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18.1 NON-FULFILMENT OF CONTRACTUAL OBLIGATIONS

18.1.1 Transmission System Operator's non-fulfilment

18.1.1.1 Pressure specifications

Should the Gas supplied by the Transmission System Operator to the Shipper at any Redelivery Point be not compliant with the pressure specifications laid out in the Network Code, the Shipper - in the absence of timely notification by the Transmission System Operator - shall promptly notify the Transmission System Operator and, without prejudice to the obligation to pay the transmission fee (except in the cases covered by Paragraph 18.1.1.3), after submitting the relevant adequate documentation, is entitled to a refund for all damages incurred as a consequence of non-compliance with pressure requirements, to the extent of the provisions of Paragraph 18.2.

For the purposes of this Sub-paragraph, the Transmission System Operator shall not be deemed as defaulting should quantities of Gas be taken off from one or several Redelivery Points that are greater than the maximum flow rate allocated to the Shipper by the Transmission System Operator for the aforementioned Redelivery Points.

18.1.1.2 Quality Requirements

If the Gas delivered to the Shipper by the Transmission System Operator at any Redelivery Point does not comply with the Quality Requirements set out in the Network Code, the Shipper, in the absence of a timely notification by the Transmission System Operator, shall promptly notify the Transmission System Operator and shall be entitled to reject the off-take of such Gas. In addition, without prejudice to the obligation to pay the transmission fee (except in the cases covered by Paragraph 18.1.1.3), the Shipper has the right -upon submitting the relevant suitable documentation - to a refund of all the damages incurred as a consequence of non-compliance with Quality Requirements, subject to the provisions of paragraph 18.2 – without prejudice the Transmission System Operator's right to obtain redress from the Shipper that delivered (or arranged the delivery of) the non-compliant Gas that caused the aforementioned costs and expenses.

18.1.1.3 Service non-performance

With the exception of the cases of *Force Majeure*, should the Transmission System Operator fail to carry out the gas transmission service under the Transmission Contract and, as a consequence of this behaviour, should the Shipper not be able to take off Gas, the Shipper, for the period of the interruption, shall be exempted from any obligations with respect to capacity charge fees and shall be entitled to receive from the Transmission System Operator, upon submitting the appropriate documentation, a refund for all damages arising from non-performance, within the limits stated in Paragraph 18.2 below.

18.1.2 Shipper's non-fulfilment

18.1.2.1 Pressure requirements

If the gas delivered by the Shipper (or by a Third Party on behalf of the Shipper) to the Transmission System Operator at an Entry Point does not comply, for any reason, with minimum pressure contractual requirements set out in the Network Code, the Transmission System Operator, in the absence of timely notification by the Shipper, shall promptly notify the Shipper and, in addition to being released from the obligation to transport the Shipper's programmed gas quantities at the Entry Point for the period in question to the extent that this transmission is not allowed by the actual delivery pressure - has the right to reduce Gas input until the values that comply with this Document's pressure requirements are restored. Any costs and charges, appropriately documented, incurred by the Transmission System Operator as a result of the Shipper's non-compliance with pressure requirements, shall be recharged to the Shipper, notwithstanding the latter's obligation to pay transmission fees.

18.1.2.2 Quality Requirements

If the Gas delivered by the Shipper (or by a Third Party on behalf of the Shipper) to The Transmission System Operator at any Delivery Point does not comply, for any reason, with Network Code's Quality Requirements , the Transmission System Operator, in the absence of a timely notification by the Shipper, shall promptly notify the Shipper, the Upstream Operator responsible for the input of non-compliant Natural Gas and the Authority, and it shall be entitled to reject the input of such Gas into the Network.

The Transmission System Operator may carry on accepting the input at Entry Points of Natural Gas whose Quality parameters have been found to vary from

the Quality Requirements and, where possible, absorb such variation (for instance, by conveniently modifying Transmission Network configuration whilst waiting for non-compliant Gas to be fully used up).

