terms and Conditions of Prices Application” as published on [www.pozagas.sk](http://www.pozagas.sk).
- “**Reasonable and Prudent Operator**” shall mean the standard of care to be exercised by a Party performing its obligations hereunder and means the degree of diligence, prudence and foresight reasonably and ordinarily exercised by an experienced operator engaged in the same line of business under the same or similar circumstances and conditions having due consideration to the interests of the other Party.
- “**Third Party**” shall mean any person other than the Party.
- “**VAT**” shall mean value added tax.

## 2 **Object**

This Agreement sets out the terms and conditions according to which the Seller agrees during the Delivery Period to make available or cause to make available to the Buyer quantities of Natural Gas at the Delivery Point and the Buyer agrees to off-take and pay for such quantities of Natural Gas.

## 3 **Quantity**

The Seller shall deliver or cause to deliver to the Buyer during Delivery Period at the Delivery Point a quantity of Natural Gas as defined in Appendix I of this Agreement (hereinafter the “**Contractual quantity**”).

## 4 **Price**

The unit price, expressed in EUR/MWh, to be paid by the Buyer to Seller for the Allocated Quantity at the Delivery Point during the Delivery Period shall be equal to as defined in Appendix I of this Agreement (hereinafter the “**Contractual Price**”).

## 5 **Delivery procedure**

The Delivery procedure is described in Appendix I of this Agreement.

### 5.1 Under-delivery

If in respect of the Delivery Period, the Contractual Quantity exceeds the Allocated Quantity by reason of Seller’s default, the Parties shall endeavor to resolve amicably such default within 10 (ten) business days following the occurrence of the Seller’s default or within any other time period agreed between the Parties (“Time Period for Remedies”).

If the Seller does not remedy to its default within the Time Period for Remedies, then the Seller shall pay to the Buyer an amount equal to the product of (i) the default quantity and (ii) the difference, if positive, between (i) the unit price, at which the Buyer acting in a commercially reasonable manner is or would be able to purchase from a Third party (or a network operator) an equivalent quantity of Natural Gas to replace the default quantity and (ii) the Contractual Price.

Notwithstanding the preceding, the Seller shall reimburse to the Buyer the amount of any incremental transportation costs and charges and other reasonable and verifiable costs or expenses incurred by the Buyer in respect of this Seller's default.

#### 5.2 Under-acceptance

If in respect of the Delivery Period, the Contractual Quantity exceeds the Allocated Quantity by reason of Buyer's default, the Parties shall endeavor to resolve amicably such default within 10 (ten) business days following the occurrence of the Buyer's default or within any other time period agreed between the Parties (the "Time Period for Remedies").

If the Buyer does not remedy to its default within the Time Period for Remedies, then the Buyer shall pay to the Seller an amount equal to the product of (i) the default quantity and (ii) the difference, if positive, between (i) the Contractual Price and (ii) the unit price, at which the Seller acting in a commercially reasonable manner is or would be able to sell to a Third party (or a network operator) an equivalent quantity of Natural Gas to replace the default quantity.

Notwithstanding the preceding, the Buyer shall reimburse to the Seller the amount of any incremental transportation costs and charges and other reasonable and verifiable costs or expenses incurred by the Seller in respect of this Buyer's default.

#### 5.3 Over-delivery

If in respect of the Delivery Period, the Allocated Quantity exceeds the Contractual Quantity by reason of Seller's default, the Parties shall endeavor to resolve amicably such default within 10 (ten) business days following the occurrence of the Seller's default or within any other time period agreed between the Parties (the "Time Period for Remedies").

If the Seller does not remedy to its default within the Time Period for Remedies, then the Seller shall pay to the Buyer an amount equal to the product of (i) the absolute value of the excess quantity and (ii) the difference, if positive, between (i) the Contractual Price and (ii) the unit price, at which the Buyer acting in a commercially reasonable manner is or would be able to sell to a Third party (or a network operator) an equivalent quantity of Natural Gas to remove the absolute value of quantity in excess.

Notwithstanding the preceding, the Seller shall reimburse to the Buyer the amount of any incremental transportation costs and charges and other reasonable and verifiable costs or expenses incurred by the Buyer in respect of this Seller's default.

