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GAS SALE AND PURCHASE AGREEMENTS (GSPAS):

Legal, Commercial, and Regulatory Perspectives in a Changing Energy Landscape

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Introduction

In the evolving global energy landscape, natural gas has emerged as a crucial bridge fuel, balancing the world's urgent need to decarbonize with its reliance on reliable energy. Producing significantly lower greenhouse gas emissions than coal and oil, it has become central to energy transition strategies worldwide. For developing economies like Nigeria, natural gas offers both a commercial opportunity and an environmental necessity, driving industrialization and cleaner economic growth.

Scientifically, "gas" refers to any substance in a gaseous state, while "natural gas" specifically denotes a hydrocarbon mixture primarily composed of methane (CH_4) found beneath the earth's surface. Extracted and processed for power generation, manufacturing, and transportation, it moves through a complex chain of producers, transporters, and consumers. At the centre of this value chain lies the **Gas Sale and Purchase Agreement (GSPA)**, the principal contract that defines the sale, delivery, and pricing of natural gas, setting out the rights, duties, and risk allocation between the parties.

Globally, GSPAs forms the foundation for multi-billion dollar transactions, from long-term Liquefied Natural Gas (LNG) supply deals to domestic gas sales for power generation. In Nigeria, their relevance has expanded under the **Petroleum Industry Act 2021**, the **National Gas Policy 2017**, and the **Decade of Gas Initiative (2021–2030)**, all aimed at positioning gas as the backbone of national development. This article explores the legal, commercial, and regulatory dimensions of GSPAs from both Nigerian and international perspectives, highlighting their key clauses, policy underpinnings, and emerging trends shaping the future of gas contracting.

2. The Natural Gas Market and Value Chain

The natural gas industry operates through an interconnected system known as the gas value chain, comprising three principal segments, upstream, midstream, and downstream. Each segment plays a distinct yet interdependent role in moving gas from the point of extraction to the final consumer. Understanding this structure is essential to appreciating how GSPAs fit into the commercial and legal landscape of gas trade.

Insect the value-chain diagram here. One showing the flow of natural gas from exploration and production, through processing and transportation, to marketing and end-use consumption.

2.1. Upstream Sector

The upstream sector involves the **exploration and production (E&P)** of natural gas. Activities at this stage include geological surveys, drilling, and the extraction of raw gas from underground reservoirs. In Nigeria, upstream operations are governed primarily by the **Petroleum Industry Act 2021 (PIA)** and overseen by the **Nigerian Upstream Petroleum Regulatory Commission (NUPRC).** Companies engaged in this segment include both international oil companies (IOCs) and indigenous firms operating under licences such as Oil Prospecting Licences (OPLs) or Petroleum Mining Leases (PMLs).

At this stage, **GSPAs** are typically entered into between producers and gas purchasers such as gas processing or Liquefied Natural Gas (LNG) companies. These contracts define production volumes, delivery points, and gas quality, ensuring that the raw gas extracted is appropriately commercialized.

2.2 Midstream Sector

The midstream sector covers the processing, transportation, and storage of natural gas. After extraction, raw gas is processed to remove impurities and separate valuable liquids like condensates and Liquefied Petroleum Gas (LPG). The processed or “pipeline-quality” gas is then transported through pipelines or converted into LNG for export.

In Nigeria, the midstream and downstream sectors are regulated by the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), which licenses gas processing plants, transmission systems, and distribution networks. GSPAs in this segment often involve supply to LNG projects, power plants, or industrial consumers. Examples include the Nigeria LNG (NLNG)long-term supply contracts and domestic arrangements under the Domestic Gas Delivery Obligation (DGDO)scheme.

2.3 Downstream Sector

The downstream sector deals with marketing, distribution, and end-user consumption. It encompasses gas supply to power plants, industrial customers, and households through pipelines or compressed forms such as Compressed Natural Gas (CNG). In this segment, GSPAs define short or medium-term arrangements for regular gas supply, often linked to electricity generation or industrial use.

Recent policy initiatives such as the Decade of Gas (2021–2030) and the National Gas Expansion Programme(NGEP) have emphasized downstream development, particularly through CNG adoption for transport and LPG expansion for domestic energy use. These efforts reflect Nigeria’s ambition to deepen local gas utilization and reduce reliance on imported fuels.

