

# HOTHAM

Mount Hotham Resort Management Board

ABN: 93 938 780 598  
PO Box 188 BRIGHT VICTORIA 3741  
P/ 03 5759 3550 F/ 03 5759 3693  
E/ property@mthotham.com.au

## Mt Hotham Alpine Resort Management LP Gas Customer Supply Agreement

| SITE DETAILS                   |  |                                 |                             |
|--------------------------------|--|---------------------------------|-----------------------------|
| Property Name                  |  |                                 |                             |
| Site Address                   |  |                                 |                             |
| Town                           | HOTHAM HEIGHTS                                 | Post Code: 3741                 |                             |
| Postal Address                 |  | Town                            | Post Code                   |
| Contact Name                   |  |                                 |                             |
| Business Name                  | (if applicable)                                |                                 |                             |
| ABN                            |  | ACN or Association No:          |                             |
| Phone                          | Home   | Business                        |                             |
| Mobile                         |  |                                 |                             |
| Email                          |  |                                 |                             |
| Fax                            |  |                                 |                             |
|                                | Agree to Terms and Conditions of Sale & Supply | Yes <input type="checkbox"/>    | No <input type="checkbox"/> |
| Signature                      |  |                                 |                             |
| Date                           |  |                                 |                             |
| OFFICE USE ONLY                |  |                                 |                             |
| Annual Gas Access Fee (Ex GST) | \$100.00                                       | Annual Gas Access Fee (Inc GST) | \$110.00                    |
| Commencement Date              |  |                                 |                             |
| Property Assessment Number     |  |                                 |                             |
| Date Entered                   |  | Entered By                      |                             |

To be completed after reading the Terms and Conditions of sale and supply. This form should then be sent to the Mt Hotham Alpine Resort Management Board at details above.

# Terms and conditions for the sale and supply of LP Gas

Effective July 2009

**Mt Hotham Alpine Resort Management Board  
(Mt Hotham ARMB)**

**PO Box 188, BRIGHT VICTORIA 3741.**

[www.developmthotham.com.au](http://www.developmthotham.com.au)

**ABN 93 938 780 598**

## **1 Term**

- 1.1 Clauses 4.1, 4.3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and this clause 1.1 shall commence on the date of execution of this Agreement. The remaining clauses shall commence on the Delivery Date. The Agreement shall continue until terminated under Clause 1.2 or Clause 18.
- 1.2 Either party may terminate this Agreement after 3 months' prior written notice which notice can only be served under Clause 22.

## **2 Definitions**

Unless otherwise defined in this Agreement:

- 2.1 "Access Date" means the date upon which Mt Hotham ARMB can enter the Site to install the Mt Hotham ARMB equipment.
- 2.2 "Agreement" means these terms and conditions.
- 2.3 "Gas Access Fee" means the fee payable by the Customer to Mt Hotham ARMB for access to the LPG from the Mt Hotham ARMB Equipment.
- 2.4 "GST" means the Goods and Services Tax.
- 2.5 "GST Laws" means the Acts and Regulations that govern the GST from time to time.
- 2.6 "LPG" means Liquefied Petroleum Gas.
- 2.7 "Mt Hotham ARMB Equipment" includes all forms of pressure vessels for the storage of LPG and associated equipment.
- 2.8 "Selling Price" means Mt Hotham ARMB's selling price per usage unit of LPG.
- 2.9 "Usage Unit" is defined as;  
The formula to calculate customer billing:

$$\text{Cost of Gas to customer} = \text{price per gigajoule} \times V_m \times K$$

Where:

$V_m$  = volume of gas past through meter, as read from meter  
 $K$  = energy conversion factor.

- 2.10 "Penalty Interest Rate" means the rate as published by the Magistrates Court of Victoria as fixed by the Attorney-General.

## **3 Right to Match**

If the Customer wishes to terminate this Agreement after the Initial Term and obtain supply from another supplier, the Customer agrees, prior to issuing the notice of termination, to give Mt Hotham ARMB the opportunity to negotiate with the Customer for continued supply.

## **4 Supply and Delivery of LPG**

- 4.1 The Customer asks Mt Hotham ARMB and Mt Hotham ARMB agrees to install the Mt Hotham ARMB Equipment on the Site as soon as practicable after the Access Date.

4.2 Mt Hotham ARMB shall supply LPG into the Mt Hotham ARMB Equipment at the Site in accordance with a delivery schedule advised by Mt Hotham ARMB.

