



# **THE INDUSTRIAL GAS USERS ASSOCIATION – SOUTHERN AFRICA**



**IGUA-SA**

Industrial Gas Users Association - Southern Africa

## **MEMBERSHIP INFORMATION PACK & APPLICATION FORM**

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## **BACKGROUND**

The IGUA-SA was established in 2018, and is a voluntary, non-profit association consisting of the gas energy consumers in Southern Africa.

Its members have the view that:

1. a healthy and effective gas energy industry is essential to the long term economic growth and social well-being of all South Africans;
2. the health and effectiveness of the gas energy industry can be enhanced by active involvement, engagement and participation in energy-related activities which have a bearing on the business of gas energy users and by co-operation with other stakeholders; and
3. that a strong synergy on energy-related matters between gas energy users will allow for a common vision on the future of this energy sector.

It is focused on gas energy that include all hydrocarbon gases transported by pipeline, including natural gas, artificial gas, hydrogen rich gas, methane rich gas, synthetic gas, coal bed methane gas, liquefied natural gas, compressed natural gas, re-gasified liquefied natural gas, liquefied petroleum gas or any combination thereof.

The Southern & East African region has combined natural gas resources that rival many large global natural gas deposits.

Yet, the South African market for natural gas is relatively small, underdeveloped and in its infancy. Demand for natural gas continues to outstrip supply - a situation that is likely to become more pronounced as electricity use as primary energy becomes more inefficient over time. Furthermore, the natural gas market in South Africa is characterised by a regulatory environment that is steadily becoming more complex from a technical and economical perspective; a market place that is imperfect with evidence of monopolistic pricing and supplier concentration; and uncertainty over the long-term availability of natural gas to industrial users.

The development of the natural gas industry holds significant opportunity for socio-economic growth in South Africa. It has the potential to ensure long term fixed capital investment and rendering the mining, energy and manufacturing sectors more efficient and globally competitive. Although the South African Government is committed to diversifying the energy mix away from coal to cleaner energy, there are still several difficulties in the way of achieving the full economic potential for the supply and consumption of natural gas in South Africa. These include the lack of clear and appropriate supporting policies that will support further investment in the sector; the uncertainties with regard to the availability of secure and reliable supply of natural gas; and the determination of long term demand for natural gas in the region.

Provided that policymakers focus on understanding what is needed to leverage these resources to stimulate economic growth, the risk remains that natural gas resources remain underdeveloped, or that it will be exported elsewhere with little consideration for the potential it holds for significantly stimulating economic growth in the region.

Large scale natural gas users remain cognisant of the above as it is desirous of addressing the mix in energy usage to cleaner and more efficient sources such as natural gas, to mitigate business risk, and to define its long-term energy dependent fixed capital investment programs.

The IGUA-SA has significant technical and economic expertise on gas energy matters and aims to be a respected and non-partisan organisation dedicated to working towards a sustainable gas energy industry.

## **CONSTITUTION, OBJECTIVES AND GOVERNANCE OF THE IGUA-SA**

The IGUA-SA is governed by a formal constitution as adopted by its founding members and provides for a formal platform or association that provides the required focus and leverage to constructively engage gas industry stakeholders such as National Government, Department of Energy, Department of Trade & Industry, NERSA, current and new entrant gas suppliers etc.

The constitution covers, amongst other, the following: (refer Annexure A):

1. The formal establishment of the IGUA-SA as association;
2. Confirmation of its legal and non-profit status;
3. The rights and liabilities of members;
4. Objectives of the IGUA-SA ;
5. Powers of the IGUA-SA ;
6. Subscription, qualification, admission and termination of membership;
7. The appointment and powers of a management committee (Exco), chairperson and vice-chair person;
8. Manner, quorum, frequency of Exco meetings, annual general meetings and special general meetings and voting procedures;
9. Compliance with the Competition Act;
10. Amendments to the constitution; and
11. Winding up of the IGUA-SA .