#### 5.4 Over-acceptance

If in respect of the Delivery Period, the Allocated Quantity exceeds Contractual Quantity by reason of Buyer's default, the Parties shall endeavor to resolve amicably such default within 10 (ten) business days following the occurrence of the Buyer's default or within any other time period agreed between the Parties (the "Time Period for Remedies").

If the Buyer does not remedy to its default within the Time Period for Remedies, then the Buyer shall pay to the Seller an amount equal to the product of (i) the absolute value of excess quantity and (ii) the difference, if positive, between (i) the unit price, at which the Seller acting in a commercially reasonable manner is or would be able to purchase from a Third party (or a network operator) an equivalent quantity of Natural Gas to replace the absolute value of default quantity and (ii) the Contractual Price.

Notwithstanding the preceding, the Buyer shall reimburse to the Seller the amount of any incremental transportation costs and charges and other reasonable and verifiable costs or expenses incurred by the Seller in respect of this Buyer's default.

## **6 Taxes and fees, customs status of Natural Gas**

### **6.1 Taxes and fees**

The price of Gas specified by this Agreement does not include VAT, excise duty or any other similar taxes or any other levies or fees.

The Seller shall pay all taxes and fees in accordance with the legal provisions arising by delivery of the Gas at the Delivery Point until the moment of its off-take by the Buyer and the Buyer shall pay any other taxes and fees (e.g. Natural Gas taxes, fuel Gas, etc.) related to the delivery of Natural Gas from the moment of its off-take by the Buyer at the Delivery Point.

Taxes related to earnings, profit or capital value are borne by each Party respectively.

### **6.2 Customs status of Natural Gas**

The quantities of Natural Gas delivered under this Agreement shall be custom duty cleared for European Union. The Seller shall take responsibility for and be in charge of all importation procedures and formalities related with delivery of the Gas at the Delivery Point until the moment of its off-take by the Buyer in accordance with the customs authorities.

## **7 Invoicing and payment**

7.1 On or before the 15<sup>th</sup> (fifteenth) calendar day after the Delivery Period, the Seller shall send to the Buyer an invoice indicating, inter alia:

- (i) the Contractual Price,
- (ii) the Allocated Quantity,
- (iii) the total invoiced sum resulting from multiplication of Contractual Price and Allocated Quantity,
- (iv) the VAT or any other taxes, if applicable

(hereinafter the “**Invoice**”).

7.2 Invoice shall be sent by email, and simultaneously by registered mail if possible.

The Invoice and any other invoice under this Agreement becomes due on the 20<sup>th</sup> (twentieth) calendar day from the day of receiving the invoice (hereinafter the “**Due Date**”).

If the Due Date for payment is a Bank Holiday, then the Due Date shall be the immediately following Banking Day.

Any payment under this Agreement shall be made in Euro by direct bank transfer to the Party to whom it is due by the appropriate Due Date at the bank and to the credit of the account in accordance with this Agreement. Any bank charges in connection with remittance shall be paid by the Buyer and any bank charges in connection with receiving of payment shall be paid by the Seller.

The date on which the due amount credited to the Seller’s account shall be considered as the calendar day of financial settlement.

7.3 If the Buyer fails to pay to the Seller any sum due on the Due Date, the Seller is entitled to issue an interest on that sum in amount of the arithmetic mean of the daily quotation of the one-month EURIBOR rate plus 2 (two) % per annum from the Due Date until the date when the relevant payment is made. If such interest is lower than 100 (one hundred) Euros, then a 100 (one hundred) Euros lump sum shall be paid by the Buyer to the Seller. The Interests Invoice becomes due 10 (ten) Banking Days after receipt by the Buyer.

7.4 Where any part of a sum on any invoice is in dispute (hereinafter the “**Payment Dispute**”), the Party owing the sum shall send to the other Party written notice hereof by registered mail within 6 (six) calendar months after receipt of such an invoice, and pay to the other Party the whole amount, except in case of fraud or manifest error. In such case the Party owing the sum shall pay the correct amount after subtracting or adding the amount that is subject of such manifest error or fraud.