2.4 The Role of Market Participants

Across the gas value chain, a variety of actors play crucial roles, including producers, gas aggregators, transmission operators, distribution companies, independent marketers, and end-users. The Gas Aggregation Company Nigeria Limited (GACN) acts as a key intermediary, a one-stop-shop for nationwide gas commercialization, ensuring balanced allocation of gas between domestic and industrial users, while promoting fair pricing and reliable supply.

Collectively, this structure forms the commercial and legal ecosystem in which Gas Sale and Purchase Agreementsoperate, linking upstream producers, midstream processors, and downstream consumers through a web of contractual obligations.

3. Legal and Regulatory Framework for Gas Commercialization

The effectiveness of any GSPA depends on the robustness of the legal and regulatory environment in which it operates. This framework establishes the rights and obligations of parties, determines the enforceability of contracts, and ensures consistency with national energy policies and international commercial standards. In both Nigeria and global gas markets, the legal framework combines statutory provisions, regulatory instruments, and contractual principles.

3.1. Nigerian Legal and Regulatory Framework

A. Petroleum Industry Act 2021 (PIA)

The Petroleum Industry Act (PIA) 2021 serves as the cornerstone of Nigeria's current gas regime. It restructured the industry by creating two key regulators, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), to oversee licensing, operations, and market conduct across the gas value chain.

Part IV of the PIA emphasizes the development of Nigeria's vast gas reserves and introduces a framework for domestic gas delivery obligations, gas pricing regulation, and open access to gas transportation infrastructure. The Act also establishes a Domestic Gas Aggregation Mechanism, empowering the Gas Aggregation Company Nigeria Limited (GACN) to coordinate and balance gas supply between producers and domestic users under contractual instruments like GSPAs.

B. National Gas Policy 2017

The National Gas Policy 2017 provides strategic direction for gas sector development, seeking to reposition Nigeria as a gas-based industrial economy. It encourages private investment through transparent market pricing and a shift from oil-linked gas policies to a market-driven commercial model. The policy promotes standardized contractual templates and model GSPAs to improve bankability and reduce transaction risks.

C. Other Key Regulations

Complementary instruments such as the Gas Pricing Regulations 2018, Midstream Gas Infrastructure Fund Regulations 2022, and the Natural Gas Pipeline Transportation Network Code establish guidelines for gas pricing, investment incentives, and third-party access to gas infrastructure. Together, these frameworks enhance predictability and investor confidence in gas commercialization projects.

3.2 International Legal Context

In long-term LNG projects, GSPAs are often shaped by industry practice and model contracts, such as those developed by the Association of International Petroleum Negotiators (AIPN) or some other bodies. These models guide key clauses like take-or-pay, force majeure, price review, and governing law and arbitration, ensuring uniformity and risk balance.

At the international level, GSPAs are largely governed by commercial contract principles under English law or other well-established legal systems chosen by the contracting parties. The United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts provide general guidance on formation, performance, and remedies for breach of cross-border contracts.

Dispute resolution in international gas contracts typically relies on arbitration, often seated in neutral venues such as London, Paris, or Singapore, under institutional rules like the London Court of International Arbitration (LCIA), ICC, or United Nations Commission on International Trade Law (UNCITRAL) frameworks. For instance, in P&ID v Federal Republic of Nigeria, the arbitration clause designated London as the seat of arbitration, illustrating how international gas contracts often select neutral venues under institutional frameworks such as the LCIA or UNCITRAL Rules. Arbitration offers parties confidentiality, enforceability under the New York Convention (1958), and flexibility to appoint energy-sector experts as arbitrators.

3.3 Harmonization Between Domestic and International Standards

For Nigeria, aligning domestic gas contracting standards with international best practices is essential to attract foreign investment. The PIA 2021, in conjunction with policies such as the Decade of Gas Initiative, seeks to harmonize regulatory procedures, promote transparency, and ensure that Nigerian GSPAs remain competitive in the global energy market. This harmonization ensures that contracts executed within Nigeria are bankable, enforceable, and compatible with cross-border financing and arbitration standards.