The Transmission System Operator intercepts non-compliant Gas in line with current legislation and only after performing a suitable analysis of such non-compliant Gas as soon as technically possible and once all flexibility tools that can be deployed to ensure the quantitative and qualitative balancing of the Transmission Network have been exhausted

It is also understood that any costs and charges, appropriately documented, incurred by the Transmission System Operator as a result of non-compliance with Quality Requirements shall be recharged to the Shipper, notwithstanding its obligation to pay transmission fees.

18.1.3 Compliance of Gas with Quality and Pressure requirements

The Transmission System Operator shall be responsible for the accuracy of the data based on which compliance checks against

- a) Quality and Pressure requirements are performed for the Gas as per the Network Code, if it owns the facility where data capture takes place..
- b) If the Transmission System Operator does not own the facility, the aforementioned data shall be notified or arranged to be notified to the Operator by the Shipper, who shall be responsible both for timeliness of notification and data accuracy.

18.1.4 Management and maintenance of measurement stations

The Transmission System Operator assumes no responsibility for the correct and regular management and maintenance of measurement stations when it does not own them.

By signing the Transmission Contract, the Shipper guarantees access at all times to the Transmission System Operator and to Third P delegated by the latter, to measurement station's equipment to collect data – should such equipment not belong by the Operator- as well as perform suitable checks of the systems used to carry out measurement operations.

The Transmission System Operator shall accept no responsibility for any use by the Shipper or Third Parties of measurement data obtained by the Shipper at the facility for internal End Customer invoicing purposes and/or to meet its own tax obligations.

18.2 LIMITATION OF LIABILITY

18.2.1 Wilful misconduct/gross negligence

The responsibility of each Party towards the other for any damages arising from or in any way related to the execution or the failed, partial or late fulfilment of its obligations under the Transmission Contract, including Gas losses, is expressly limited to the cases of wilful misconduct and/or gross negligence.

18.3 EARLY TERMINATION OF THE CONTRACT AND WITHDRAWAL FROM THE CONTRACT

18.3.1 Causes of early termination and withdrawal on the part of the Transmission System Operator

- a) Other than for the reasons provided for by the Law, the Transmission Contract may also be terminated early by the Transmission System Operator by sending relevant written notification to the Shipper pursuant to Article 1456 of the Italian Civil Code, copying in the Authority for information, under the following circumstances:
 - i. Shipper's non-fulfilment of its payment obligations towards the Transmission System Operator in connection with the performance of the Transmission Contract for period of at least 3 months shall entitle the Transmission System Operator to early termination of the aforementioned Transmission Contract, without prejudice to any other remedy provided by the Law, the Network Code and the Transmission Contract;
 - ii. the prolonged improper use of the information system by the Shipper, resulting in major negative impacts on correct system operation, constitutes grounds for early termination of the Transmission Contract and

entails an obligation to refund all damages caused to the Transmission System Operator and other Shippers

- b) It is expressly agreed that the Transmission System Operator is entitled to terminate the Contract, without refunding any fees, under the following circumstances:
- i. the Shipper's being subjected to any legal proceedings (judicial, administrative or voluntary) shall entitle the Transmission System Operator to early termination of the Contract, except where such Contract is taken over by the bankruptcy administrator.
 - ii. termination of the Shipper's actual activity.
 - iii. If the Shipper ceases to comply, for any reason, with one or more of the system's access requirements, as specified in the Chapter on "Transmission Capacity Booking Procedure", and is not able to reverse the situation within thirty days, the Party shall lose its status as Shipper and with it the ability to access the transmission service along the Gas pipeline network managed by the Transmission System Operator.

18.3.2 Payments due

In all cases of contractual termination/withdrawal described at Paragraphs a), b), c) above, the Shipper concerned must in any case pay the Transmission System Operator, in addition to the amounts actually due, for whatever reason and relating to the period up to the Transmission Contract's termination date, an amount equivalent to the discounted value - due at the termination date and at a discount rate equal to the annual average rate of return of 10-Year Treasury Bonds for the last available year, plus 0.75% - of the estimated payments due in respect of the capacity fees owed by the Shipper for the period from the date of the early termination to the original end date of the Transmission Contract. The amount of capacity fees covered by any financial guarantee is excluded from the above calculation, as provided by the access requirements set out in the "Transmission Capacity Booking Procedure" Chapter.

