

26 SEPTEMBER 2023

COMMERCIAL STUDY GROUP

MSA Update Tokyo



MSA TEMPLATE 2011 UPDATE

CSG Tokyo – 25 September 2023

The Objective

..”to deliver a more standardized and updated version of GIIGNL Master Sale Agreement 2011 “



ORGANIZATIONAL SET-UP

Layered set-up to secure timely input, quality checks and full buy-in representatives

- I. Steerco: Laurent David
- II. Chairman CSG: Laurent Chaveron
- III. Representatives from the GIIGNL members - 6 companies: ENGIE, JERA Global Marketing, Naturgy, Tokyo Gas, TotalEnergies, Shell (*names on next page*)
- IV. Faciliator / Coordinator: Ton Floors
- V. Internal legal committee: representatives from ENGIE, TotalEnergies and Shell
- VI. External Law Firm to support the final stage: Norton Rose selected (tender process)

VII.



A REPRESENTATIVE GROUP OF GIIGNL MEMBERS

Individual members per company



♦ Guillaume Servajean – Victoria Binavince



♦ Kazuhide Hattori - Jeffrey Setiawan



♦ Encina Egido Cantano



♦ Amar Salokhe – Siew-Chi Tan



♦ Yuta Takiguchi - Takuro Yamamoto



♦ Marc Ollevier – José de la Riva – Maria Hernandez



LOOKING BACK – THE PROCESS

Scheduled meetings plenary and bilateral sessions

Months	Plenary	Bilateral	Topic Bilateral session	Companies
Feb	16	28	ABC/AML/ Sanction	TotalEnergies / Shell
March	30	2	Title Transfer	Naturgy / JERA GM
		16	Commercial arbitration	Engie/Shell/Tokyo Gas
April	19-20 (CSG meeting in Barcelona)	13	ESG / MRV/ GHG neutral & Safety -Vetting	JERA GM / TotalEnergies /Engie
May	25	11	Demurrage & operational tolerance	JERA GM / Shell / Tokyo Gas
June	8 - 22 (at plenary mtgs other additional straightforward topics will be covered)	22	Termination due to Events of Defaults	Naturgy / Shell
July	20			
August			1 st draft MSA Template 2023	External legal counsel
Sept	Legal		Review 1 st draft by members	ALL
Oct			Final draft	
Nov	General	Assembly	endorsement	

WAY FORWARD

Scheduled meetings to deliver in time new MSA Template 2011

Item	Final deadline	Bilateral / Plenary
Legal firm Selection	07/Jul/23	Selection Committee
Handover to External Law Firm	23/Jul/23	Legal Committee
1st draft ready by External Law Firm	31/Jul/23	Norton Rose
Initial Feedback by members (Q&A session)	30/Aug/23	Plenary
Written feedback from members on 1st draft	18/Sep/23	Plenary
Collected feedback presented	21/Sep/23	Plenary
CSG Tokyo	27/Sep/23	Plenary
2nd Handover to External Law Firm	02/Oct/23	Legal Committee
2nd draft ready by External Law Firm	10/Oct/23	Norton Rose
Written feedback from members on 2nd draft	16/Oct/23	
3rd Handover to External Law Firm	19/Oct/23	Legal Committee
Final Draft ready by External Law Firm	24/Oct/23	
Last look opportunity by members	26/Oct/23	Plenary
MSA Publication	30/Oct/23	



INITIAL RESULT FEEDBACK 1ST DRAFT MSA

Plenary Session Tokyo

Out of 10 critical issues identified, two should be highlighted:

1. **Failure to Take / Failure to Deliver (new clause):** in evolution of time this has become a real business issue, where all members are very committed to reflect the right content in new MSA document;
2. **Environmental, Social, and Governance (new clause):** controversial issues among the members, primarily due to MRV standards and compensations of the full trade chain.














AOB

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KEY ISSUES IDENTIFIED

Focus will be on following 10 critical issues (not ranked in priority), to be worked in detail through bilateral sessions

1. Commercial Arbitrage and wilful misconduct and aggregate liability cap  
2. Failure to deliver/ to take: cap should be market based (liability clause) 
3. Termination due to Events of Defaults 
4. ESG / MRV/ GHG Neutral/ Offsetting provision 
5. Statement of carbon content 
6. Transfer of title and risk, in relation to taxes 
7. Update ABC / AML / Sanction clause 
8. Safety - Vetting of LNG vessels 
9. Demurrage: reciprocity in case Seller causing demurrage ("Excess Berth Occupancy" Cost) 
10. Operational tolerance (quantity settlement in line CN) 

 = *Bilateral meeting held*

Note: other comments from November meeting are logged and will be incorporated in final draft, e.g. fax reference etc)



BILATERAL MEETINGS OUTCOME

Highlights

To highlight the outcome of bilateral sessions:

- **ABC/AML/Trade control:** new clause to be inserted in MSA Template 2023
- **Transfer Title:** Definition EEZ and split DES/FOB to be inserted in line with proposal by the group
- **Taxes:** clause to be adjusted in line with the proposal, including Tax Refund
- **Commercial Arbitrage /Wilful misconduct:** no change in existing clause, however, definition of Wilful Misconduct to be adjusted in line with the group proposal
- **ESG/MRV/GHG neutral:** new clause to be developed. Proposal of the group for review.
- **Safety / Vetting:** preliminary suggestion no change; clause for your review.
- **Demurrage / Operational tolerance:** Clause to be reviewed to include BOG, exclude cooling down, reciprocity of Seller and Buyer secured. Operational tolerance clause remains as-is with 5% tolerance



STRAIGHTFORWARD OTHER ISSUES

Important but less controversial issues

GIIGNL MSA Template 2011 - Issue List	
CLAUSE SUBJECT	Items brought up CSG - November 2022
1. DEFINITIONS AND INTERPRETATION	"Full Cargo Lot" concept vs quantity to be determined in the CN
	Willful Misconduct and link with Failure to supply/take
	GHG content (Greenhouse content)
2. SALE AND PURCHASE	
3. QUANTITY AND UNLOADING SCHEDULE	Operational Tolerance
	"Full Cargo Lot" concept vs quantity to be determined in the CN
4. QUALITY	
5. SHIPPING AND RECEIVING FACILITIES	
6. SHIP MOVEMENT AND UNLOADING	
7. MEASUREMENT, SAMPLING AND TESTING	Add a Vetting Clause
8. TRANSFER OF TITLE AND RISK	Transfer of title
10. TAXES AND CHARGES	Interest rate (eg LIBOR to SOFR)
11. PERMISSIONS AND APPROVALS	
12. FORCE MAJEURE	
13. LIMITATION OF LIABILITY	FAILURE BY BUYER OR SELLER
	Willful Misconduct and link with Failure to supply/take
	FTD/FTT LD's: move toward MtM recovery
14. GOVERNING LAW AND ARBITRATION	Update reference to Incoterms
	ICC or LCIA for dispute resolution
	Commercial arbitration (willful misconduct)
15. SAFETY	
16. TERM	Termination clause and types of events of default
17. GENERAL	Update to the ABC/AML/Trade Controls/US Trade Controls language
	Take out reference to fax and telex (outdated)
	Business Practices: include ESG and Sanction Clause (ABC)
	ESG: TBD the merits of introducing ESG focused language
	Sanctions and Anti-Bribery