



VIA E-MAIL

June 10, 1997

Gas Industry Standards Board  
1100 Louisiana, Suite 4925  
Houston, Texas 77002

Attention: Rae McQuade

RE: **R97096 Standard Purchase and Sales Contract**  
**"Day Trading"**

Per your request, attached please find the proposed "General Terms & Conditions" relating to the formation of a "Day Trading" contract. As previously discussed, when these GT&C's are invoked and agreed upon during the course of a successful oral transaction, they form the basis of a complete Contract between the parties. This procedure would completely eliminate the need for execution of a separate "Base" contract between the parties. It should be noted that the attached applies only to fully-interruptible (sometimes referred to as "Swing") transaction obligations.

I appreciate GISB's consideration of the attached and look forward to putting "GISB DAY" into place.

Very truly yours,

Bill Hebenstreit  
Manager, Contract Services

Attachment

**GENERAL TERMS & CONDITIONS  
FOR FULLY-INTERRUPTIBLE SHORT-TERM  
SALE AND PURCHASE OF NATURAL GAS  
("GISB DAY")**

When invoked orally and agreed upon during the course of an oral transaction agreement between two parties with the words "GISB DAY", the following General Terms and Conditions for Fully-Interruptible Short-Term Sale and Purchase of Natural Gas published by the Gas Industry Standards Board shall be incorporated by reference into such oral transaction agreement to form the basis for a complete understanding ("Contract") between the parties.

**DISCLAIMER:** The purpose of the Contract formed by the above procedure is to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. **Such a Contract is intended for Interruptible transactions of one month or less and is not suitable for Firm transactions.** Further, GISB does not mandate the use of such a Contract by any party. **GISB DISCLAIMS AND EXCLUDES, AND ANY USER OF THE CONTRACT ACKNOWLEDGES AND AGREES TO GISB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT GISB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THE CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL GISB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THE CONTRACT.**



**GENERAL TERMS AND CONDITIONS  
FOR FULLY-INTERRUPTIBLE SHORT-TERM  
SALE AND PURCHASE OF NATURAL GAS  
("GISB DAY")**

**SECTION 1. PURPOSE AND PROCEDURES**

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Fully-Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas.

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". The Contract is formed when, during an oral transaction conversation, the term "GISB DAY" is invoked and agreed upon between the parties. Notwithstanding the foregoing sentences, the parties agree that either party ("Confirming Party") may confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2., such receiving party shall notify the sending party via facsimile by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. The entire agreement ("Contract") between the parties shall be those provisions contained in both these General Terms & Conditions and the respective Transaction Confirmation. In the event of a conflict between the terms of (i) a Transaction Confirmation, and (ii) these General Terms and Conditions, the terms of the former shall govern.

**SECTION 2. DEFINITIONS**

2.1. "British thermal unit" or "Btu" shall have the meaning ascribed to it by the Receiving Transporter.

2.2. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.

2.3. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received, or if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.

2.4. "Contract" shall mean the legally-binding relationship established by orally invoking and agreeing to the term "GISB DAY" during an oral transaction involving the sale and purchase of natural gas. The Contract is composed of (i) the General Terms and Conditions enumerated herein and (ii) the provisions specified in the oral transaction.

2.5. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu, as evidenced by the Contract Price on the Transaction Confirmation.

2.6. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as set forth in the Transaction Confirmation.

2.7. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.

2.8. "Delivery Period" shall be the period during which deliveries are to be made as set forth in the Transaction Confirmation.

2.9. "Delivery Point(s)" shall mean such point(s) as are mutually agreed upon between Seller and Buyer as set forth in the Transaction Confirmation.

2.10. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under these General Terms and Conditions.

2.11. "Gas" shall mean any mixture of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.

2.12. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

2.13. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3. related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

2.14. "MMBtu" shall mean one million British thermal units which is equivalent to one dekatherm.

2.15. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

2.16. "Payment Date" shall mean the date or before which payment is due Seller for Gas received by Buyer in the previous Month which shall be the twenty-fifth (25<sup>th</sup>) calendar day of the Month.

2.17. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

2.18. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

2.19. "Transaction Confirmation" shall mean the document, substantially in the form of Exhibit A, setting forth the terms of a purchase and sale transaction formed pursuant to Section 1. for a particular Delivery Period. In absence of a written document, "Transaction Confirmation" shall mean a telephonic recording of transaction particulars orally agreed to between the parties.

2.20. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular Transaction Confirmation.

### **SECTION 3. PERFORMANCE OBLIGATION**

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms herein. Sales and purchases will be on a Fully-Interruptible basis only.

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THE CONTRACT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

### **SECTION 4. TRANSPORTATION, NOMINATIONS AND IMBALANCES**

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s) and for delivering such Gas at a pressure sufficient to effect such delivery but not to exceed the maximum operating pressure of the Receiving Transporter. Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's actions or inactions (which shall include, but shall not be limited to, Buyer's failure to accept quantities of Gas equal to the Scheduled Gas), then Buyer shall pay for such Imbalance Charges, or reimburse Seller for such Imbalance Charges paid by Seller to the Transporter. If the Imbalance Charges were incurred as a result of Seller's actions or inactions (which shall include, but shall not be limited to, Seller's failure to deliver quantities of Gas equal to the Scheduled Gas), then Seller shall pay for such Imbalance Charges, or reimburse Buyer for such Imbalance Charges paid by Buyer to the Transporter.

