

NEWGAS (PTY) LTD
 Registration No. 2016/273551/07
 VAT No. 4030275079

66 Castle Hill
 85 Countesses Avenue
 Windsor East
 Randburg 2194



GAS SUPPLY AGREEMENT

CLIENT'S NAME

TYPE OF BUSINESS

Ltd / (Pty) Ltd	Close Corporation	Partnership	Sole Proprietor	Other
Registered Number			VAT Number	

ADDRESSES

Postal Address	Physical Address

COMMUNICATION

Telephone	Fax	Email

DIRECTORS

Full Names	Identity Number	Home Address

Directors: Kevin Munro, Jan Labuschagne

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BUSINESS – Please explain your business

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TURNOVER & ASSETS

Turnover exceed R 1million?	Yes / No	Assets exceed R1million	Yes / No
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CREDIT REQUIRED

Average Monthly		Total Credit Limit	
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BANK

Bankers	Account Name (If Different)	Branch Code	Account Number

Consent is expressly given to the Client’s Bankers and Trade Account Suppliers to provide information requested to the Company or their Credit Information Agency

TRADE EXPERIENCE

Company	Telephone	Contact	Balance

CONTACT PEOPLE

Who is responsible for ordering? Telephone

Who is responsible for paying? Telephone

- Please attach the following documents to the application:**
- o Copy of a cancelled cheque or latest bank statement; and
 - o Standard FICA Documents (Please see below); and
 - o Proof of Liability cover

FICA DOCUMENTATION REQUIRED

- Copy of VAT certificate
- Copy of Certificate of Incorporation / Founding Statement
- Proof of physical address - Utility bill or rental statement or other
- Copies of directors’/Partners’/Owners identity documents
- Company Letterhead
- Fully completed Surety documentation (Annexure B)

Please-mail the completed application and all supporting documentation to “ admin@newgas.co.za “

TERMS AND CONDITIONS

The undersigned, for and on behalf of the "APPLICANT" or "CLIENT" named here over, agrees to the following terms and conditions in regard to the items purchased from

NEWGAS (Pty) Ltd, hereinafter referred to as the "COMPANY"

The Client appoints the address on the second page as his domicillium citandi et executandi for all purposes relating to this agreement.

All accounts are payable within 7 days from date of invoice, except where otherwise agreed to in writing.

Each supply period is a separate contract, and upon bi-monthly meter readings the Client will be issued an Invoice.

The Client will not have the right to withhold any payment of goods delivered, against non-delivery or late delivery of any other goods.

In the event of a dispute between the parties, the Client agrees that these terms and conditions shall take precedence over the Clients terms and conditions and shall be appropriately implemented.

Should the Client breach any of the provisions of this contract, or any other contract with the Company, or have any of its cheques returned unpaid by its bankers, then without any prejudice to any of the other rights of the Company against the Client, all amounts owing by the Client to the Company whether or not then due and payable shall immediately become due and payable on demand.

Client agrees that the Company has the right of set off and shall be entitled but not obliged to use this right whenever moneys are jointly owing and due, between Client and the Company.

The Company shall be entitled, but not obliged, to institute any legal proceedings against the Client in any Magistrates court having jurisdiction over it, even though the cause of action is beyond the jurisdiction of that court.

In the event of the Company instructing its agents or attorneys to recover monies from the Client, the Client shall be liable for and pay all legal costs incurred by the Company on the attorney client scale, including collection commission.

Client shall make payment of interest at prime overdraft rate plus 3% per month on all arrear amounts owed from due date to actual date of payment.

Client hereby provides the Company with permission in terms of the provisions of the National Credit Act (Act 34 of 2005) to obtain financial information from Client's Auditors, any information it may require from the Clients Bankers, information it may require from the Clients Trade Suppliers as well as to provide Trade References on its trading performance to suppliers requesting Trade References and Industry Trade Bodies.

No act, omission, course of dealing, forbearance, delay or indulgence by the Company in enforcing any of these conditions shall affect or prejudice any of the subsequent rights of the Company, and no such matter shall be treated as any evidence of waiver of the Company rights thereunder, nor shall any waiver of a breach by Client of any one or more of these conditions operate as a waiver of subsequent breach thereof.