4. Key Clauses and Terms in Gas Sale and Purchase Agreements

As earlier noted, GSPAs are the backbone of commercial transactions in the natural gas industry. They define the rights and obligations of both parties, the seller (Producer/Supplier) and the buyer (Distributor/End-user/Marketer), and allocate risks that may arise throughout the life of the contract. While they are often customized to suit the peculiarities of each project, certain clauses consistently form the core of their legal and commercial framework. The following are some of the key provisions that determine the stability and bankability of these agreements.

4.1. Quantity and Delivery

This clause establishes the volume of gas to be supplied and the manner of delivery. It typically includes the Annual Contract Quantity (ACQ), the Daily Contract Quantity (DCQ), and the Delivery Point, where title and risk transfer from the seller to the buyer. Any ambiguity in these terms can lead to disputes, especially where supply interruptions occur or demand fluctuates. A clear delivery mechanism is therefore vital to ensure performance certainty and avoid claims of non-delivery or under-nomination.

4.2. Take-or-Pay

The take-or-pay provision is one of the most critical elements of a GSPA. It obliges the buyer to pay for a minimum quantity of gas, often 70–90% of the contracted volume, even if it does not take delivery of it. This ensures predictable revenue for the seller and enhances project bankability, especially in long-term gas supply arrangements. To protect the buyer, most contracts allow “make-up gas,” enabling unused volumes to be taken in subsequent periods.

In ENI Dación B.V. v PDVSA, the tribunal upheld the validity of a take-or-pay clause, emphasizing that such provisions represent a legitimate payment obligation rather than a penalty.

4.3. Pricing

Pricing provisions determines how the gas is valued and adjusted over time. They may be fixed, indexed to crude oil or inflation, or a combination of both. The Domestic Gas Pricing Regulations 2008 and the Petroleum Industry Act 2021 (PIA) establish benchmark prices for domestic gas supply to key sectors such as power and manufacturing. A well-drafted pricing clause should include review or reopener mechanisms, usually every three to five years, to reflect market changes. It should also address currency risks, especially for contracts denominated in U.S. dollars but payable in Naira.

4.4. Nomination, Quality and Specification

The seller typically nominates a quantity of gas for daily delivery. The buyer is obligated to take delivery if the nominated amount falls within the contract's limits. The Gas Quality clause ensures that gas delivered meets technical and safety standards suitable for processing and transportation. Typically, the gas must fall within a specified heating value range, remain above the hydrocarbon dew point to avoid condensation, and be free from solids, liquid water, and corrosive impurities such as hydrogen sulfide, carbon dioxide, and mercury. These standards safeguard pipeline integrity, protect processing equipment, and ensure compliance with market specifications.

4.5. Force Majeure

A force majeure clause exempts a party from liability when performance becomes impossible due to events beyond its control, such as natural disasters, war, or government actions. The clause must specify qualifying events and require timely notice and reasonable mitigation efforts. Nigerian courts, as seen in Globe Spinning Mills v Reliable Electrical Engineering Co., have held that force majeure will not apply unless expressly stated in the contract. Also, with the nature of the industry, anything beyond the control of anyone can happen hence, a proper draft ensures that parties are protected without providing a loophole for non-performance.

4.6. Default and Termination

This provision outlines what constitutes a default and the remedies available. Typical triggers include non-payment, failure to deliver, insolvency, or breach of material obligations. The clause usually provides for a notice and cure period (commonly 30 days) before termination. It may also include compensation or liquidated damages for early termination. Because GSPAs often forms the bedrock of a long-term project involving significant infrastructure investments, termination rights must be precisely defined to avoid premature contract collapse.

4.7. Governing Law and Dispute Resolution

Given the international character of gas trade, most GSPAs stipulate a neutral governing law (commonly English law, Nigerian law, or New York law) and an arbitration mechanism for resolving disputes. Arbitration is preferred for its confidentiality, enforceability under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, and flexibility in appointing sector experts. Common frameworks include the London Court of International Arbitration (LCIA), the International Chamber of Commerce (ICC), and the United Nations Commission on International Trade Law (UNCITRAL) Rules. In Nigeria Agip Exploration Ltd v NNPC, the Court of Appeal reaffirmed the enforceability of arbitration clauses in oil and gas contracts.

