

# Understanding the NAESB Base Contract for Sale and Purchase of Natural Gas

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An Article that analyzes the model form Base Contract for Sale and Purchase of Natural Gas from the North American Energy Standards Board (NAESB). This Article provides a detailed examination of the contract's general terms and conditions (GTC), explaining crucial concepts like firm and interruptible performance obligations, force majeure, adequate assurance of performance, events of default, and early termination and liquidation. It highlights the benefits of using this industry-standard form and explores the interplay between the Base Contract and its associated documents, including the Transaction Confirmation, the Credit Support Addendum (CSA), and the Canadian Addendum (CA). A key feature of this Article is its identification of commonly modified sections, offering practical insights and examples of special provisions that parties frequently negotiate to address specific commercial concerns, manage risk, and adapt the contract to their particular transaction.

The Base Contract for Sale and Purchase of Natural Gas (Base Contract) is a standardized contract form that is published and copyrighted by the North American Energy Standards Board (NAESB). Established in the early 1990s, NAESB is an organization that sets standards for the natural gas and electric industries and serves as an industry forum for the development and promotion of standards. The organization's efforts in drafting and adopting standardized contracts has enhanced the efficiency and transparency of transactions involving the purchase and sale of natural gas.

The Base Contract is a form used for buying and selling natural gas in the physical market where the transactions involve the actual physical delivery of the agreed commodity (see [Practice Note, Hedging Oil and Gas Production: Issues and Considerations: Physically Settled OTC Oil and Gas Transactions](#)). Most purchases and sales of natural gas in the US physical market are transacted under NAESB contracts. The current and most widely used version of the Base Contract is the 2006 version, adopted by NAESB on September 5, 2006. The other version

commonly used is the 2002 version. NAESB has also published a Model Credit Support Addendum and a Canadian Addendum.

The NAESB Base Contract and its addenda, including the Credit Support Addendum and the Canadian Addendum, provide a comprehensive and standardized framework for transactions involving the purchase and sale of natural gas. By promoting efficiency, consistency, and risk management, the NAESB documents streamline the contracting process, make transactions more accessible, reduce disputes, and promote market stability. The ability to tailor agreements through special provisions ensures the flexibility needed to meet unique deal circumstances while still maintaining industry wide standards. Whether in the US or Canada, the NAESB Base Contract is an essential tool for advancing an efficient, reliable, and transparent natural gas purchase and sale transaction.

NAESB is not a sponsor of Practical Law and this resource does not reflect its views. For information on acquiring the NAESB Base Contract, see [NAESB's website](#). For information regarding NAESB's copyright

policy, see [NAESB: NAESB Copyright Policy and Companies with Access to NAESB Standards Under the Copyright Policy as of December 8, 2025](#).

There is also a financial market for natural gas where parties trade futures contracts as a tool to manage market volatility. Under these transactions, there is no actual delivery of the physical commodity, and the transaction is settled by payment obligations (financial settlement). The [New York Mercantile Exchange](#) (NYMEX) and the [Intercontinental Exchange](#) (ICE) are the main exchanges for the trading of natural gas futures in the US. For information on financially settled oil and gas transactions, see [Practice Note, Hedging Oil and Gas Production: Issues and Considerations: Financially Settled OTC Oil and Gas Transactions](#).

### Advantages of the Base Contract

Because the Base Contract is a standardized form that is widely accepted in the industry, there are numerous benefits for both parties when using the form, including:

- Reduction in the time and cost associated with negotiating bespoke contracts, particularly boilerplate terms.
- Flexibility to customize standard terms. Similar to the interplay between the ISDA Master Agreement and the Schedule to ISDA Master Agreement, used to document over-the-counter swaps and derivatives transactions, parties may incorporate special provisions to amend the Base Contract. For information regarding the ISDA Master Agreement, see:
  - [Practice Note, ISDA® Documents: Overview \(US\)](#);
  - [Practice Note, Understanding the ISDA® Master Agreement and Schedule](#);
  - [The ISDA® Master Agreement: Early Termination and Close-Out Checklist](#); and
  - [ISDA® Master Agreement Toolkit](#).
- Management of risks associated with credit, market, regulatory, and operations, as parties are frequently both a buyer and seller of natural gas and will be more incentivized to include modifications that benefit both sides.
- Reduction of dispute risk, as parties are generally aware of how the industry and the courts will interpret terms.

- Expansion of the pool of buyers and sellers, with the standardized form making purchase and sale transactions more accessible for parties with a smaller legal budget.

### NAESB Natural Gas Standard Forms

The NAESB natural gas standard forms (NAESB Forms) are comprised of:

- The Base Contract, including the general terms and conditions (see Base Contract).
- Special provisions (see Special Provisions).
- The Transaction Confirmation (Confirmation) (see Confirmation).
- The Credit Support Addendum (see Credit Support Addendum).
- The Canadian Addendum (see Canadian Addendum).

### Base Contract

The Base Contract provides the standard framework for the purchase and sale of natural gas. It is bilateral and is structured as a master agreement that allows either party to be the seller or the buyer in any given transaction executed under it. The Base Contract includes:

- A cover page.
- The general terms and conditions (GTC).

