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THREE LESSONS FROM SUPPORTING A GAS SUPPLY AGREEMENT

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LESSONS FROM THE NIGERIAN GAS-TO-POWER MARKET

A Gas Supply Agreement (GSA) looks, on its face, like a sale contract: one party delivers molecules, the other party pays for them. While it is true that the twin central pillars of a GSA is the seller's obligation to supply subject to terms on the one hand, and the buyer's obligation to take-or-pay on the other, spend a few weeks inside one, particularly in the Nigerian gas-to-power market and that illusion collapses quickly. A GSA is more than a sale contract; it is a commercial and operational framework that has to be bankable to lenders, compliant with the applicable regulatory framework and resilient enough to survive a decade of grid constraints, FX volatility, and counterparty stress. Get any one of those wrong and the document stops working long before it is ever litigated. The failure rarely shows up as a dispute in the first instance; it shows up as an outage that nobody quite has the mechanism to absorb, or a payment that nobody quite has the security to enforce.

These are three lessons that have stayed with me through the transactions I have supported.



1. VOLUME CLAUSES ARE ONLY AS STRONG AS THE SYSTEM AROUND THEM

It is tempting to treat take-or-pay and deliver-or-pay as the commercial heart of a GSA, they carry the numbers everyone negotiates hardest over, and they read as the clause that decides who is exposed if gas does not move. In Plain terms, take-or-pay obligates the buyer to pay for a specified minimum volume in each period regardless of whether it actually takes delivery, usually in exchange for a right to reclaim that volume later as make-up gas, while deliver-or-pay is the mirror obligation on the seller, requiring it to compensate the buyer, typically by reference to the buyer's cost of replacement supply, if the seller fails to deliver the contracted volume. That instinct misleads. These clauses are core economic and risk-allocation mechanisms but nomination, delivery point, curtailment, make-up, transportation and payment provisions determines whether those mechanisms are actually usable.

Follow one conventional on-grid structure in the Nigeria gas-to-power chain end to end, upstream producer, gas processor, transporter, power plant, and where present, NBET or a DisCo, through to the end-user, and it becomes clear that volume obligations do not sit in isolation.[1] The seller can be fully ready to deliver, the buyer fully willing to take, and the contracted volumes can still go unmoved, because the gas processing plant

[1] Structure now vary: the Electricity Act 2023, state-market transitions and NERC's bilateral-trading reforms mean NBET is not present in every transaction.

is down, the pipeline is constrained, the power plant cannot evacuate to the grid, or downstream remittance shortfalls transmit payment stress upstream from offtaker to generator to gas supplier. According to the Nigerian Electricity Regulatory Commission's 2025 Annual Report[2] Disco remitted 94.80% of what they owed to NBET and the Market Operator in 2025, leaving a shortfall of roughly N89.58 billion that NERC classified as an underpayment attributable to market participants.

Each link in that chain quietly rewrites what "shortfall" and "make-up" actually mean on the ground, regardless of how precisely those terms are defined on paper.

Make-up gas rights are only as valuable as the buyer's ability to nominate them later, and in a market where downstream offtake is the binding constraint, that ability is often theoretical. Drafting curtailment, outage, and shortfall mechanics without mapping them against the realistic operating envelope of the whole chain produces clauses that are legally elegant and commercially inert. The more useful drafting question is not "what happens if the buyer under-takes," but "what would actually have to be true, operationally, for the buyer's make-up right to mean anything," whether that means the expiry of make-up rights, priority against firm nominations, spare transportation capacity, or different treatment of buyer-caused versus system-caused under-take.

2. THE PAYMENT SECURITY NEGOTIATION TELLS YOU MORE THAN THE PRICE NEGOTIATION

In most Nigerian gas-to-power transactions, the parties converge on price faster than they converge on payment security and the payment security conversation is where the deal's real risk profile shows itself. Price is visible on the face of the contract; the security package reveals who actually funds the working capital gap, and for how long the seller carries unsecured exposure.