## **ACTIVITIES & FOCUS AREARS OF THE IGUA-SA**

<b>Secretariat Function</b>	<p>The IGUA-SA is managed in accordance with the agreed and ratified Constitution, that includes:</p> <ol style="list-style-type: none"> <li>1. membership recordkeeping,</li> <li>2. accounting services (including project budgets),</li> <li>3. treasury services,</li> <li>4. statutory returns and compliances,</li> <li>5. provision of a national domiciled office,</li> <li>6. basic archiving,</li> <li>7. event management i.e. Annual General Meeting, General Meetings, Exco meetings,</li> <li>8. representing the IGUA-SA for banking and tax legislation purposes,</li> <li>9. provide an annual audit using and independent chartered accountant firm,</li> <li>10. ensuring compliance with the Competition Act,</li> <li>11. and provision of hot desks and meeting room for members and consultants as required from time to time.</li> </ol>
<b>Special Project Management Services</b>	<p>The IGUA-SA will from time to time embark on specific projects to provide specialist legal, technical or economic insights to advance its agenda. For example, this may take the form of legal proceedings and/or economic investigations to make representations to Government, Regulators or other interested parties.</p> <p>These special projects are from time to time identified as part of the strategic objectives of the IGUA-SA and approved by the Exco based on associated proposals, discussions and budgets i.e. for external subject matter expertise on policy, legislation or discussion papers.</p>

<b>Policy &amp; Technical Services</b>	<p>A critical function of the IGUA-SA is to engage with National Government, NERSA and other stakeholders on policy, legislation, pricing and discussion papers which are published from time to time. Through the IGUA-SA, the interest of industry will be represented at appropriate forums with the Department of Energy, Department of Trade &amp; Industry, Business Unity South Africa etc. IGUA-SA is aware of and submit timeous and relevant comment on these policy issues through following a typical cycle i.e.:</p> <ol style="list-style-type: none"> <li>1. online information monitoring and development of strategic relationships with key stakeholders to have the earliest knowledge of any policies, legislation and discussion papers published for public comment by NERSA, Government or any relevant stakeholder</li> <li>2. notification to IGUA-SA of the call for comment including the due date for submission as well as the internal due date for members comments .</li> <li>3. appropriate kick-off discussion meetings are held through a Special General Meeting (for all members) or as part of the regular Exco meetings.</li> <li>4. members' initial comments are consolidated and edited into the first draft response document which is then circulated for further comments.</li> <li>5. following at least one round-robin consultation with the Exco and members, final comments are consolidated and edited into the final draft for approval by the Exco before submission to the relevant stakeholder entity.</li> <li>6. from time to time it may be required to provide subject matter expertise on these policies, legislation or discussion papers in the case where the secretariat does not have these skills internally. In such cases, the secretariat will project manage this work using much the same process of round-robin comment and consensus. Experience has proven that this method is the most inclusive when dealing with multiple inputs across multiple sectors.</li> <li>7. coordination and collation of member's data for technical studies to support technical work of the IGUA-SA.</li> <li>8. annual member surveys if required to gather and collate data from members relevant to the objectives of the IGUA-SA.</li> </ol>
<b>Communication</b>	<p>Keep members informed through the most appropriate communication channels. In addition to the development of an appropriate branding, these channels include regular:</p> <ol style="list-style-type: none"> <li>1. newsletters (summary of the projects, engagements, workshops, conferences and interests of the IGUA-SA);</li> <li>2. annual reports;</li> <li>3. media and government notice alert service;</li> <li>4. website development and maintenance; and</li> <li>5. electronic document depository and library service.</li> </ol>
<b>Spokesperson</b>	<p>The Project Management Office (PMO) provides a point of contact for all internal and external enquiries made to the group. In this way the PMO provides a filtering and screening service to the group to IGUA-SA and ensure that enquiries and information reach the right person and audience.</p> <p>Accordingly, the PMO provides an experienced, independent Spokesperson to deal with any media or other external inquiries directed to the group; speaking on behalf of the IGUA-SA.</p> <p>In addition, the Spokesperson acts as a liaison with multiple stakeholders including government departments, building and maintain relationships on behalf of the IGUA-SA.</p>
<b>Supply side</b>	<p>As demand for gas continues to outstrip supply, coupled with limited resource development, common ground and clarity needs to be found between current suppliers, users and stakeholders in the gas value chain. Industry also need to engage new potential entrants to the gas market with a view to guide and assist these entities to develop the South African gas market to its full potential.</p>