On the cover page, the transacting parties:

- Include their identifying, contact, and accounting information.
- List their guarantors, if applicable.
- Make elections from the options offered under certain terms and conditions of the GTC. If the parties do not check a box with their election, the default provision specified by the GTC applies. Elections include:
  - the spot price publication to be used under Section 2.3.1;
  - the payment date and method of payment under Section 7.2;
  - whether netting applies or not under Section 7.7;

- whether early termination damages apply or not under Section 10.3.1;
- whether other setoff under other agreements applies under Section 10.3.2;
- the choice of law under Section 15.5; and
- whether confidentiality applies or not under Section 15.10.

The GTC is a boilerplate template containing the general terms that govern the relationship between the parties. The GTC is incorporated by reference into the Base Contract and applies to all gas purchase and sales transacted by the parties thereunder.

### Section 1: Purpose and Procedures

This section establishes the intent of the GTC to facilitate the purchase and sale of natural gas on either a firm or interruptible basis. Because the Base Contract is intended to be a flexible document that can govern multiple Confirmations, this section defines the roles of buyer and seller, allowing a party to be a buyer under one Confirmation but a seller under a separate Confirmation. Neither party is obligated to buy or sell gas until a Confirmation is effective.

Section 1 also describes two transaction procedures that parties may elect between, which are:

- The oral transaction procedure, which allows transactions to be agreed on by either an electronic data interchange (EDI) transmission that is mutually agreeable to the parties or by telephone, with legal binding effect from the moment of agreement. The confirming party then must confirm a telephonic transaction by sending the other party a Transaction Confirmation by fax, EDI, or mutually agreeable electronic means within three business days of the transaction confirmation if the failure to send a Transaction Confirmation does not invalidate the oral agreement of parties.
- The written transaction procedure, which requires written confirmation, with binding effect on the exchange of nonconflicting confirmations or passage of the confirm deadline (the default is two business days after receipt unless modified under the cover page elections).

The default election in the Base Contract is the oral transaction procedure. The oral transaction procedure is commonly used in short-term spot transactions

to permit the quick execution of a transaction. In shorter-term contracts, the risk of a dispute is more limited, and the parties are more likely to remember the details of the agreement to resolve any disputes. Parties to longer-term arrangements, with extended obligations, commonly execute written Confirmations that contain detailed provisions addressing potential exposures through the life of the transaction.

Regardless of the selected transaction procedure, under Subsection 1.4 of the GTC, the parties may record telephone conversations related to the contract. If the parties opted for the oral transaction procedure, they cannot contest the validity or enforceability of the recordings without waiving objections they may have to the admissibility of this evidence.

Section 1 also addresses discrepancies between confirmations and sets the priority of documents in case of conflict as, in order:

- A binding Confirmation.
- The oral agreement, if the parties selected the oral transaction procedure.
- The Base Contract.
- The GTC.

For modifications to Section 1 often agreed to by the parties, see Section 1: Purposes and Procedures.

### Section 2: Definitions

Section 2 defines key terms used throughout the contract. These definitions clarify the meaning of terms to avoid ambiguity in contract interpretation. In this Note, key definitions are explained within the context of the section where used.

### Section 3: Performance Obligation

This section outlines the obligations of the seller to deliver and the buyer to receive the contract quantity of gas. It distinguishes between transactions that are:

- **Firm.** Under a firm transaction, either party may interrupt performance without liability to the other only to the extent prevented by force majeure.
- **Interruptible.** Under an interruptible transaction, either party may interrupt performance at any time without liability to the other party for any reason.

### Firm Transactions

Under firm transactions, as the performing party's sole and exclusive remedy for the other party's failure to deliver or receive gas, parties may choose in Subsection 3.2 between:

- **The cover standard.** This is the default election. It entitles the non-breaching party to damages based on the cost of replacement or resale, adjusted for transportation costs. If the parties elect cover standard, the non-defaulting party must use commercially reasonable efforts to obtain gas (if buyer) or sell gas (if seller). If a performing party cannot obtain replacement gas or find a replacement buyer, as applicable, the performing party is then entitled to damages calculated based on the spot price standard.
- **The spot price standard.** It provides for damages equal to the difference between the contract price and the spot price, as determined by a pre-selected published index. The default index in the cover page is Gas Daily Midpoint. This option does not require the performing party to use commercially reasonable efforts to mitigate its damages by selling or buying gas.

Both options exclude imbalance charges, which are not recoverable under Section 3. The cover standard option is a more accurate reflection of market prices, because under the spot price standard, the index price may be unusually high or low at the time of calculation. If the parties are transacting in an illiquid market or would like to liquidate damages quickly without commercially reasonable efforts to find a replacement buyer or replacement gas, as applicable, the spot price standard may be the better option.

Because Subsection 3.2 does not specifically include transaction costs in the damages calculation (such as legal fees, broker fees, and fees associated with replacing hedges), these costs are not recoverable unless specified by the parties in the special provisions.

### Alternative Damages and Termination Option

If agreed to in writing in the Confirmation, Subsections 3.3 and 3.4 allow parties to add:

- **Alternative damages.** These are the damages expressed in dollars or dollars per MMBtu, agreed by the parties in the Confirmation for failure by either party to perform a firm obligation.

- **A termination option.** This is the option of either party to terminate a transaction for the other party's failure to perform a firm obligation for a certain number of days during a period as specified in the Confirmation.