Now there are many more of these clauses but these ones are integral for a well drafted agreement. Each of these clauses performs a distinct but interrelated function in balancing commercial interests, legal certainty, and risk allocation. For Nigeria's gas sector, clear and well-drafted GSPAs are indispensable for attracting private capital and sustaining market confidence. Ultimately, a GSPA is not just a sale contract; it is a comprehensive risk management instrument that determines whether a gas project succeeds or fails.

5. Common Challenges in GSPAs

While GSPAs form an important part of gas commercialization, their effectiveness depends not just on technical drafting but on anticipating and managing real-world risks. In practice, several recurring pitfalls have caused major project delays, losses of revenue, and contractual disputes. This section highlights key pitfalls.

5.1 Ambiguity in Quantity and Delivery Obligations

Unclear definitions of Annual Contract Quantity (ACQ), Daily Contract Quantity (DCQ), or delivery points often lead to performance disputes. In ENI Dación B.V. v PDVSA, a disagreement arose over the buyer's obligation to take gas volumes due to vague take-or-pay wording, ultimately resulting in arbitration. Similarly, in Nigeria, inconsistent metering systems and delivery point disputes have frequently disrupted gas supply to power plants, emphasizing the need for detailed measurement and allocation clauses aligned with pipeline infrastructure realities.

5.2 Poorly Structured Pricing Mechanisms

A recurring challenge in Nigerian GSPAs is the reliance on fixed or government-controlled pricing without adequate review or indexation clauses. This often undermines the commercial viability of projects, especially under inflationary and currency-volatile conditions. For instance, under early domestic gas contracts prior to the Domestic Gas Supply Pricing Regulations 2008, fixed Naira-denominated prices became unsustainable as inflation eroded margins, causing

several producers to default on supply. Also in the case of Enterprise Energy v. Vietnam,a dispute arose over pricing and currency conversion, showing the importance of review mechanisms tied to transparent benchmarks.

5.3. Regulatory Misalignment and Policy Shifts

The evolving regulatory environment, particularly following the PIA 2021, has rendered some pre-existing gas contracts obsolete or commercially inconsistent. Contracts that failed to anticipate regulatory reforms, such as those executed under the old Petroleum Act, often lacked flexibility clauses for tariff adjustments, tax regime changes, or new licensing frameworks. In a landmark dispute, Total E&P Nigeria Limited vs. Federal Inland Revenue Service (FIRS), Total E&P Nigeria successfully argued that the contractual "Realisable price", not the government's "Official Selling Price", should govern petroleum profits tax calculations. The Tax Appeal Tribunal accepted this view, favoring Total and affirming that the Reasonable price aligned with the Memorandum of Understanding between Total and the Federal Government.

5.4. Credit and Bankability Risks

A frequent challenge in Nigerian gas projects is inadequate credit support, especially where state-owned entities or newly incorporated off-takers are involved. The absence of instruments such as letters of credit, parent company guarantees, or sovereign assurances undermines project financing.

The P&ID v. FRN saga is an extreme example, even though not a typical GSPA, it shows how poor contractual oversight and weak governmental capacity can expose states to multi-billion-dollar liabilities. For gas projects, financiers increasingly demand enforceable payment guarantees and escrow arrangements before committing capital.

6. Conclusion

Gas Sale and Purchase Agreements (GSPAs) are central to the commercialization of natural gas, defining how gas moves from producers to consumers within a framework of legal and commercial certainty. In Nigeria, their importance has grown under the Petroleum Industry Act 2021, the National Gas Policy, and the Decade of Gas Initiative, all aimed at unlocking the country's vast gas potential.

To be effective, GSPAs must strike a balance between stability and flexibility, clearly allocating risks, ensuring transparent pricing, providing credit security, and aligning with both domestic and international standards. As Nigeria expands its gas market locally and globally, adopting best practices in contract drafting, dispute resolution, and regulatory compliance will be key.

Ultimately, strong and well-drafted GSPAs are not just commercial tools, they are strategic instruments that will determine how successfully Nigeria leverages its gas resources for sustainable and inclusive economic growth.

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