This signed at _____ **on this** _____ **day of** _____

On behalf of CLIENT

Name _____ **Designation** _____ **Signed** _____

Name _____ **Designation** _____ **Signed** _____

I / We confirm that I / We are authorised to enter into this contract on behalf of the CLIENT

Witnesses

Name _____ **Designation** _____ **Signed** _____

Name _____ **Designation** _____ **Signed** _____

GAS SUPPLY AGREEMENT

(“this Agreement”)

between

NEWGAS (PTY) LTD and



The Client

hereinafter referred to as **“the Client”**

(collectively hereafter called **“the Parties”**)

1 INTRODUCTION

- 1.1 NEWGAS carries on the business as a distributor of Liquefied Petroleum Gas and has expertise in the procurement and supply of Liquefied Petroleum Gas (hereinafter referred to as “LPG”) and related equipment and products;
- 1.2 The Client is the owner or controlling shareholder/member of the restaurant business known as “.....” in the Complex known as Key West Centre (the premises leased by the Client for the purposes of the restaurant business hereinafter referred to as “the Premises” and the property of which the Premises forms part hereafter referred to as “the property”);
- 1.3 The Client consumes LPG as the primary source of cooking energy on the Premises, which LPG is supplied to the Client through a gas reticulation system (“the gas reticulation system”) operated by NEWGAS;
- 1.4 The Key West Centre (“the owner”) of the property, as part of its service offer to tenants in the property, has undertaken to from time to time select as the preferred supplier of LPG to the property a company offering the most sustainable terms of supply to tenants;
- 1.5 The owner has selected NEWGAS as the preferred supplier for the period described in clause 4 hereof;
- 1.6 The parties have agreed on the respective rights, obligations and responsibilities of the Client and NEWGAS in respect of the supply, dispensing and consumption of LPG at the Premises (“the LPG”).

2 SALE AND PURCHASE OF LPG GAS

The Client will purchase all its requirements of LPG for consumption at the Premises during the currency of this Agreement from NEWGAS.

3 DURATION

- 3.1 This agreement shall commence on **26 September 2016** (“the Commencement date”) and the continuance will be subjected to the duration of the lease period between either the Client, or NEWGAS, with the Owner / Landlord of Key West.

4 GAS PRICES

- 4.1 The price of LPG and other charges are set out in Annexure A. All prices and charges stated are net and exclude VAT.

- 4.2 NEWGAS shall at all times during the currency of this Agreement have the right to adjust these prices and charges in accordance with monthly DoE announcements for LPG, variations in market-, economic and any other relevant circumstances. A 30 days' written notice ("the 30-day notice period") to the Client may be applicable but notice is deemed to be given by invoices in the normal business cycle, whereupon:
- 4.2.1 The Client shall be deemed to have accepted such adjusted prices and charges ("the adjusted prices") unless and to the extent that it notifies NEWGAS to the contrary in writing within the thirty (30) day period. Payment may not be withheld during the review period.
- 4.2.2 The LPG price is under contractual obligation between NEWGAS and the Owner / Landlord of Key West, to be fair and market- and cost related.

5 PAYMENT, CREDIT TERMS AND INTEREST

- Payment for the LPG delivered via the gas meter shall be made to the NEWGAS bank account within 7 days of the invoice date, following receipt of NEWGAS's bi-monthly TAX Invoice. Failing which payment shall be made by way of a cash payment on the same date. NEWGAS reserves the right to install pre-paid gas meters at a future date during the currency of this Agreement, whereupon the Client agrees that gas purchases will be made in advance.
- 5.1 The Client shall enjoy such credit terms as NEWGAS may in its sole discretion determine from time to time, in which event payment shall be by way of a direct automatic debit to NEWGAS's bank account on the due date for such payment as determined in accordance with the credit terms granted by NEWGAS.
- 5.2 The Client shall be liable for, and pay to NEWGAS on demand interest on all overdue amounts calculated at a rate of 3 (three) per cent above the prime rate of interest charged to commercial customers of Standard Bank.