Adding the termination option is an important provision, as there is not otherwise a right under the GTC for a performing party to terminate because of a party's failure to perform its firm obligation, because it is not considered an event of default (see Events of Default).

For common modifications to Section 3 of the GTC, see Section 3: Performance Obligations.

### Section 4: Transportation, Nominations, and Imbalances

Section 4 assigns responsibility for transportation of gas to the seller (up to the delivery point) and the buyer (from the delivery point). It requires coordination of nominations to meet the respective transporter deadlines and mandates prompt notification of discrepancies in deliveries.

This section also requires parties to use commercially reasonable efforts to avoid imbalance charges and assigns responsibility for any imposed to the party whose actions caused the imbalance. Imbalance charges are defined under Section 2.22 to include any fees, penalties, costs, or charges in cash or in kind that are assessed by the transporter for failure to meet the transporter's balance or nomination requirements.

### Section 5: Quality and Measurement

The seller must deliver gas that meets the quality, pressure, and heat content requirements of the receiving transporter. Measurement is based on the established procedures of the transporter, with the unit of measurement being one MMBtu dry.

### Section 6: Taxes

This section allocates responsibility between the parties for taxes, fees, levies, penalties, or charges (Taxes) imposed by government authorities on or regarding the gas. It gives parties the option to select that either:

- The buyer pays Taxes at and after the delivery point and the seller only those before the delivery point. This is the default option in the cover page.

- The seller pays Taxes before and at the delivery point and the buyer only those after the delivery point.

Under this section, if a party:

- Pays Taxes it is not responsible for, it must be reimbursed by the responsible party.
- Is entitled to tax exemptions, it must document them to the other party.

### Section 7: Billing, Payment, and Audit

The seller invoices the buyer for gas delivered with adjustments for actual quantities once known. Payment is due by the specified payment date chosen on the cover page, with the default being the 25th day of the month following the month of delivery, or within ten days of invoice receipt. Disputed invoices must be supported by documentation.

Interest accrues for late payments at the then-effective prime rate of interest published under “Money Rates” by *The Wall Street Journal*, plus two percent per annum.

This section also:

- Grants each party audit rights to verify statements and charges under the contract, excluding proprietary information not directly relevant to the transactions.
- Sets a two-year limit for objections after the month of gas delivery. Thereafter, invoices and billings are conclusively presumed final and accurate and payment claims are deemed waived.
- Allows the netting of undisputed amounts due, owing, or past due under the contract, unless the parties otherwise agree.

### Section 8: Title, Warranty, and Indemnity

Under Section 8, title to the gas passes from the seller to the buyer at the delivery point, unless the parties otherwise agree. Risk of loss for the gas falls on the seller up to its delivery at the delivery points and is assumed by the buyer thereafter. The gas delivery and title transfer must occur within US customers’ territory.

Regarding warranties and indemnities, under Section 8:

- The seller:
  - warrants good and merchantable title to the gas, free of liens, encumbrances, and claims;

- represents and warrants being the importer of record if the seller took title to the gas outside US customs territory and is responsible for applicable duties, taxes, fees, and other requirements;
  - disclaims all other express or implied warranties, including merchantability or fitness for any particular purpose;
  - must indemnify the buyer for all losses, liabilities, or claims, including reasonable attorneys’ fees and court costs (Claims), for title claims, personal injury, death, or property damage from the gas or for charges attaching to the gas before title passes to the buyer; and
  - assumes liability for all Claims arising from its delivery of off-spec gas.
- The buyer:
    - indemnifies the seller for Claims regarding payment, personal injury, death, or property damage resulting from the gas and charges attaching to the gas after the buyer receives title at the delivery point; and
    - assumes all liability for the gas after taking delivery of the gas at the delivery point.

### Section 9: Notices

Section 9 specifies how Confirmations, notices, invoices, and communications must be addressed and delivered (including by fax, mutually acceptable electronic means, courier, mail, or hand delivery) and when they are deemed received. Changes to payment instructions require ten business days’ notice.

### Section 10: Financial Responsibility

This section addresses the financial obligations of the parties, including performance assurances, events of default and remedies, early termination, early termination damages, setoffs, and liquidation and settlement of the transactions. It is one of the most commonly modified sections of the GTC (see Section 10: Financial Responsibility).

#### Adequate Assurance of Performance

Under Subsection 10.1, if a party has reasonable grounds for insecurity about the other party’s performance, it may demand adequate assurance of performance. Each party also grants to the other a continuing first-priority security interest, lien, and right

of setoff against adequate assurance of performance given in the form of cash.

Because the GTC does not define reasonable grounds for insecurity, this issue is sometimes addressed by parties with a special provision. There is no bright-line test for when these grounds exist, but case law and commentary under UCC Section 2-609 suggests that:

- Courts require a high standard to demonstrate that reasonable grounds for insecurity exist and that their determination is fact based (see *Enron Power Mktg., Inc. v. Nevada Power Co.*, 2004 WL 2290486, at \*5 (S.D.N.Y. Oct. 12, 2004), *supplemented*, 2004 WL 3015256 (S.D.N.Y. Dec. 28, 2004)).
- What is sufficient adequate assurance (for example, amount, form, and term) is fact based.
- A demand for adequate assurance must be in writing and clear and unequivocal (see *AMF v. McDonald's Corp.*, 536 F.2d 1167 (7th Cir. 1976)).