If, upon resolution of said invoice query, it is determined that any amount paid should not have been paid, the non-contesting Party shall send to the contesting Party an adjusted invoice and such overpaid amount shall be repaid to the contesting Party. The Parties shall seek to settle the disputed amount as soon as possible in an amicable way. Unless otherwise agreed by the Parties, any sum agreed to be reimbursed shall be paid by the 10<sup>th</sup> (tenth) calendar day following such agreement, or the immediately following Day if such Day is a Bank Holiday.

## **8 Title and risk**

Title to and risk for and any liabilities resulting from the Natural Gas made available by Seller and off-taken by Buyer during the Delivery Period shall pass from Seller to Buyer at the Delivery Point.

## **9 Quality of the Natural Gas**

9.1 The quality of Natural Gas to be delivered under this Agreement, including the gross calorific value and pressure, shall be in accordance with the specifications described in [Technical Terms and Conditions](#) of the Buyer as published on [www.pozagas.sk](http://www.pozagas.sk) (hereinafter the “**Specifications**”).

9.2 In case the quality of Natural Gas made available at the Delivery Point deviates from the Specifications, each Party, as soon as it has gained knowledge thereof, undertakes to inform the respective other Party without delay of such deviation and the expected duration thereof.

9.3 If at any time, the Natural Gas made available at the Delivery Point does not conform to the Specifications (hereinafter the “**Off-Spec Gas**”), the Buyer is entitled to refuse the off-take of such Off-Spec Gas in accordance with the provisions of the Buyer only provided that the Buyer does not accept such Off-Spec Gas without any fees, charges or costs being due in respect of such Off-Spec Gas.

If any quantities of Off-Spec Gas (i) are delivered prior to the Buyer having knowledge of such Off-Spec Gas, and/or (ii) are delivered to the Buyer after the Buyer serves a notice of refusal to the Seller as per this Section, then the Seller shall pay to the Buyer all reasonably documented direct costs, damages and losses actually incurred by the Buyer as a result of the delivery of such quantities of Off-Spec Gas, provided that the Buyer shall take all reasonable measures to mitigate its costs.

9.4 In case the Buyer rejects the Natural Gas on grounds of Article 9, the Off-Spec Gas is considered as not delivered and the provisions of Section 5.1 shall apply.

## **10 Representation and warranties**

10.1 For deliveries of Natural Gas at the Delivery Point, the Seller warrants to the Buyer that he has the right to pass to the Buyer title of such Natural Gas and that such Natural Gas is free of liens, charges, encumbrances and adverse interests of any kind.

10.2 Each Party hereby represents and warrants to the other Party that:

- (i) it is a company duly incorporated and validly existing in all respects under the laws of the jurisdiction of its incorporation,
- (ii) there are no Third Party restrictions on such Party entering into and performing this Agreement both as Seller and Buyer at the Delivery Point,
- (iii) as Seller it has all the authorizations, licenses and permits necessary for the delivery and sale of Natural Gas pursuant to this Agreement,

- (iv) as Buyer it has all the authorizations, licenses and permits necessary for the off-take and purchase of Natural Gas pursuant to this Agreement, and
- (v) it is not relying upon any representation or warranties other than those set forth in this Agreement.

## **11 Liability**

### **11.1 Limitation of liability**

Without prejudice to Section 5.1, 5.2, 5.3 and 5.4, and subject to Section 11.2 and unless agreed otherwise in this Agreement, neither Party shall be liable to the other Party for any consequential or indirect losses, costs, expenses or damages sustained by such other Party as a result of any act or omission of either Party or of the persons used by such Party in performing its obligations under the Agreement (vicarious agent) or of the Party's legal representatives in respect of any matter arising out of, or incidental to or in any way connected with, this Agreement.

### **11.2 Intentional default and other mandatory rules**

Nothing in this Agreement, however, operates to exclude or limit a Party's liability for:

- (i) personal injury or death resulting from wilful misconduct or negligence of such Party or of any of the persons employed by such Party or the Party's vicarious agent in performing its obligations under this Agreement or of the Party's legal representatives, or
- (ii) any other damage due to wilful misconduct, fraud or gross negligence of a Party or of the persons employed by such Party or the Party's vicarious agent in performing its obligations under this Agreement or of the Party's legal representatives.