18.3.3 Causes of early termination and withdrawal on the part of the Shipper

Where events prevent the Shipper from inputting or taking off Gas from the Gas pipeline network managed by the Transmission System Operator for a continuous period of over 6 months starting from the date of the first occurrence of said

event, by submitting a notification providing objective proof of this event, the Shipper shall be entitled to request the early termination of the Transmission Contract due to the impossibility of service provision caused by the event in question, notwithstanding the provisions of Sub-paragraph 18.3.2 above. If the capacity under the terminated Contract is allocated in full or in part by the Transmission System Operator to another Shipper, the monetary amount pertaining to the allocated capacity shall be credited to the Shipper affected by the termination.

Pursuant to Article 10.2 of Resolution No. 168/06, the Shipper is also entitled to early termination of the Transmission Contract, in the event of delay by the Transmission System Operator in the provision of transmission capacity at the RN Entry Point interconnected with the Exempted Terminal, with respect to the final date of provision of the transmission capacity defined in the Transmission Contract and pursuant to the procedures defined by the Leading Company's Network Code.

Pursuant to Article 10.1 of Resolution No. 168/06, the Shipper is entitled to withdraw from the Transmission Contract, should the period between the Transmission Contract's signature and the date of transmission capacity's provision stated in the Contract at the time of signature exceed two years, pursuant to conditions and procedures provided by the Leading Company's Network Code.

18.3.4 Service interruption

In any case of early termination of the Transmission Contract, the Transmission System Operator shall initiate a relevant service interruption procedure.

18.4 FORCE MAJEURE

18.4.1 Definition

The term "*Force Majeure*" means any event, act, fact or circumstance not caused by the invoking Party ("Concerned Party"), outside the Parties' control and unforeseeable or unavoidable by the constant diligence of a Reasonable and Prudent Operator and at a reasonable cost, which makes it totally or partially impossible for the Concerned Party to meet its obligations, but only when the

event or circumstance affects the Gas pipeline managed by the Transmission System Operator (hereafter "*Force Majeure*" or "*Force Majeure* event").

18.4.2 Causes

Below, by way of example, is a non-exhaustive list of causes of *Force Majeure* that meet the aforementioned requirements:

- war, terrorist action, sabotage, acts of vandalism, revolution;
- adverse natural phenomena such as lightning, earthquakes, landslides, fires and floods;
- explosions, radiation and chemical contamination;
- strikes, lockouts and other forms of industrial unrest, excluding company conflicts declared on different occasions by collective bargaining and do not directly concerning the Transmission System Operator and the Shipper;
- Transmission System Operator's delay or inability to obtain the necessary licenses and/or concessions from the competent authorities with respect to pipeline laying and operation of transmission facilities, as well as urgent compulsory purchase measures and restrictive easement requests to the competent authorities and revocation of such licenses and/or concessions, where this has not been determined by fraudulent, negligent or omissive behaviour on the part of the Transmission System Operator;
- acts, refusals or lack of response not implying the consent of the competent authorities that are not, in turn, the result of fraudulent, negligent or omissive behaviour of the relevant Concerned Party;
- fault, failure or breakdown of Gas transmission plants/pipelines, equipment or installations along the Gas pipeline network managed by the Transmission System Operator that such Operator could not have prevented by using an adequate level of care.

The Parties expressly agree that *Force Majeure* cannot be caused by any event that occurs outside the Gas pipeline Network managed by the Transmission System Operator.

18.4.3 Effects

The Concerned Party shall be relieved from any liability for the non-fulfilment of the obligations under the Transmission Contract, as well as for any damage or

loss borne by the other Party to the extent and for the duration that both Parties are affected by *Force Majeure*.

Whenever a *Force Majeure event* occurs, the Concerned Party must take steps, where possible, to limit the negative effects of such event in order to allow normal operations to be restored in the shortest possible time, thereby allowing its contractual obligations to be fulfilled.

The inability of a Party to comply with its payment obligations is not considered as a *Force Majeure* event.

18.4.4 Notification

The Concerned Party must notify the other Party, in a timely manner, with the following:

- i. occurrence of the event that prevents the total or partial fulfilment of its obligations under the Contract, by giving a clear indication of the nature of the event and also identifying - where a reasonable assessment is possible - the likely time required for its resolution;
- ii. progress report of the event, providing a regular update on the estimated duration;
- iii. time when the *Force Majeure* event ceases to exist.