6 EQUIPMENT

- 6.1 NEWGAS shall provide the Gas meter and the Regulator ("the equipment") (which shall always remain the property of NEWGAS and which shall be deemed to be movable for the purposes of this agreement), for the regulation and measurement of consumption of the LPG on the Premises.
- 6.2 The Client shall not interfere with the equipment or allow any substance to be placed therein other than LPG supplied by NEWGAS. Furthermore, if for reasons of safety or alterations to the building or Client's premises, the equipment needs to be moved, relocated and/or modified the Client shall bear all cost relating thereto.
- 6.3 The Client shall immediately notify NEWGAS of any defect in the equipment.
- 6.4 NEWGAS shall be obliged, at its cost, to maintain, inspect and repair the equipment or any extension or replacement thereof in a safe and operable condition, provided such maintenance or repair was not occasioned due to the negligence or intentional act or omission of the Client, its agents or employees.
- 6.5 The Client shall not move, relocate or modify the equipment. Should the Client request that the equipment be moved, relocated or modified, NEWGAS may at its discretion do so to meet the Client's particular needs and circumstances.
- 6.6 In the circumstances envisaged by clauses 6.5 above, the parties shall, prior to the removal, relocation, or modification of the equipment, agree on the cost of the installation, removal, relocation and/or modification of the equipment, and the mechanism by which such cost shall be recovered.
- 6.7 NEWGAS shall at all times have the necessary rights of access to inspect the equipment, and to remove same from the Premises upon termination of this Agreement for whatever reason, or at any time when, in the absolute discretion of NEWGAS, removal is warranted as a result of considerations of safety or insufficient use thereof by the Client.
- 6.8 The equipment using LPG (after the Gas Meter and Regulator in the reticulation system), is the property of the Client. The Client is responsible for the compliance and conformity of the equipment to all applicable requirements, and will provide a current Certificate of Conformity (CoC) when requested by NEWGAS or the Landlord.

7 DELIVERY, MEASUREMENT, RISK AND OWNERSHIP

- 7.1 Delivery of the LPG shall be effected at the point at which the LPG passes through the measuring device (“the meter”) installed between the main gas pipeline system incorporated into the property and the inlet valve of the Premises which supplies the LPG to the cooking and heating appliances installed in the premises of the Client.
- 7.2 The quantity of gas supplied by NEWGAS shall be measured according to Gas Industry Practices prevailing from time to time during the currency of this Agreement.
- 7.3 Risk in the gas shall pass to the Client on delivery.

8 GUARANTEE

- 8.1 The LPG supplied in terms of this Agreement is guaranteed to conform to SABS 1774. The Client shall be responsible for ensuring that any appliances connected to the reticulation system shall at all times be approved for use of LPG conforming to this standard, or such other standard as the relevant authority may impose from time to time.
- 8.2 Should the LPG fail to conform to the relevant specification, NEWGAS may either replace or give credit for such gas to the exclusion of any other remedy available to the Client. Any claim in this regard must be lodged by the Client with NEWGAS in writing within 7 days after the date of delivery of the gas failing which NEWGAS shall be excused from all liability.

9 LIABILITY AND INDEMNITY

- 9.1 Neither of the parties shall during the currency of this Agreement or after its termination have a right of action against the other, and neither of the parties shall be liable for any loss, damage or injury resulting from the supply of LPG in terms of this Agreement or the loan of equipment by NEWGAS to the Client, except where such loss, damage or injury results from an intentional act or omission or the gross negligence of that party, its agents, employees or independent contractors.
- 9.2 Notwithstanding clause 9.1 neither party shall be liable for any indirect or consequential loss (including but not limited to loss of revenue, loss of profits, loss of clients, loss of contracts, and loss of custom, goodwill and/or reputation).
- 9.3 The Client hereby indemnifies NEWGAS against all liability for loss, damage or injury whether direct, indirect or consequential suffered by any person not being a party to this Agreement resulting from a breach of this Agreement or the commission of a delict by the Client in relation to this Agreement or otherwise.