### **SECTION 5. QUALITY AND MEASUREMENT**

All Gas delivered by Seller shall meet the quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes herein shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

### **SECTION 6. TAXES**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

## **SECTION 7. BILLING, PAYMENT AND AUDIT**

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due in the manner specified herein, in immediately available funds, on or before the later of the Payment Date or 10 days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. If Buyer fails to remit the full amount payable by it when due, interest on the unpaid portion shall accrue at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum from the date due until the date of payment; or (ii) the maximum applicable lawful interest rate. If Buyer, in good faith, disputes the amount of any such statement or any part thereof, Buyer will pay to Seller such amount as it concedes to be correct; provided, however, if Buyer disputes the amount due, Buyer must provide supporting documentation acceptable in industry practice to support the amount paid or disputed.

7.3. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with Section 7.2. above.

7.4. A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made herein. This examination right shall not be available with respect to proprietary information not directly relevant to transactions under the Contract. All invoices and billings shall be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7. shall be paid in full by the party owing payment within 30 days of notice and substantiation of such inaccuracy.

## **SECTION 8. TITLE, WARRANTY AND INDEMNITY**

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. Notwithstanding the other provisions of this Section 8., as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

## **SECTION 9. NOTICES**

9.1. All Transaction Confirmations, invoices, payments and other communications ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission, if the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered two Business Days after mailing.

## **SECTION 10. FINANCIAL RESPONSIBILITY**

10.1. When reasonable grounds for insecurity of payment or title to the Gas arise, either party may demand adequate assurance of performance. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the party demanding assurance, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to the demanding party or a performance bond or guarantee by a creditworthy entity. In the event either party shall (i) make an assignment or any

general arrangement for the benefit of creditors; (ii) default in the payment obligation to the other party; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); or (v) be unable to pay its debts as they fall due; then the other party shall have the right to either withhold and/or suspend deliveries or payment, or terminate the Contract without prior notice, in addition to any and all other remedies available hereunder. Seller may immediately suspend deliveries to Buyer hereunder in the event Buyer has not paid any amount due Seller hereunder on or before the second day following the date such payment is due.

10.2. Each party reserves to itself all rights, set-offs, counterclaims, and other defenses which it is or may be entitled to arising from the terms herein.

## **SECTION 11. FORCE MAJEURE**

11.1. Except with regard to a party's obligation to make payment for Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include but not be limited to the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption of transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the party experiencing such disturbance.

11.4. The party whose performance is prevented by Force Majeure must provide notice to the other party. Initial notice may be given orally; however, written notification with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notification of Force Majeure to the other party, the affected party will be relieved of its obligation to make or accept delivery of Gas as applicable to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

## **SECTION 12. TERM**

These General Terms & Conditions shall remain in effect during the Delivery Period of the respective Transaction Confirmation(s). The rights of either party pursuant to Section 7.4., the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Contract.

## **SECTION 13. MISCELLANEOUS**

13.1. If any provision herein is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant provided herein.

13.2. No waiver of any breach herein shall be held to be a waiver of any other or subsequent breach.

13.3. These General Terms & Conditions and the respective Transaction Confirmation(s) set forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by the Contract.

13.4. The interpretation and performance of the Contract shall be governed by the laws of the state specified solely by Seller, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

13.5. The Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any Federal, State, or local governmental authority having jurisdiction over the parties, their facilities, or Gas supply, the Contract or Transaction Confirmation or any provisions thereof.

13.6. There is no third party beneficiary herein.

13.7. Each party to the Contract represents and warrants that it has full and complete authority to enter into and perform the Contract. Each person who orally executes the Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

**“GISB DAY” TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY**

EXHIBIT A

Letterhead/Logo

Date: \_\_\_\_\_, 199\_\_  
Transaction Confirmation #: \_\_\_\_\_

This Transaction Confirmation is subject to the General Terms & Conditions for Fully-Interruptible Short-Term Sale and Purchase of Natural Gas (“GISB DAY”). The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt.

<p><b>SELLER:</b></p> <p>_____</p> <p>_____</p> <p>Attn: _____</p> <p>Phone: _____</p> <p>Fax: _____</p> <p>Transaction Reference No. _____</p> <p>Transporter: _____</p> <p>Transporter Contract Number: _____</p>	<p><b>BUYER:</b></p> <p>_____</p> <p>_____</p> <p>Attn: _____</p> <p>Phone: _____</p> <p>Fax: _____</p> <p>Transaction Reference No. _____</p> <p>Transporter: _____</p> <p>Transporter Contract Number: _____</p>
<p><b>Contract Price:</b> \$ _____/MMBtu or _____</p>	
<p><b>Delivery Period:</b> Begin: _____, 199__ End: _____, 199__</p>	
<p><b>Delivery Point(s):</b> _____</p> <p>(If a pooling point is used, list a specific geographic and pipeline location):</p>	
<p><b>Special Conditions:</b></p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>Seller: _____</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>Buyer: _____</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>