18.4.5 Impact on transmission fees

In the case of a *Force Majeure* event and for the period of time such event continues to exist the Shipper's capacity charges shall be waived:

- *pro rata temporis*, in the event of total interruption of the transmission service;
- in proportion to the actual reduction of the Gas quantities redelivered by the Shipper at the Redelivery Points, in the event of partial reduction of transmission performance.

18.5 ABSENCE OF GAS PROPERTY TRANSFER

Gas delivery at the Entry Point by or on behalf of the Shipper shall not imply the transfer of property rights for such Gas to the Transmission System Operator, who shall take over the Gas only for service provision purposes. Property rights for the thus delivered Gas shall, be retained at any time by the Shipper or relevant entitled Third Parties.

18.6 DISPUTE RESOLUTION

18.6.1 Jurisdiction of the Authority

Pursuant to Article 18 of Resolution No.137/02, in the event of disputes concerning the interpretation and the application of the Transmission Contract and until the implementation of the provisions of Article 2.24 (b) of Law No. 481 of 14 November 1995, the Parties resort to the Authority to settle an Arbitration procedure, in line with the procedures defined by the Authority's regulations.

18.6.2 Temporary provisions

Until the Authority publishes the regulation for the definition of Arbitration activation procedures, any disputes shall be treated as follows.

18.6.2.1 Preventive investigation

Possible disputes arising between the Transmission System Operator and the Shipper with respect to the interpretation and application of the Transmission Contract - except in cases where one of the Parties deems it necessary to take urgent precautionary measures -, shall be submitted, at the instigation of either Party and subject to formal notice sent to the other Party, to a preventive joint investigation by subjects appointed starting from a group of first line managers by the aforesaid Parties, in the attempt of reaching a mutually acceptable resolution.

18.6.2.2 Arbitration procedure or judicial resolution

Where the attempt to find an agreement does not satisfactorily conclude within sixty days from the date of notification specified at Paragraph 18.5.2.1 above - and notwithstanding the dispute resolution competencies allocated to the Electricity and Gas Authority by the Law and pursuant to Article 18 of Authority Resolution No.137/02 - each party shall have the right of resorting to the Judicial Authority for the resolution of the dispute.

In such a case, the parties shall confer exclusive jurisdiction to the Court of Milan.

18.6.2.3 Application

The current provision also applies to all Shipper relationships that are in place at the date of the Network's Code entry into force and derive from Transmission Contracts underwritten with the Transmission System Operator even before such date.

18.6.2.4 Technical arbitration

Where a dispute is of technical nature and cannot be resolved via an agreement between the Parties within 15 (fifteen) working days from notification by one Party to the other, it shall will be definitively resolved, in compliance with the National Arbitration Rules of the Milan Chamber of Arbitration, by a sole arbitrator who shall be appointed to start the procedure and resolve the dispute pursuant to the aforementioned regulation. The Arbitrator shall have suitable technical expertise in the Gas sector and, more specifically, with respect to gas transmission, delivery, regassification, storage and trade. The arbitration language is Italian; The arbitration shall take place in Milan. The arbitrator's shall decide in an informal and legally binding way. The arbitrator shall provide its decision by written notice, stating the relevant grounds, within 60 (sixty) working days from acceptance of the appointment. The arbitrator's decision shall be final and binding for the Parties. The Parties waive the right to any form of recourse, except in cases of conflict of interest, wilful misconduct and/or arbitrator's gross negligence.

18.7 TRANSFER OF THE TRANSMISSION CONTRACT

Neither Parties may transfer the Transmission Contract to a Third Party, either in full or in part, without the other Party's previous written authorisation. Such a transfer cannot be unreasonably refused if the Third Party meets the Network Code's eligibility criteria.

The aforementioned written authorisation shall not be necessary if the Transferee is a company controlled by the Transferor or under the joint control of another company pursuant to Article (2359) (1) of the Italian Civil Code.

18.8 APPLICABLE LAW

This document is governed by Italian Law.