The reason is structural. Gas is often priced in US dollars or US-dollar-indexed terms; though naira settlement at an agreed benchmark is also common, the buyer — typically a GenCo — earns in naira; the offtaker of the buyer's product, usually NBET or the DisCos downstream of it, may be affected by delayed or incomplete downstream remittances. A letter of credit that covers one or two months of supply sounds standard until you ask which bank issues it, confirmed by whom, callable on what trigger, and replenished within how many days after a draw. Each of those answers is a negotiation in itself, and each one tells you how the counterparty actually views its own creditworthiness. Parties negotiate confirmation, tenor and replenishment terms because of cost, bank limits, liquidity and internal approvals, not simply because one side doubts its own credit.

The LC, parent guarantee, or escrow structure is not boilerplate, it is the deal's shock absorber. Suspension rights, default interest, and termination thresholds only function if the security instrument behind them is genuinely callable in the timeframe the seller needs. Documentary conditions that defeat a draw, an expiry date that falls before replenishment, no auto-renewal, or exposure that accumulates faster than the security can be restored can all leave a facility that looks adequate on paper providing no real cover in practice. Spending three weeks on price and three months on the LC is not inefficiency; it is the market correctly pricing where the risk actually lives, and a weak security package often has to be renegotiated later, after leverage has already deteriorated.

3. BOILERPLATE RARELY SURVIVES CONTACT WITH THE ASSET

The third lesson is the one I least expected. Force majeure and change-in-law clauses look settled precisely because they are the ones most often copied from precedent without being re-pressure-tested

[2] NERC's 2025 Annual Report (reported by https://nerc.gov.ng/wp-content/uploads/2026/08/2025-Annual-Report_Pub.pdf)

against the asset they are meant to govern; metering and commissioning tests are asset-specific technical provisions often copied the same way, without sufficient testing against the equipment actually installed.

In Nigeria, the operational reality bites in specific ways. Force majeure has to contemplate not just the dramatic events but the routine ones: third-party pipeline vandalism, host community disruption (which may also stem from a party's own non-compliance rather than a qualifying event), upstream producer outages the seller does not itself control — each raising the drafting question of whether the beyond-control test is met, causation, foreseeability where relevant, the seller's prevention and mitigations obligations, availability of alternative supply or transportation, notice and whether the event is attributable to the seller, the transporter or an upstream source. Change in law is not abstract: it has to contemplate domestic gas pricing regulations, the Petroleum Industry Act's still-evolving implementation, NUPRC interventions in upstream operations and NMDPRA interventions in midstream and downstream matter, including the gap-pricing and trading framework, with the contractual consequence specified as a price benchmark, domestic supply obligation, tariff, licence condition, allocation or settlement rule, and CBN circulars that can change FX access through convertibility, transferability, settlement, repatriation or benchmark risk. Metering and commissioning tests need to reflect what is physically installed on the asset and who is responsible for calibrating it, not a template lifted from a different project with different equipment. And the FX clause; whether payment is in dollars, naira at a CBN-published NFEM rate, or naira at another contractually specified and legally compliant benchmark, (subject to legal and compliance review, since any alternative must be objectively verifiable, contractually defined, and supported by timing and fallback provisions), can swing the economics of the contract by more than any price renegotiation ever will.

Force majeure and change-in-law clauses drafted in the capital rarely survive contact with the wellhead. Site diligence, walking the asset, or at minimum speaking directly to the operations, metering, commercial and finance people who run it, changes the drafting in ways no precedent bank can, it surfaces the failure modes that are routine on site or in dispatch, invoicing, reconciliation and payment processes but invisible from a desk.



DRAFTING FROM THE ASSET OUTWARD

The thread running through all three lessons is the same. A GSA is not a legal document that happens to govern an energy asset; it is an energy asset's commercial operating framework that happens to be written by lawyers. It has to be bankable — lenders must be able to underwrite it. It has to be practical — operators must be able to live inside it. And it has to be resilient, it must absorb the shocks the Nigerian gas-to-power market reliably delivers, rather than drafting on the assumption that they will not come.

The discipline is simple: draft from the asset outward, not from precedent inward.