<b>Economic and commercial</b>	Key to the development of the natural gas market in South Africa, is an understanding of the global natural gas markets, global pricing and cost drivers. The development and establishment of a library of market information accessible to members that assists with benchmarking, other commercial matters and respective price negotiations between members and gas suppliers. In addition, it will be imperative to also develop gas price forecasting mechanisms that will be able to forecast prices up to 5 years in advance based on underlying macro-economic data.
<b>Engagements &amp; Representation</b>	It is a common cause that members of industry often have other commitments that precludes appropriate representation at certain levels. The nurturing of relationships with key business associations i.e. <ol style="list-style-type: none"> <li>1. BUSA,</li> <li>2. BLSA;</li> <li>3. NERSA, DTi, DoE.</li> <li>4. NEPAD</li> <li>5. various business forums, engagements and attendance on behalf of the IGUA-SA members at relevant workshops, conferences and task teams.</li> </ol>

## **MEMBERSHIP FEES & OTHER INFORMATION**

Membership to IGUA-SA is at the discretion of the Exco and consists of five categories of membership:

<b>Category</b>	<b>Description</b>	<b>Fees (payable in advance, VAT excl)</b>
<b>A: Gas user membership</b>	Gas end users (current & future) of volumes in excess of 400 000GJ/a, voting rights, reserve right of admissions, eligible for Exco representation, optional participation in special projects, not vertically integrated	R125 000 (per 6 months); or R250 000/a
<b>B: Gas user membership</b>	Gas end users (current & future) of volumes of 400 000GJ/a or less, no voting rights, reserve right of admissions, not eligible for Exco representation, optional participation in special projects, not vertically integrated	R67 500 (per 6 months); or R125 000/a
<b>Industry membership</b>	New gas suppliers, gas traders, new gas transmission/distribution organisations, not eligible for Exco representation, optional participation in special projects.	R75 000/a
<b>Associate membership</b>	Consultants, professionals in the operating, financial, marketing and legal communities; and others who provide services to the natural gas industry, not eligible for Exco representation, optional participation in special projects.	R25 000/a
<b>Affiliate membership</b>	International organisations that are interested in natural gas activities in Southern Africa, not eligible for Exco representation, optional participation in special projects.	R50 000/a

The membership fees are reviewed on a regular basis by the IGUA-SA Exco and may be amended based on membership numbers and specific output requirements from time to time. Fees are levied on a six-month basis from April to September; and October to March. If an organisation becomes a member within a particular six-month period, fees will be calculated pro rata for the remaining months of the six-month period.

Participation and contribution in respect of IGUA-SA is based on typical meeting schedule and attendance as follows:

1. Executive committee (Exco) meetings: held monthly, or as determined by the Exco from time to time; approval and implementation of strategy & initiatives; management decisions in terms of IGUA-SA Constitution.
2. Strategy & information meetings: held monthly, or as determined by the Exco from time to time; general feedback on workstreams, status updates, proposals on new initiatives, information sharing and industry updates.
3. Industry meetings: held as determined by Exco from time to time; general forums and information sharing sessions with external participation on invitation, broad non-member participation.
4. AGM: held bi-annually in terms of the IGUA-SA Constitution.
5. Events: industry events and conferences as arranged by IGUA-SA from time to time.

Category	Exco meetings	Strategy & information meetings	Industry meetings	AGM's	Events
A & B Gas user membership	✓	✓	✓	✓	✓
Industry membership		✓	✓	✓	✓
Associate membership		✓	✓	✓	✓
Affiliate membership		✓	✓	✓	✓

Other important information include:

1. IGUA-SA requires at least two (or more) member representatives from each organisation – one primary and one secondary – to be nominated.
2. IGUA-SA communicates with members via email - announcements, notices and calls for comment; a member access portal to be developed for document repository and sharing; and monthly newsletters (except for those months when there is a General Meeting).
3. At IGUA-SA's Annual General Meeting (AGM), date to be confirmed, the work plan and budget for the upcoming year is agreed with members and the Exco is nominated to serve for the year.
4. The IGUA-SA Exco is comprised of at least 5 elected member representatives and their proxy to oversee the day-to-day running of the IGUA-SA and its engagements throughout the year. Any member can attend any or all Exco meetings even if they have not been elected to the Exco. The Chairman and Vice-Chair are elected from within the Exco. The Exco meets regularly in Johannesburg.
5. In addition to the AGM, there are at least two General Meetings each year, one in June and one around October – these are primarily information sharing meetings to ensure that all members are aware of the work and engagement of the IGUA-SA throughout the year and to raise any items and issues. Sometimes an external stakeholder or consultant may be invited to make a special presentation at a General Meeting or Exco. These are also usually held in Johannesburg.