The GTC does define adequate assurances of performance under Section 2 as sufficient security in form, amount, and term as is reasonably acceptable to the demanding party (such as cash, a standby letter of credit, prepayment, or a guaranty).

### Events of Default

Subsection 10.2 defines events of default affecting a party or its guarantor. These include:

- An assignment or general arrangement benefitting creditors.
- Filing, commencing, authorizing, or agreeing to a proceeding under bankruptcy or other law for the protection of creditors.
- Becoming bankrupt or insolvent.
- Inability to pay debts when due.
- The appointment of a receiver, provisional liquidator, conservator, custodian, trustee, or equivalent for all or substantially all its assets.
- Failure to:
  - perform credit support obligations;
  - provide adequate assurance of performance when due; or
  - pay amounts when due.

### Additional Events of Default

The parties may include additional events of default under the cover page. These include:

- **Transactional cross default.** This occurs when a party defaults under any other transaction between the same parties for the purchase, sale, or exchange of physical gas or any other transaction specified in the contract.
- **Indebtedness cross default.** This occurs when a party or its guarantor defaults under agreements related to indebtedness for borrowed money in an amount exceeding a specified threshold, making that indebtedness immediately due and payable.

### Remedies for Default

The non-defaulting party may:

- Withhold or suspend deliveries or payments.
- Terminate and liquidate the transactions under the contract, excepting any that cannot be liquidated and terminated under applicable law (Excluded Transactions). Excluded Transactions may be liquidated and terminated once legally possible.

### Early Termination and Liquidation

If the default is not cured, the non-defaulting party may notify the defaulting party of its decision to terminate and liquidate the transactions, except Excluded Transactions, designating the early termination date (no later than 20 days after the notice). The non-defaulting party may then liquidate the terminated transactions and determine the aggregate or net of all amounts owing between the parties under the terminated transactions into a single amount payable by one party to the other (Net Settlement Amount).

### Early Termination Damages

Depending on the parties' cover page election, the Net Settlement Amount may or may not include early termination damages. Including early termination damages is the default option. When this is the case, the non-defaulting party must:

- Determine in a commercially reasonable way:
  - the amounts each party owes under the terminated transactions and Excluded Transactions up to the early termination date, including all applicable charges; and
  - the market value of each terminated transaction. Market value means the amount of gas yet to be delivered or purchased, multiplied by the market price of a similar transaction at the same delivery point, considering, for example, the NYMEX gas

futures settlement prices, quotes from leading dealers in energy swaps or physical gas markets, or good faith third-party offers and accounting for differences in transportation costs and terms.

- Liquidate and accelerate the terminated transactions at the market value by reference to the contract value. Contract value means the gas yet to be delivered or purchased, multiplied by the contract price. If the market value is higher, the buyer is owed the difference as early termination damages, and if the market value is lower, the seller is owed the difference. The amounts due must be discounted to the present value using an interest rate determined in a commercially reasonable manner (to account for the period between the date of liquidation and the date on which the amount would have otherwise been due under the terminated transactions).

If the parties opt for no early termination damages, the non-defaulting party must only consider in the liquidation the amounts each party owes (due or not) for gas delivered and received under the terminated transactions, up to the early termination date, including all unpaid applicable charges.

### Setoffs

Based on the parties' cover page election, the Net Settlement Amount may be subject to netting or aggregation (setoffs) of amounts owing between the parties under other agreements or arrangements. These setoff election options are:

- **Other agreement setoffs do not apply.** This option only includes amounts owing between the parties under the terminated transactions under the Base Contract.
- **Bilateral set off option.** This is the default option in the cover page. In this option, the non-defaulting party may satisfy the Net Settlement Amount:
  - from any collateral received under the Base Contract from or on behalf of the defaulting party (for example, cash, irrevocable standby letter of credit, or other security interest); or
  - by discounting it from any amount the liquidating party owes to the defaulting party or taking it from any collateral it holds under any other agreement or arrangement outside the Base Contract.
- **Triangular set off option.** This option allows parties to exercise the bilateral set off option and set off sums owed by or to their affiliates under other

agreements or arrangements outside the Base Contract. Triangular setoff is widely held to be unenforceable under bankruptcy law, even where the parties have agreed to it, because of the strict bilateral mutuality requirement under Section 553 of the Bankruptcy Code (see *In re Orexigen Therapeutics Inc.*, 990 F.3d 748 (3d Cir. 2021)).

The party that is required to pay the net settlement amount and setoffs must pay by the close of business on the second business day following notice given by the non-defaulting party to the defaulting party of the Net Settlement Amount, which payment date cannot be earlier than the early termination date. Interest on any unpaid portion of the Net Settlement Amount accrues until the date of payment at a rate equal to the lower of:

- The then-effective prime rate of interest published under "Money Rates" by *The Wall Street Journal*, plus two percent per annum.
- The maximum applicable lawful interest rate.