## **12 Force Majeure**

The expression "**Force Majeure**" shall mean any event or circumstance which (i) is beyond the reasonable control of the affected Party, and (ii) could not have been foreseen, prevented or overcome by the exercise of the standard of a Reasonable and Prudent Operator by the affected Party, and (iii) causes or results in a failure, or delay, by the affected Party to perform any of its obligations hereunder other than any payment obligation under this Agreement.

Without limitation to the generality of the above, the following events or circumstances shall be qualified as Force Majeure:

- (i) shortfall, suspension or any reduction of service or any other similar event affecting the Buyer and/or any other direct upstream and downstream system, which is preventing a Party from fulfilling its obligations under this Agreement,
- (ii) unexpected maintenance on the network operated by the Buyer and/or any other direct immediately relevant upstream and downstream system,
- (iii) any action or omission of the Buyer and/or any other direct upstream and downstream system and/or any action or omission of national authorities, preventing a Party from fulfilling its obligation to deliver Contractual Quantity properly nominated in accordance with this Agreement.

The affected Party shall be relieved from its obligations under this Agreement to the extent that owing to Force Majeure it is not able to perform such obligations under the Agreement.

The affected Party claiming relief due to Force Majeure shall:

- (i) forthwith notify the other Party of the event or circumstances of Force Majeure and shall use all reasonable efforts to furnish all available information on the cause of the event and estimate the time required to remedy the Force Majeure situation, and
- (ii) forthwith exercise its reasonable efforts to limit the negative effects and to restore promptly the conditions for the achievement of its obligations under this Agreement.

### **13 Assignment**

Neither Party may assign, charge, pledge, encumber or otherwise dispose of this Agreement or any of its respective rights and obligations hereunder or thereunder without the express prior written consent of the other Party.

### **14 Termination of the Agreement**

Each Party has the right to early terminate this Agreement in the following cases:

- (i) if the other Party commits a material breach of its obligations under this Agreement, in particular fails to make timely payments, provided that the Party in breach has failed to remedy the breach before expiration of a 5 (five) calendar days' notice period,
- (ii) to the extent permitted by law, in case of bankruptcy, insolvency, effective dissolution, winding-up or liquidation of the other Party or when such Party takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence of any of the aforementioned acts.

### **15 Confidentiality**

The terms and conditions of this Agreement and any confidential or proprietary information in written, oral or electronic form which a Party obtains from the other Party pursuant to or in relation with this Agreement shall be treated as confidential until 2 (two) years after this Agreement has expired or has been terminated.

The confidentiality obligations shall not apply for the following:

- (i) to disclosure of information to any transmission system operator (TSO) and/or trading point operator (Hub Operator) and/or other interconnected network operator to the extent such disclosure is required for the performance of Natural Gas transmission including but not limited to allocation provided by any TSO and/or Hub Operator and/or other interconnected network operator,
- (ii) to the extent such disclosure of information is required by applicable law, order, or regulation or in connection with any judicial, arbitral or administrative proceeding,
- (iii) to disclosures of information made to employees, affiliates, agents, contractors or advisers of a Party who have undertaken to keep such terms and/or information confidential,
- (iv) to the extent such information is already in the public domain (or otherwise already known to the Party receiving such information), otherwise than through a breach of this Agreement,
- (v) to disclosure of information to any governmental agency, or regulatory, or administrative agency having jurisdiction over the disclosing Party,
- (vi) to disclosure of information to a bona fide intended assignee of a Party's rights and obligations hereunder, provided that such Party shall enter into a confidentiality undertaking in favour of the other Party on the same terms as those contained in this clause.

### **16 Applicable law and dispute**

16.1 This Agreement shall be construed and governed by Slovak Law (excluding rules and regulations governing conflict of laws as well as the UN Sales Law Convention). Regarding the matters not specified by herein Agreement, the contractual relationship set out by herein Agreement shall be governed by stipulations of the Act No. 513/1991 Coll., Commercial Code, as amended and relevant legal regulations.

16.2 If any claim, controversy or dispute arises out of or in connection with the Agreement, the Parties will attempt to settle it in good faith by negotiation between them. If such claim, controversy or dispute cannot be settled by negotiation within 30 (thirty) Days following the day the negotiation was initiated, such claim, controversy or dispute shall be referred to and finally settled by arbitration in Vienna in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce of Paris (ICC). Three arbitrators are to be appointed in accordance with the said Rules. Arbitration proceeding shall be held in the English language.