10 SAFETY

The Client

- 10.1 confirms that it has read and understood the cautionary labels attached to NEWGAS's equipment, and the precautions relating to the use of equipment, as set out in the South African Bureau of Standard's Code of Practice SANS 019, SANS 10083 and the Occupational Health and Safety Act no. 85 of 1993 (as amended) and its Regulations. The Client undertakes to take note of any amendments to and/or updates to these as published from time to time;
- 10.2 acknowledges and undertakes that it will, for all purposes of the Occupational Health and Safety Act, 1993, as amended, and the regulations promulgated thereunder from time to time (“the OHSACT”), be the user of the equipment and accordingly be responsible for all obligations and duties imposed by the OSHACT on a “user” as defined in the OSHACT, with which obligations and duties the Client acknowledges itself to be fully acquainted; and
- 10.3 indemnifies and holds NEWGAS harmless in respect of any loss or damage of whatsoever nature and howsoever arising consequent upon any act or omission which constitutes a breach or contravention of, or a failure to comply with, any of the obligations and duties referred to in 10.2 above.

11. VIS MAJOR

Notwithstanding anything to the contrary contained in this Agreement, neither party shall be liable for failing to fulfil any of its obligations if such failure is due to war, civil disturbance, riots, acts of terrorism, fire, storm,

industrial dispute, quarantine, breakdown of equipment or vehicles, unplanned refinery shut downs, acts of God or State or to any other cause which is beyond that party's reasonable control.

12 BREACH

12.1 Should either party breach any of its obligations in terms hereof and fail to remedy such breach within 14 days of receipt of a written notice to that effect, then the aggrieved party shall be entitled without prejudice to any other rights in terms of this agreement or in law to:

12.1.1 claim specific performance; or

12.1.2 cancel this agreement and claim damages.

12.2 It is recorded that the refusal by NEWGAS to supply the Client with any of its LPG requirements due to the Client's account being in arrears shall not constitute a breach of this agreement giving rise to cancellation, damages or specific performance.

13 LEGAL PROCEEDINGS

Any legal proceedings arising out of this Agreement shall be governed by the law of the Republic of South Africa and adjudged in the relevant South African Court, but should the parties agree, the relevant Magistrates court shall have jurisdiction. Either party shall be entitled to recover from the other all legal costs arising from such legal proceedings, including, but not limited to, collection commission, tracing charges and legal fees on an attorney and own client basis.

14 WAIVER OR INDULGENCE

No waiver or indulgence which one party may grant to the other party in respect of any of the terms and conditions of this Agreement shall be a continuing waiver or indulgence of those terms and conditions, nor a novation thereof.

15 GENERAL

15.1 This Agreement, and the Annexures hereto, constitute the whole agreement between NEWGAS and the Client and no representations, undertakings, warranties, guarantees, terms and conditions that are not recorded herein shall have legal validity.

15.2 No variation of any terms or conditions of this Agreement shall be binding unless reduced to writing and signed by both parties.

15.3 NEWGAS's rights shall not be affected by the sale and/or disposition by the Client of its business or any part thereof or by the dissolution of any partnership, acquisition or disposal of member's interest and/or shares and/or any other substantial change in its shareholding by any means whatsoever.

15.4 In the event that the Client disposes of its business, whether in whole or in part, the Client shall ensure that any agreement of sale makes provision for the terms and conditions of this Agreement to be assigned in their entirety to the purchaser. The Client undertakes to advise NEWGAS in writing of the name and address of such purchaser within 30 days of the execution of the purchase agreement.

15.5 The parties choose as their domicilium citandi et executandi the addresses set out on the first and second page hereof.

15.6 The parties hereby agree that the terms and conditions of this agreement and any communications arising out of and in connection with this agreement are confidential and may not be disclosed to any third party. The provisions of this clause 15.6 shall survive the termination or cancellation of this agreement.

15.7 The Client shall not without the prior written consent of NEWGAS, cede or assign any of its rights or obligations in terms of this Agreement to any other party. NEWGAS may cede and assign its rights and obligations to any other party.

Signed at _____ on this _____ day of _____ 2016

As witnesses:

1 _____
.....
For: NEWGAS (Pty) Ltd

2 _____
.....
Name of signatory
(The signatory warranting by his signature that he is
duly authorized hereto).

Signed at _____ on this _____ day of _____ 2016

As witnesses:

1 _____
.....
For:

2 _____
.....
Name of signatory
(The signatory warranting by his signature that he is
duly authorized hereto).