### Forward Contract

Because the contractual right of a forward contract merchant to terminate and liquidate a forward contract is not stayed, avoided, or limited by Chapter 11 (11 U.S.C. § 556), the parties agree that:

- The transactions are a forward contract (11 U.S.C. § 101(25)).
- Buyer and seller are each a forward contract merchant (11 U.S.C. § 101(26)).

For an overview of the Chapter 11 process, see [Practice Note, Bankruptcy: Overview of the Chapter 11 Process](#). For a discussion of forward contracts in bankruptcy, see [Practice Note, Hedging Oil and Gas Production: Issues and Considerations: Bankruptcy Risk](#).

### Section 11: Force Majeure

The force majeure clause of the GTC has the typical structure for these clauses in oil and gas contracts, including a definition of force majeure, a list of force majeure events, a list of excluded events, the consequences from a force majeure, and the obligations for the party affected by the force majeure.

Given the importance of force majeure as a risk allocation mechanism and the likelihood of disputes involving its occurrence, Section 11 is one of the most modified provisions of the GTC. For a discussion of typical modifications, see Section 11: Force Majeure.

For information on force majeure generally, see:

- [Practice Note, Force Majeure Clauses: Key Issues.](#)
- [Practice Note, Force Majeure Clauses: Key Issues in Selected Commercial Transactions.](#)
- [Key Issues When Invoking a Force Majeure Clause: State Law Chart.](#)
- [Standard Clause, Oil & Gas Contracts: Force Majeure Clause.](#)
- [Force Majeure Toolkit.](#)

### Definition

Subsection 11.1 defines force majeure as any cause not reasonably within the control of the affected party. Subsection 11.2 lists non-exhaustive force majeure examples, such as:

- Acts of God, natural disasters, and regionwide weather events (hurricanes, earthquakes, storms, or freezing).
- Physical events (breakage, accident, or necessity of repairs to machinery or equipment or lines of pipe).
- Government actions (compliance with court orders, laws, or policies).
- Acts of others (strikes, sabotage, insurrection, or war).
- Interruption or curtailment of firm transportation or storage.

### Excluded Events

Subsection 11.3 identifies events or circumstances that are not force majeure and do not excuse the party's failure to perform, including:

- Economic hardship (such as the seller's ability to sell the gas at better prices, the buyer's ability to buy gas on better terms, or disallowance of the pass-through of costs relating to the contract by a regulatory agency).
- Loss of buyer's market or of the buyer's ability to use or resell the gas or the loss or failure of the seller's gas supply or depletion of reserves, except if any of the foregoing is caused by a specified force majeure under Subsection 11.2.
- Curtailment of interruptible or secondary firm transportation, unless the primary in-path firm transportation is also curtailed.

### Consequences

Seller and buyer are both obligated to use reasonable efforts to avoid the adverse effects of a force majeure and resume performance. The GTC does not specify what efforts would be considered reasonable.

Force majeure generally relieves the affected party from performing the obligation prevented by its occurrence, with no liability to the other party. Under the GTC specifically, neither party is liable to the other for failure to perform a firm obligation to the extent this failure is caused by force majeure. Importantly, under the GTC, the occurrence of a force majeure alone does not automatically relieve the affected party from its obligations, because:

- The affected party must first notify the other party in writing of the event as soon as reasonably possible and with full details (though the first notice may be oral). Once the written notice is properly given, the affected party is relieved from of its obligations from the onset of the force majeure and through its duration.
- There must be a cause-effect relationship between the force majeure event and the affected party's failure to perform. The affected party is only excused to the extent the force majeure caused the failure to perform. When arguing force majeure as a defense, the affected party has the burden of proving this causation element. For instance, in *Freeport LNG Marketing, LLC v. Kinder Morgan Texas Pipeline LLC*, involving a force majeure dispute under the Base Contract regarding the 2021 winter storm Uri, the appellate court reversed the trial court's grant of summary judgment finding that Kinder Morgan failed to establish the causation element required under the contract as it did not demonstrate that the curtailment of gas deliveries to Freeport was caused by its compliance with an emergency order of the Railroad Commission of Texas. On the contrary, Kinder Morgan's selling and repurchasing gas despite that order undermined its force majeure defense. (*Freeport LNG Mktg., LLC v. Kinder Morgan Tex. Pipeline LLC*, 2025 WL 1109028 (Tex. App.—Houston [14th Dist.] Apr. 15, 2025, no pet.) (mem. op.))
- The affected party must remedy the condition and resume performance with reasonable dispatch. Otherwise, it is not entitled to the benefit of the provisions of force majeure under Subsection 11.3(ii). However, the affected party is not required to settle

strikes, lockouts, or other industrial disturbances, which are left to the affected party's sole discretion in Subsection 11.4.

### Obligations Not Excused by Force Majeure

Even if all requirements are met, force majeure does not excuse a party from:

- Payment obligations under Sections 7 (Billing, Payment, and Audit) and 10.4 (payment of the Net Settlement Amount).
- Imbalance charges.

### Section 12: Term

Either party may terminate the contract with 30 days' written notice, but the contract continues in effect for any outstanding delivery periods. This section also identifies rights and obligations that survive, such as:

- Audit rights (Section 7.6).
- Rights under Section 10 (Financial Responsibility).
- Limitation of liability (Section 13).
- Obligations to make payments.
- Indemnification obligations.

Parties sometimes modify the contract term or add other rights and obligations that survive termination (see Section 12: Term).

