

III.12 EXCHANGES OF SUBSCRIBED CAPACITY AND TRANSFERS OF SUBSCRIBED FOUNDATION AND REGULATED CAPACITY

III.12.1 Exchanges of Subscribed Capacity

12.1.1 Any Capacity User (the “**First Exchanging User**”) shall have the right to exchange any part of its Subscribed Capacity with corresponding Subscribed Capacity of another User (the “**Second Exchanging User**”) provided that the exchange is performed in accordance with the provisions described below.

12.1.2 In order to effect an exchange of Subscribed Capacity, both the First Exchanging User and the Second Exchanging User shall send to the Operating Company their respective requests for acceptance of exchange (using the form published by the Operating Company on the Electronic Communication System), indicating:

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- (a) the volume of LNG, expressed in cubic metres of LNG with an indicative energy value in MJ;
- (b) the relevant Unloading Slots, with an indication of the specific dates if the exchange relates to Unloading Slots in relation to which the Annual Unloading Schedule or the Three (3) Month Schedule have already been provided by the Operating Company pursuant to clauses 3.2.3 or 3.3.2 of chapter II; and
- (c) the number of berthings;

which they propose to exchange.

12.1.3 The requests for acceptance of exchange shall be received by the Operating Company within 17:00 of the 16th (sixteenth) Day of the Month preceding the beginning of the first Month of the first Unloading Slot object of the exchange of the Subscribed Capacity.

12.1.4 The requests for acceptance of exchange shall be irrevocable and shall contain a statement pursuant to which the First Exchanging User and the Second Exchanging User acknowledge that the exchange shall become effective only upon acceptance by the Operating Company. The Operating Company shall be entitled to reject a request for acceptance of exchange in the following cases:

- (a) either the request of the First Exchanging User or the request of Second Exchanging User is not received by the Operating Company within the deadlines indicated under clause 12.1.3 above;
- (b) the requests for acceptance of exchange of the First Exchanging User and of the Second Exchanging User contain information which are contradictory and/or incomplete;
- (c) the First Exchanging User or Second Exchanging User does not hold the Subscribed Capacity that is the object of the exchange according to their respective Capacity Agreements;
- (d) the First Exchanging User and the Second Exchanging User do not fulfil all the Service Conditions specified under clause 2.3 of chapter III with respect to the portions of Subscribed Capacity being exchanged;
- (e) at the date when the Operating Company receives the requests for acceptance of exchange, the First Exchanging User and/or the Second Exchanging User are in breach of any of the provisions of the Regasification Code which would entitle the Operating Company to terminate the relevant Capacity Agreement pursuant to clause 13.1 of chapter III.

12.1.5 Within two Business Day(s) from the expiry of the deadlines indicated under clause 12.1.3 above, the Operating Company shall communicate to the First Exchanging User and the Second Exchanging User:

- (a) the acceptance of the proposed exchange of Subscribed Capacity by returning a copy of the requests duly signed for acceptance by the Operating Company; or, in the event that one or more grounds for rejection set forth in clause 12.1.4 occur,
- (b) the refusal of the request for acceptance of exchange, with an indication of the ground(s) for the non acceptance.

Upon acceptance of a proposed exchange by the Operating Company, the Subscribed Capacity of the First Exchanging User and of the Second Exchanging User under the respective Capacity Agreements

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and, if applicable, the term of any such Capacity Agreements shall be considered amended in accordance with the information provided by such Parties pursuant to clause 12.1.2.

12.1.6 In case of exchange of Foundation Capacity, the exchange is subject to the criteria provided in article 2, sub-section 3, letter k) of the MAP decree of 11 April 2006.

III.12.2 Transfers of Subscribed Foundation Capacity

12.2.1 A Foundation Capacity User shall have the right to transfer (“cedere”) to other persons (“soggetti”) any portion of the Foundation Capacity subscribed by it under any Capacity Agreement to which it is a Party provided that:

- (a) the transfer complies with the criteria referred to under article 2, sub-section 3, letter k) of the MAP decree of 11 April 2006;
- (b) the person to which the Subscribed Foundation Capacity is being transferred:
 - (i) provides to the Operating Company the information and statements to be included in Access Requests as set forth in clause 2.4.5 of chapter II;
 - (ii) provides to the Operating Company the documentation as set forth in clause 2.4.6 of chapter II;
 - (iii) fulfils the Access requirements as set forth in clause 2.4.4 of chapter II; and
- (c) the Foundation Capacity User provides the Operating Company with a copy of the authorisation by the MSE to transfer the relevant Subscribed Foundation Capacity pursuant to article 8 of the MAP decree of 11 April 2006, it being understood that such authorisation shall not be required in the event of “non systematic spot transfers of Foundation Capacity aimed at optimising the use of Terminal” (“*cessioni di capacità esentata spot di tipo non sistematico finalizzate all’utilizzo ottimale del Terminale*”).