## **17 General provisions**

17.1 This Agreement shall become valid and effective on the day it is signed by the authorized representatives of both Parties.

17.2 Buyer declares that this Agreement is a transaction to be reported in accordance with Art. 3 of the Commission Implementing Regulation (EU) No. 1348/2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (hereinafter the “Implementing Acts”). Buyer and Seller agree that the Seller in addition to meeting their own reporting obligation according to the Implementing Acts in relation to this Agreement will meet on behalf of the Buyer properly and in time the reporting obligation of the Buyer, for what the Buyer empowers the Seller by signing of this Agreement. The Buyer is obliged to provide the Seller with all necessary information and cooperation. The Seller shall notify to the Buyer its fulfilment of the Buyer’s reporting obligation without unnecessary delay by submitting an automated message from its internal system detailing the trade terms and demonstrating that it had been reported within the REMIT timescales. The Seller shall not be liable to the Buyer for potential damages in connection with failure to comply or defective fulfilment of the Buyer's reporting obligation.

17.3 Any Party, if asked by the other Party, undertakes to sign, confirm or deliver and submit to the latter free of charge any other documents, and to take any such additional actions as might be reasonably required for the implementation of transactions and operations intended in this Agreement.

17.4 This Agreement represents the full and complete agreement of both Parties and supersedes and cancels all prior communications, understandings and agreements between the Parties in relation to this Agreement, whether written or oral, expressed or implied.

17.5 Any and all modifications and supplements to this Agreement shall not be valid unless drawn up in writing and signed by both Parties or their permitted successors or assignees.

17.6 All written communication with regard to this Agreement shall be in English.

17.7 If any of the provisions of the Agreement is or becomes ineffective, inoperative or void, the effectiveness of the other provisions shall not be affected. The Parties undertake to replace the ineffective, inoperative or void provision by a new and effective operable provision which achieves an economic, technical and/or legal result as similar as possible to that of the ineffective, inoperative or void provision.

17.8 The Parties agree that manuscript signature and advanced electronic signature, as defined in Article 3(11) of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, applied by authorized persons to be sufficient and binding for entering into this Agreement and any documents related to the Agreement for which the Agreement requires written form, or which require to be signed by the Parties.

17.9 This Agreement shall be concluded in English language. If this Agreement is entered into in paper form signed by manuscript signature, it shall be executed in two (2) originals with the Parties receiving one (1) original each.

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IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their respective duly authorised representatives.

In [FILL IN], on [FILL IN]

In [FILL IN], on [FILL IN]

For and on behalf of

For and on behalf of

**[FILL IN]**

**POZAGAS a.s.**

Name : [FILL IN]

Name : [FILL IN]

Title : [FILL IN]

Title : [FILL IN]

Name : [FILL IN]

Name : [FILL IN]

Title : [FILL IN]

Title : [FILL IN]

**APPENDIX I: Binding Price Offer Form**

**APPENDIX II: Authorized representatives**

**Seller's authorized representatives:****Contractual matters:**

Name: [FILL IN]  
Address: [FILL IN]  
Telephone: [FILL IN]  
E-mail: [FILL IN]

**Logistics/Dispatching:**

Name: [FILL IN]  
Telephone: [FILL IN]  
E-mail: [FILL IN]

**Invoicing:**

Name: [FILL IN]  
Telephone: [FILL IN]  
E-mail: [FILL IN]

*Any modification of this data shall be notified in writing!*

**POZAGAS a.s. authorised representatives:****Contractual matters:**

Name: [FILL IN]  
Address: Malé námestie 1, Malacky, 901 01, Slovenská republika  
Telephone: [FILL IN]  
E-mail: [FILL IN]

**Logistics/Dispatching:**

Name: [FILL IN]  
Telephone: [FILL IN]  
E-mail: [FILL IN]

**Invoicing:**

Name: [FILL IN]  
Telephone: [FILL IN]  
E-mail: [invoice@pozagas.sk](mailto:invoice@pozagas.sk)

*Any modification of this data shall be notified in writing!*