### Section 13: Limitations

Under this section, remedies and damages are limited to those expressly provided in the contract. If no remedy is specified, liability is limited to direct actual damages. Consequential, incidental, punitive, exemplary, indirect, lost profits, or other business interruption damages are excluded. These limitations apply regardless of cause, even if there is negligence (sole, joint, or concurrent, active or passive) of a party.

To the extent any damages under the contract are liquidated damages, in Section 13, the parties acknowledge that the damages are difficult or impossible to determine or that obtaining an adequate remedy is inconvenient and the damages as calculated are a reasonable approximation of the harm or loss.

Parties must review Section 13 under the governing law they have selected in the cover page, because state laws often restrict or set special requirements

for the validity and enforceability of limitation of liability provisions. For additional information on limitation of liability, see:

- [Standard Clause, General Contract Clauses: Limitation of Liability.](#)
- [Standard Clause, General Contract Clauses: Liquidated Damages: Drafting Note: Liquidated Damages.](#)
- [Practice Note, Litigating Contract Damages: Proving Liquidated Damages.](#)
- [Practice Note, Contract Provisions to Review from a Litigator's Perspective: Limitation of Liability Provisions.](#)

### Section 14: Market Disruption

This section provides a framework for determining a replacement price where a price index is not published or is unavailable for one or more days. The market disruption provision is significant, as many natural gas transactions are based in whole or part on an index.

Under Section 14:

- A market disruption event includes:
  - the failure of an index to announce or publish information necessary to determine the floating price (defined as the price or a price factor agreed on by the parties to be based on a specified index);
  - the temporary or permanent discontinuance or unavailability of the index;
  - the temporary or permanent closing of any exchange acting as the index;
  - the failure of trading to commence, permanent discontinuation, or material suspension of trading on the exchange or market acting as the index; or
  - both parties agreeing that a material change has occurred in the formula or method for determining the floating price.
- If a market disruption event affects the price index used for the contract, the parties must negotiate a replacement price.
- If the parties cannot agree on a replacement price by the second business day following the affected day, each party must obtain two market quotes, in good faith and from non-affiliated market participants in the market, for similar quality and

quantities of gas in the closest location to the delivery point. The average of these four quotes is the replacement price for the floating price.

- If either party fails to provide two quotes, the replacement price is the average of the two quotes obtained by the other party.

### Section 15: Miscellaneous

This section covers typical contract miscellaneous provisions, including:

- Assignment (with consent, except for affiliates or financing), providing that the transferor remains principally liable.
- Severability.
- No waiver.
- Entire agreement and amendment.
- Governing law (as selected in the cover page).
- Compliance with laws.
- No third-party beneficiaries.
- Authority to contract.
- Headings.
- Confidentiality (with typical exceptions, including prospective purchasers of a party's assets, for legal or regulatory requirements, and to a third party for the only purpose of calculating a published index).
- Dispute resolution (if agreed by the parties in a special provision or Confirmation).
- Admissibility of electronic records.

### Disclaimer

The GTC includes a broad disclaimer and waiver of any warranties, representations, and liability by NAESB regarding the Base Contract and its use.

### Special Provisions

The parties may attach special provisions to the Base Contract to modify its standardized terms. Parties include special provisions to address specific concerns with the Base Contract language. Sections often modified by special provisions include:

- Section 1: Purposes and Procedures.
- Section 2: Definitions.
- Section 3: Performance Obligations.
- Section 6: Taxes.
- Section 7: Billing, Payment, and Audit.
- Section 10: Financial Responsibility.
- Section 11: Force Majeure.
- Section 12: Term.

### Section 1: Purposes and Procedures

Parties often modify this section by:

- Adding other electronic means of communication as a method in which parties can carry out or confirm oral transactions.
- Providing that the confirming party is not obligated to issue a Transaction Confirmation for transactions having a delivery period of less than an agreed number of business days (usually shorter than a month).
- Requiring any modification or supplementation of the Base Contract and GTC to be expressly agreed to by the parties in writing.

### Section 2: Definitions

Parties frequently supplement, amend, add, or delete defined terms in response to other modifications in the Base Contract.

### Section 3: Performance Obligations

Parties commonly modify Section 3 by including make-whole damages for transactions with fixed contract prices and a firm delivery obligation in the event of a force majeure. This modification generally provides that if, because of a force majeure, the seller or the buyer cannot meet a firm performance obligation when the delivery period is at least one month and the contract price is fixed, the seller (if the indexed price is higher than the fixed price) or the buyer (if the fixed price is higher than the contract price) must pay the difference between the fixed price and the indexed price of gas for the affected month.

### Section 6: Taxes

This section is sometimes modified to reflect different tax allocation structures or additional tax-related provisions agreed to by the parties, such as modifying the contract price to:

- Include all production, severance, *ad valorem*, or other Taxes on the gas before its delivery to the buyer at the delivery point and providing that the seller is responsible for all them.
- Not include any sales, use, utility, consumption, or similar Taxes (at any jurisdictional level) imposed on the transfer of title, possession, or risk of loss of the gas to the buyer or on the buyer's subsequent disposition of the gas and providing that the buyer is responsible for all them.