III.12.3 Transfers of Subscribed Regulated Capacity

12.3.1 Each User of the Capacity Agreement (“*Utente Cedente*”) shall have the right to transfer to another User or entity other than the User (“*Soggetto Cessionario*”) any part of the Subscribed Regulated Capacity according to the Capacity Agreement to which it is party, provided that the transfer is carried out in accordance with the procedures described below.

12.3.2 In order to carry out the transfer of the Regulated Subscribed Capacity, the *Soggetto Cessionario* shall:

- a) provide to the Operating Company the information and statements that should be included in the Access Request as required by article 2.4.6 of Chapter II;
- b) provide to the Operating Company the documentation provided for in article 2.4.6 of Chapter II;
- c) meet the access requirements provided for in article 2.4.4 of Chapter II;

12.3.3 The request for the acceptance of the transfer of the Regulated Subscribed Capacity shall be sent to the Operating Company, filled and signed by the *Utente Cedente* and *Soggetto Cessionario* using the

form published by the Operating Company on the Electronic Communication System, indicating:

- a) The LNG volume expressed in LNG cubic meters with an energetic value expressed in MJ;
- b) The relevant Unloading Slots, with an indication of the specific dates if the transfer is related to Unloading Slots which have been part of the Annual and or Three Months Plan already communicated by the Operating Company according to article 3.2.3 or 3.3.2 of Chapter II, and
- c) the number of berthings which are object of the transfer;

12.3.4 The request for the acceptance of the transfer shall be notified to the Operating Company by 17:00 hours of the 16th (sixteenth) Day of the Month preceding the beginning of the first Month of the first Unloading Slot that is object of the Subscribed Capacity Transfer.

12.3.5 The request for acceptance of the transfer shall be irrevocable and shall contain the statement whereby the Utente Cedente and the Soggetto Cessionario agree that the transfer will become effective only in the moment in which the Operating Company accepts it. The Operating Company shall be entitled to reject a request for acceptance of the transfer in the following cases:

- a) The request for the transfer acceptance is not received by the Operating Company within the deadline provided for in article 12.3.4 above;
- b) The request for the transfer acceptance contains contradictory and/or incomplete information;
- c) the Utente Cedente is not the owner of the Subscribed Capacity which is being sold to under the relevant Capacity Agreement;
- d) the Utente Cedente does not meet all the requirements for the requested service under article III.2.3 with respect to the portions of Subscribed Capacity to be sold;
- e) the Soggetto Cessionario does not meet all the requirements in article 12.3.2 above;
- f) the Utente Cedente doesn't meet any of the provisions of the Regasification Code at the date on which the Operating Company receives the request for acceptance of the transfer, which entitle the Operating Company to terminate the relevant Contract for the Capacity under article III.13.1.

12.3.6 Within 2 (two) Business Days from the deadline set at article 12.3.4 above, the Operating Company shall notify the Utente Cedente and Soggetto Cessionario:

- a) the acceptance of the Subscribed Capacity transfer, sending a copy of its request signed by the Operating Company for acceptance, indicating that the Soggetto Cessionario assumes for all purposes the status of User;
- b) the refusal of the transfer acceptance request, in the event that one or more reasons for refusal provided for in article 12.3.5 have occurred, indicating the reason(s) for non-acceptance.

12.3.7 From the time the proposed transfer under paragraph a) of article 12.3.6 is accepted, the Soggetto Cessionario, assuming for all purposes the qualification of User, take over all the obligations related to the Utente Cedente and becomes responsible towards the Operating Company for the obligations arising from the Regulated Capacity Contract for the provisions of the service which it is party, in

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relation to the Regulated Capacity transferred.

12.3.8 Any refusal of acceptance of the transfer by the Operating Company in accordance with paragraph (b) of article 12.3.6 above, implies that the Utente Cedente retains the rights and obligations related to the Regulated Capacity Contract in its entirety, as stipulated under article 2.4.2 of Chapter II.