Annexure "A"

GAS PRICES

1. The initial unit price for the LPG to the Client is based on the Client's total expected consumption of LPG and is R /kg or R /m³. (As at prices effective September 2016).
2. The above-mentioned unit price for the gas is net and exclusive of VAT and will be subject to adjustment in terms of Clause 4 of this Agreement.
3. It is agreed that the opening Gas Meter reading taken on 26 September 2016 was

Annexure "B" - Page 1

Suretyship

I the undersigned,

NAME:

ID NR:

Hereby bind myself as Surety and Co-Principal Debtor and severally to

NEWGAS (PTY) LTD
REG NO.: 2016/273551/07
VAT NO: 4030275079

("the Company")

for the punctual payment of all sums which are or may become due for gas, equipment and related charges by

NAME:

REG NO:

VAT NO:

("the Client")

to the Company in terms of, or in connection with or arising in any way whatsoever out of a written agreement, or any renewal thereof, between the Company and the Client in terms of which the Company has supplies to the Client gas or equipment

Annexure "B" - Page 2

I agree and declare that:

1. No act of indulgence, relaxation or grace granted by the Company to the Client or any amendment of the obligations existing between the Client and the Company shall prejudice or affect the Company's right in terms hereof.
2. The Company shall be entitled, without prejudice to its rights and without detracting from my liability hereunder, to release any securities or other sureties given to it or to give to or compound with or make any arrangements with the Client in regard to the fulfilment of any of the Client's obligations as the Company in its absolute discretion deem fit.
3. This Suretyship shall remain in force for a 6-month period as a covering liability on my part for as long as the Client is or will be indebted to or is or will be under any obligation or commitment to the Company under and in terms of the Agreement or renewal thereof and I shall not be entitled to withdraw or cancel this Suretyship unless and until any and all such indebtedness, commitments and obligations of the Client to the Company in terms of the Agreement have been fully discharged. This Deed of Suretyship shall further remain in force notwithstanding the death, insolvency (which term shall for the intents and purposes of these presents include sequestration, surrender, winding-up and judicial management, whether provisional or final) or legal disability of the Client or any other surety(ies) for and/or co-principal debtor(s) with the Client.
4. This Suretyship shall be in addition to and without prejudice to any other suretyship or securities now held or hereafter held by the Company from or on behalf of the Client.
5. The amount of my indebtedness hereunder and that of the Client to the Company at any time, shall be prima facie established by a certificate signed by the Company (or by one of the Company's members whose appointment qualification and/or authority need not be proved. A certificate in terms hereof shall be prima facie proof of the amount of my indebtedness hereunder and shall be valid as a liquid document for the purposes of obtaining provisional sentence or summary judgment against me thereon.

6. Should I at any time in defending any action based on this Suretyship allege that there is no reason or cause for the Client's obligation to the Company or that errors have been made in the calculation of the amount claimed, then the onus of proving such a defence shall rest on me.
7. I renounce the benefits of exclusion, division and cession of action, the full meaning and effect whereof I know and understand.
8.
 - 8.1. I choose domicilium citandi et executandi at :

Annexure "B" - Page 3

- 8.2 All notices addressed to me shall be sent by pre-paid registered post to the address referred to in sub-clause (a) hereof and in such event shall be deemed to have been received by me on the 5th day after posting.
9. If the estate of the Client is provisionally or finally sequestrated or, if the Client is a company or close corporation, it is placed under provisional or final winding-up, my liability hereunder shall not be affected in any way.
10. Each signatory who is married warrants and represents to the Company that no consent from such signatory's spouse is required in terms of Matrimonial Property Act No. 88 of 1984 (as amended) to bind the joint estate of such signatory and his spouse. Each such signatory acknowledge that he knows and understands the full meaning and effect of the foregoing.
11. This Suretyship constitutes the entire agreement between me and the Company, and no variation thereof shall be of any force or effect unless in writing and signed by both the Company and me.
12. I/We acknowledge that no representations whatever have been made to me in order to induce me to sign this Suretyship.
13. If any term, clause or provision of this Suretyship is contrary to or in conflict or inconsistent with any law or the judgment of any competent court, the invalidity or unenforceability of any such term, clause or provision shall not affect the validity of the remainder of this Suretyship, which shall continue to be of full force and effect.

14. I undertake to pay the costs incurred in the preparation and stamping of this Suretyship

SIGNED at..... on this day of..... 20.....

AS WITNESSES:

1.....

.....
SURETY:

2.....