4.3 The Customer shall purchase all of its LPG requirements from Mt Hotham ARMB

## **5 Payment Terms**

5.1 Mt Hotham ARMB shall render an invoice in respect of each delivery of LPG made to the Site based upon the Selling Price and the Customer shall pay the amount of the invoice within 30 days of the date of the invoice.

5.2 The Customer agrees to pay the annual Gas Access Fee within 30 days of the date of invoice.

5.3 Interest on overdue accounts shall accrue on and from the due date for payment at the Penalty Interest Rate on a monthly basis until payment is made.

## **6 Credit Check and Security Deposits**

6.1 The Customer agrees that Mt Hotham ARMB may require the Customer to pay a security deposit or other form of credit support upon request if Mt Hotham ARMB determines that the Customer has an unsatisfactory credit rating or if during the term of the Agreement the Customer does not have a satisfactory account payment record.

6.2 Mt Hotham ARMB shall advise the amount of the security deposit or credit support and the Customer shall be required to provide that support via bank cheque, cash, other cleared funds or instruments as requested within the time period requested by Mt Hotham ARMB.

6.3 Failure by the Customer to comply with provision of security as requested by Mt Hotham ARMB may result in termination of this Agreement.

6.4 Mt Hotham ARMB may use a security deposit or credit support to offset any amount owed by the Customer to Mt Hotham ARMB if the Customer fails to pay an invoice by the date upon which it is due to be paid and Mt Hotham ARMB will advise the Customer of the use of the security.

6.5 Mt Hotham ARMB shall release the security deposit or other form of security upon termination of the Agreement once all outstanding amounts to Mt Hotham ARMB have been satisfied.

6.6 The Customer agrees to Mt Hotham ARMB conducting a credit check of the Customer at any time during the term of this Agreement.

## **7 Safety**

7.1 The Customer shall:

7.1.1 Ensure that each of the Customer's employees, contractors and customers and every other person purchasing or receiving from the Customer LPG is adequately warned and instructed as to the known dangerous qualities of LPG and safe handling procedures;

7.1.2 Ensure that any third party that procures LPG from the Customer is aware of the hazardous nature of LPG;

7.1.3 At all times handle LPG and the Mt Hotham ARMB Equipment in a safe and proper manner and take all reasonable precautions to prevent misuse and damage;

7.1.4 Comply with the requirements of all laws and orders or directions of statutory authorities and Mt Hotham ARMB in relation to the supply and use of LPG and access to the Mt Hotham ARMB Equipment;

7.1.5 Ensure that all of its servants, contractors, employees and agents who handle LPG and who access the Mt Hotham ARMB Equipment are fully trained to do so in a safe and proper manner and are informed of and fully understand all applicable laws and regulations;

7.1.6 Not access the Mt Hotham ARMB Equipment if any part of it is not or appears to the Customer not to be in good working order;

7.1.7 Notify Mt Hotham ARMB by telephone immediately upon becoming aware of or suspecting any defect in the Mt Hotham ARMB Equipment;

7.1.8 Only use the Mt Hotham ARMB Equipment for the dispensing of LPG purchased from Mt Hotham ARMB;

7.1.9 Not allow any LPG not supplied by Mt Hotham ARMB to be used or stored in the Mt Hotham ARMB Equipment; and

7.1.10 Keep legible and visible all trade marks and signs of Mt Hotham ARMB on the Mt Hotham ARMB Equipment.

## **8 Risk in and Title to LPG**

- 8.1 All property and title in LPG shall remain with Mt Hotham ARMB until the Customer has paid for the LPG.
- 8.2 Risk in respect of LPG shall pass to the Customer upon supply of the LPG into the Mt Hotham ARMB Equipment.
- 8.3 Where the Customer has sold the LPG and has not paid for the LPG then the Customer shall, until payment is made, hold the moneys and any debts arising from the sale of the LPG in trust for Mt Hotham ARMB and shall keep those moneys and debts separate from the Customer's own moneys.