### Section 7: Billing, Payment, and Audit

Section 7 is often modified to require payment of all invoiced amounts (including disputed amounts), with a dispute resolution process after the payment. Parties also include special provisions modifying the audit period from the standard term of two years after the month of gas delivery.

### Section 10: Financial Responsibility

This section governs the request for and delivery of adequate assurance of performance, events of default, and termination mechanics. It is one of the most important sections of the Base Contract and therefore one of the most frequently modified terms.

#### Section 10.1

Regarding adequate assurances of performance, the parties customarily add greater specificity on the meaning of general terms by, for example:

- Enumerating specific events that give a party reasonable grounds for insecurity, such as a counterparty's drop in its credit ratings.
- Adding a cap on the amount of adequate assurance of performance that a party can request.
- Modifying the list of adequate assurance of performance to eliminate or add adequate forms of assurance.
- Adding a specific deadline by which a party must return excess adequate assurance of performance.
- Including an ongoing covenant for parties to deliver financial statements.

- Completely opting out of Section 10.1 and replacing it with the Credit Support Addendum (see Credit Support Addendum).

#### Section 10.2

The parties often modify Section 10.2 regarding events of default by:

- Adding a grace period for failure to perform any credit support obligations.
- Extending the grace period for delivering adequate assurance of performance.
- Adding events of default, such as:
  - failure to perform a material obligation under the Base Contract following an applicable grace period;
  - failure to make or take delivery of gas, in addition to the remedy of cover damages or spot damages;
  - false or misleading representation or warranting; and
  - the occurrence of a merger event.

#### Section 10.3

Under Section 10.3, the parties often modify the termination procedures and the calculation and payment of early termination damages by adding:

- A fish-or-cut bait provision, under which a non-defaulting party must either resume its performance of its obligations or designate an early termination date.
- Other breakage costs to the calculation of early termination damages, including:
  - brokerage fees, commissions, and other similar losses, costs, and expenses incurred by the non-defaulting party;
  - legal costs incurred by the non-defaulting party to enforce its rights; and
  - costs of replacing or liquidating hedges covering volumes purchased or sold under the terminated transactions.

### Section 11: Force Majeure

This is a frequently modified section of the Base Contract, particularly since the gas supply disruptions that arose during winter storm Uri and the court rulings that followed. Two federal courts in Texas issued opinions providing guidance on the

## Understanding the NAESB Base Contract for Sale and Purchase of Natural Gas

interpretation of force majeure clauses in NAESB agreements, finding that:

- Force majeure requires impracticability of performance rather than impossibility.
- Seller gas supply means gas that is normally sold by seller rather than gas available for purchase on the spot market.
- The conduct of the party claiming force majeure in sourcing additional supply will be held to the standard of reasonableness.

(*MIECO, L.L.C. v. Pioneer Nat. Res. USA, Inc.*, 109 F.4<sup>th</sup> 710 (5<sup>th</sup> Cir. 2024) and *LNG Ams., Inc. v. Chevron Nat. Gas*, 2023 WL 2920940 (S.D. Tex. Apr. 12, 2023).)

On October 15, 2025, a Texas district court further held that a producer's failure to purchase replacement gas did not constitute a breach of contract. Pioneer's loss of its gas supply because of winter storm Uri was a force majeure event under the contract, which excused Pioneer's performance. The court found that:

- Neither the contract language nor the natural gas industry's custom and practice require a gas supplier to buy replacement gas on the spot market after declaring force majeure.
- Pioneer did exercise due diligence by making reasonable efforts to avoid the adverse effects of the storm.
- The economic hardship provision did not preclude Pioneer from invoking force majeure.

(*MIECO LLC v. Pioneer Nat. Res. USA, Inc.*, 2025 WL 2933076 (N.D. Tex. Oct. 15, 2025).)

Common modifications to Section 11 include:

- Adding to the illustrative list of events constituting a force majeure, such as to specifically include the breakage, accident, or need to repair owned and third-party gathering systems and treatment plants used to gather or treat the party's gas.
- Expressly providing certain circumstances in which a party is not entitled to the benefits of the force majeure, such as:
  - an increase or decrease in gas supply because of the allocation of production by well operators, pipelines, or other parties;
  - lack of pressure or failure of specific wells or appurtenant facilities absent a force majeure broadly affecting other wells in the same region; or

– a party's failure to obtain or maintain a required government permit, consent, or approval other than resulting from a change in laws or regulations.

- Defining reasonable efforts to avoid the adverse effects of a force majeure, including by requiring that a seller deliver to alternative delivery points or purchase gas from the spot market if there is a disruption in seller's supply.
- Requiring the affected party to prorate all firm obligations at the affected delivery point and give firm obligations priority over interruptible obligations, to the extent permitted by the transporters.
- Providing that force majeure does not require the parties to extend the term of any transaction or make up quantities of gas, or the seller to deliver or buyer to receive gas at points other than the delivery point.

### Section 12: Term

Parties sometimes amend Section 12 to add other provisions to those that survive the termination of the Base Contract, for example, the obligations to pay or reimburse Taxes under Section 6.

### Confirmation

The Confirmation is a form that the parties fill out to conduct purchase and sales of natural gas under the Base Contract. However, the Base Contract gives parties the option to confirm transactions orally, in which case the written Transaction Confirmation form does not apply.