## **9 Risk in and Title to Mt Hotham ARMB Equipment**

- 9.1 The Customer agrees to Mt Hotham ARMB installing the Mt Hotham ARMB Equipment at the Site and the Customer and Mt Hotham ARMB shall work together to obtain all statutory approvals relating to such installation provided however that the final responsibility rests with the Customer. In the event that the Customer is not the owner of the Site, the Customer warrants that it has obtained the consent of the owner of the Site to the installation.
- 9.2 The Customer warrants that Mt Hotham ARMB may enter the site on and from the Access Date for the purpose of performance of this Agreement.
- 9.3 The Customer shall bear all costs necessary for the operation of the Mt Hotham ARMB Equipment (including without limitation all costs of and relating to fire protection equipment, electrical power supply and water supply).
- 9.4 All property and title in the Mt Hotham ARMB Equipment shall remain with Mt Hotham ARMB and risk in the Mt Hotham ARMB Equipment shall pass to the Customer at the time of installation. The Customer shall ensure that the Mt Hotham ARMB Equipment is covered by the Customer's insurance and shall provide Mt Hotham ARMB with copies of certificates of currency of insurance in relation to the Mt Hotham ARMB Equipment upon request.
- 9.5 The Customer shall not remove the Mt Hotham ARMB Equipment or allow the Mt Hotham ARMB Equipment to be removed from its installed position at the Site other than with the consent of Mt Hotham ARMB.
- 9.6 If the Customer wishes Mt Hotham ARMB to relocate the Mt Hotham ARMB Equipment on the Site or if the Customer requires Mt Hotham ARMB to install Mt Hotham ARMB Equipment of a different type or capacity then all costs of relocation or replacement shall be paid by the Customer. Any relocation shall be undertaken by Mt Hotham ARMB.
- 9.7 The Customer shall not make any alteration to the Mt Hotham ARMB Equipment or allow any attachment to be affixed or constructed in the vicinity of, or used in the operation of the Mt Hotham ARMB Equipment without the prior written consent of Mt Hotham ARMB.
- 9.8 Mt Hotham ARMB shall carry out all repairs and maintenance necessary to keep the Mt Hotham ARMB Equipment in reasonable working order and Mt Hotham ARMB shall provide for maintenance and inspection of the Mt Hotham ARMB Equipment.
- 9.9 The Customer shall exercise due care in attending to and protecting the Mt Hotham ARMB Equipment at all times. The Customer agrees to reimburse Mt Hotham ARMB for all costs associated with repair or replacement of Mt Hotham ARMB Equipment necessitated by any cause whatsoever other than normal wear and tear.
- 9.10 Mt Hotham ARMB may at all reasonable times enter the Site for the purpose of inspecting replacing and maintaining the Mt Hotham ARMB Equipment.

## **10. Customer Equipment**

Where pressure vessels and associated equipment are owned by the Customer, then the Customer shall carry out all repairs and maintenance as required by law necessary to keep the Customer's equipment in working order.

## **11 Indemnity**

The Customer shall indemnify and keep indemnified Mt Hotham ARMB against any liability arising from any loss or damage to persons or property or death or injury caused:

- 11.1 By or as a consequence of any breach of the Agreement by the Customer; or
- 11.2 By or as a consequence of any act or omission of the Customer.

## **12 Confidentiality**

The Customer shall not at any time during or after the Initial Term disclose any information relating to Mt Hotham ARMB confidentially disclosed by Mt Hotham ARMB to the Customer during the Term of this Agreement and shall take all reasonable steps to prevent any disclosure to any third party by the Customer or its agents or employees of Confidential Information.

## **13 Assignment**

- 13.1 The Customer shall not assign any of its rights and obligations under the Agreement without the prior written consent of Mt Hotham ARMB. Mt Hotham ARMB may withhold its consent if it forms the reasonable opinion that the proposed assignee will not be able to comply with the terms of this Agreement.
- 13.2 In the event that the Customer wishes to sell its lease, sub-lease, business or property the Customer shall inform Mt Hotham ARMB in advance so that the parties can properly assess compliance with clause 13.1.
- 13.3 Mt Hotham ARMB may assign or novate any of its rights and obligations under the Agreement upon giving written notice to the Customer.

## **14 Warranties and Conditions**

- 14.1 All express and implied terms, conditions and warranties which otherwise might apply to or arise out of the supply of LPG are excluded except as provided in the Agreement and in any law which cannot lawfully be excluded or modified by Agreement between the parties including, without limitation, the Trade Practices Act 1974 (Commonwealth).
- 14.2 The liability of Mt Hotham ARMB for breach of this Agreement is limited to any one or more of the following as determined by Mt Hotham ARMB in its absolute discretion:
  - 14.2.1 In respect of the Mt Hotham ARMB Equipment: replacing, repairing or installing equivalent Mt Hotham ARMB Equipment (as the case may be); or
  - 14.2.2 In respect of LPG: delivering replacement LPG.
- 14.3 Notwithstanding anything contained in this Agreement, Mt Hotham ARMB shall be under no liability to the Customer for any loss (including but not limited to loss of profits and consequential loss of income or Customer's product) or for damage to persons or property or for death or injury caused by any improper or unsafe condition of the Mt Hotham ARMB Equipment installed on the Site by Mt Hotham ARMB or by any act or omission of Mt Hotham ARMB or by the Customer in relation to the LPG or the Mt Hotham ARMB Equipment.