The Confirmation is binding unless disputed within two business days and documents the economic and commercial terms of each individual transaction entered into under the Base Contract, including:

- The identification of each party acting as seller or buyer.
- The contract price.
- The delivery period.
- The type of performance obligation and quantity, for example:
  - firm for a fixed quantity;
  - firm for a variable quantity; or
  - interruptible (up to a certain quantity).

- The delivery points.
- Any special conditions agreed to for that transaction.

A template for the Confirmation is included as Exhibit A of the Base Contract.

### Credit Support Addendum

The Credit Support Addendum (CSA) is attached to the Base Contract and is a bilateral agreement that governs the credit support arrangements between the parties under the Base Contract. As with the Base Contract, the CSA includes a cover page where parties make elections under the general terms and conditions of the CSA.

### Key Elements of the CSA

#### Purpose

The CSA supplements and amends the terms of the Base Contract. In a conflict between the terms of the CSA and the Base Contract, the CSA governs.

#### Types of Credit Support

Parties may elect eligible collateral under the CSA, which may include cash, letters of credit, or other acceptable forms of security as agreed to by the parties. Parties also elect the valuation percentage attributable to each of the forms of collateral.

#### Credit Support Amount

The CSA details how to calculate the amount of credit support that a pledging party is required to transfer. The calculation is based on exposure, minus the sum of:

- The applicable collateral threshold.
- The value of all posted collateral of the pledging party that is held by the secured party.
- Any interest earned on the posted collateral that has not been previously transferred to the pledging party.

Exposure may fluctuate with market conditions and the value of outstanding transactions. A party that anticipates it will be a net buyer will want to negotiate for a higher collateral threshold. Collateral thresholds can be a fixed amount or a formula based on, for example, credit ratings of a party (for example, if a higher credit rating will correspond with a higher threshold).

#### Valuation and Timing

Specifies how often the credit support amount is to be recalculated and the timing for transferring credit support and returning excess support. Under the CSA, a pledging party does not have to transfer credit support unless the collateral requirement exceeds a minimum transfer amount. A party that anticipates it will be a net buyer, and therefore more likely to be required to pledge credit support, will want a higher minimum transfer amount.

#### Dispute Resolution

Includes procedures for resolving disputes related to the amount of eligible collateral. The procedure requires the parties to consult and reconcile their differences and, if unresolved, to obtain quotations from Reference market-makers to recalculate the exposure.

#### Letters of Credit

Outlines conditions under which letters of credit must be maintained, renewed, substituted, or drawn on. The CSA also defines what is a letter of credit default, the occurrence of which requires the pledging party to either transfer a substitute letter of credit or other eligible collateral. For a discussion of letters of credit and types generally, see [Practice Notes, Commercial Letters of Credit](#) and [Letters of Credit: Types of Commercial Letters of Credit](#).

#### Termination

Includes conditions under which the CSA can be terminated. The process for unwinding the credit support arrangements is also specified.

### Importance of the CSA

The CSA enhances the parties' risk allocation structure under the NAESB forms. It is a key factor for:

- **Risk management.** The CSA helps manage the financial risk associated with natural gas transactions by ensuring that parties have adequate credit support in place. The standardized terms ensure consistency across contracts and decreases the risks of defaults from novel terms (unless agreed to by the parties).
- **Market stability.** By reducing the risk of default, CSAs contribute to the overall stability and reliability of the natural gas market.

### Canadian Addendum

The Canadian Addendum (CA) is an addendum to the Base Contract where parties may elect to incorporate terms specific to transactions with the Canadian energy market. Because it addresses operational, regulatory, and legal differences in the Canadian energy market, the CA is crucial to ensure the applicability and compliance of NAESB standards within the Canadian market.

### CA Modifications

Specific modifications included in the CA are:

- **Spot price adjustment.** Modifies Section 2.31 of the Base Contract to give parties the additional option to select Canadian Gas Price Reporter (default if the delivery point is in Canada) or Gas Daily Midpoint if the delivery point is outside of Alberta as the referenced index price for the definition of spot price.
- **Termination currency.** Permits parties to select Canadian dollars as the default termination currency.
- **Governing law.** Allows parties to elect the laws of the Province of Alberta, Canada as the governing law.
- **Definitions.** Modifies the definitions of:
  - business day to exclude holidays observed in the relevant party's principal place of business

rather than the Base Contract standard of federal banking holidays for transactions in the US; and

- contract price to be expressed in Canadian dollars per gigajoule if the delivery point is in Canada.
- **Taxes.** Includes specific provisions for goods and services taxes.
- **Billing, payment, and audit.** Provides for:
  - different interest rates for amounts payable in Canadian currency;
  - netting of amounts due and owing in the same currency; and
  - payments for each transaction in the currency of the contract price.
- **Financial responsibility.** Modifies this section by:
  - including “other credit support in the form of cash” as adequate assurance of performance. The CA modification also includes specific language providing that a security interest is not created in other credit support in the form of cash, because the Personal Property Security Act does not permit for direct perfection of a security interest in physical cash; and
  - using the termination currency equivalent for netting, aggregation, or setoff.
- **Transaction Confirmation.** Includes a new form of Transaction Confirmation, which has options for Canadian export zero rating.

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