## **15 Waiver**

Failure by Mt Hotham ARMB to insist upon strict performance by the Customer of any terms or conditions of the Agreement shall not be taken to be a waiver thereof or of any rights of Mt Hotham ARMB in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion.

## **16 Force Majeure**

- 16.1 If the performance or observation by Mt Hotham ARMB of its obligations (or any of them) is prevented, restricted or interfered with by reason of any force majeure, Mt Hotham ARMB shall, upon prompt notice of such force majeure being given to the Customer, be excused from such performance or observance to the extent of such force majeure.
- 16.2 The term "force majeure" shall mean act of God, strike, lockout, ban and limitation of work, or other industrial disturbance, act of the public enemy, war, terrorist attack, blockade, riot, lightning, fire, storm, flood, explosion, governmental restraint, shortage or unavailability of equipment or supplies or any other cause beyond the control of Mt Hotham ARMB.

## **17 Severability**

Each word, phrase, sentence, paragraph and clause ("a provision") of the Agreement is severable and if a Court determines a provision to be unenforceable, illegal or void the Court may sever that provision which becomes inoperative and such severance will not affect the other provisions of the Agreement.

## **18 Default**

- 18.1 Mt Hotham ARMB may terminate this Agreement without notice if;

18.1.1 The Customer fails to pay any outstanding amounts.

18.1.2 The Customer breaches any other obligation under this Agreement;

18.1.3 The Customer (if a person) dies or becomes mentally ill or becomes bankrupt or has an execution levied against his/her assets or being a company goes into liquidation whether compulsorily or otherwise or if any steps or proceedings are taken to appoint an official manager of its affairs or a receiver is appointed to the whole or any part of its assets or if the Customer enters into any arrangement, reconstruction or composition with its creditors generally; or

18.1.4 The Customer does not pass a credit check to the satisfaction of Mt Hotham ARMB and fails to pay a security deposit for an amount nominated by Mt Hotham ARMB.

18.2 Mt Hotham ARMB shall have no obligation to make any deliveries of LPG to the Customer if and for so long as the Customer is in default in payments under this Agreement.

## **19 Termination or Expiry**

19.1 On the expiration or sooner determination of this Agreement:

19.1.1 The Customer shall cease to use all trade marks, business names, or any other industrial property of Mt Hotham ARMB and shall remove any sign or other representation that Mt Hotham ARMB products can be purchased from the Customer; and

19.1.2 The Customer shall allow Mt Hotham ARMB to enter the Site to recover the Mt Hotham ARMB Equipment and LPG.

19.2 Termination of the Agreement shall be without prejudice to any pre-existing or accrued rights or obligations of either party.

## **20 Costs, Expenses and GST**

20.1 The Customer shall pay all stamp duty, GST and other taxes payable in respect of the Agreement or any transaction undertaken pursuant to the Agreement.

20.2 If a party makes a supply to the other party which is a taxable supply for the purposes of the GST law and has incorrectly determined the GST payable in respect of that supply, that party shall have the right to recover or the obligation to repay (as the case may be) any GST amount that, in its reasonably held opinion ought to have been paid in respect of that supply or to refund any GST amount that, in its reasonably held opinion, ought not to have been charged in respect of the supply.

20.3 All invoices shall satisfy the requirements of the GST law regarding tax invoices and, where required, adjustment notes shall be provided.

## **21 Governing Law and Jurisdiction**

The parties submit themselves to the jurisdiction of the Courts of the State or Territory in which supply is made for all proceedings arising from this Agreement.

## **22 Notices**

22.1 A notice, direction, consent or other communication in connection with the Agreement shall be in writing and shall be given or made by an authorised officer of the relevant party to the recipient party by delivery to the recipient party, by registered mail sent to that party, by facsimile transmission to that party or by email sent to that party.

22.2 Deliveries made and mail sent shall be to the address of the recipient party, facsimile messages shall be transmitted using the facsimile number of the recipient party and email shall be sent to the recipient party's email address. A party may from time to time change any of the details by not less than five business day's notice to the other party.

22.3 Registered mail shall be deemed to be received on the second clear business day after posting. Proof of transmission of a facsimile message is proof of receipt on the date of transmission provided that the recipient's answerback code is received after transmission and provided that if transmission is not on a business day or not before 4.00 pm, then it shall be deemed to have been received on the next succeeding business day after transmission. Provided that the recipient's email address does not return an undeliverable notice, then email sent to the recipient shall be deemed to have been received on the next succeeding business day after being sent.