## **CONTACT INFORMATION**

Interested members can contact any Exco member or the IGUA-SA Executive Officer at:

<b>Name</b>	<b>Designation</b>	<b>Email</b>	<b>Phone</b>
<b>Jaco Human</b>	Executive Officer	Jaco.human@igua-sa.org	+27 83 443 9275
<b>Thomas Shaw</b>	Chairperson	thomas.shaw@ardaghgroup.com	+27 83 440 6983
<b>James de Smidt</b>	Treasurer	jdesmidt@pg.co.za	+27 83 949 1885
<b>Lance Foxcroft</b>	Exco member	lfoxcroft@ceramic.co.za	+27 83 265 3656
<b>Rodney Rogan</b>	Exco member	rrogan@illovo.co.za	+27 84 962 5276
<b>Francois vd Bank</b>	Exco member	francois.vanderBank@arcelormittal.com	+27 83 450 6812
<b>Mark Miller</b>	Exco member	mark.miller@mondigroup.co.za	+27 82 446 9764

## **ANNEXURE A: MEMBERSHIP APPLICATION**

In terms of the IGUA-SA Constitution, the following:

1. Each applicant shall be required to sign and to complete such application form (see below) correctly and in full and, in addition, upon request, to supply such further information as the Exco may require to demonstrate the applicant's eligibility.
2. Applicants for membership shall be approved or declined at the discretion of the Exco.
3. The Exco will in making decisions act reasonably and without bias or prejudice.

With reference to the above, you are requested to complete the form below:

<b>Organisation Information</b>		
Organisation name:		
Organisation address:		
Phone:	E-mail:	Mobile:
Registration Number:		
VAT No:		
Designation:		
<b>Nature of Organisation</b>		
Nature of business:		
Brief motivation for applying for IGUA-SA membership:		
Estimated gas consumption in GJ/a (where applicable):		

## Signatures

Responsible Person: Name and Surname:

Signature of applicant:

Date:

Name of other representatives:

**ANNEXURE B: IGUA-SA CONSTITUTION**

**CONSTITUTION**

**OF THE**

**INDUSTRIAL GAS USERS ASSOCIATION - Southern Africa**  
**(IGUA-SA)**

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## 1. ESTABLISHMENT OF ASSOCIATION

- 1.1. A number of industrial gas energy users, having the view that:
- 1.1.1. a healthy and effective gas energy industry is essential to the long term economic growth and social well-being of all South Africans;
  - 1.1.2. the health and effectiveness of the gas energy industry can be enhanced by active involvement, engagement and participation in energy-related activities which have a bearing on the business of gas energy users and by co-operation with other stakeholders; and
  - 1.1.3. a strong synergy on energy-related matters between gas energy users will allow for a common vision on the future of this energy sector;
- have associated themselves in an association referred to as the INDUSTRIAL GAS USERS ASSOCIATION - Southern Africa.

## 2. INTERPRETATION

- 2.1. In this Constitution, unless the context otherwise requires:
- 2.1.1. "**Committee**" means the committee appointed in terms of clause 14;
  - 2.1.2. "**Committee Member**" means the duly appointed representative of a Member on the Committee as provided in clause 14.2;
  - 2.1.3. "**Competition Act**" means the Competition Act, 89 of 1998, as amended;
  - 2.1.4. "**Gas**" means all hydrocarbon gases transported by pipeline, including natural gas, artificial gas, hydrogen rich gas, methane rich gas, synthetic gas, coal bed methane gas, liquefied natural gas, compressed natural gas, re-gasified liquefied natural gas, liquefied petroleum gas or any combination thereof;
  - 2.1.5. "**General Meeting**" includes the Annual General Meeting and Special General Meetings;
  - 2.1.6. "**IGUA-SA**" means the INDUSTRIAL GAS USERS ASSOCIATION - Southern Africa;
  - 2.1.7. "**including**" means "including, without limitation to the generality of the foregoing" and "**includes**" has a corresponding meaning;
  - 2.1.8. "**Member/s**" means those persons, whether individuals, partnerships, companies or other bodies corporate, who have agreed to associate together as the IGUA-SA;
  - 2.1.9. "**Rules on Competition Compliance**" means the rules to be followed by the Members at each IGUA-SA meeting to ensure compliance with the provisions of the Competition Act, as set out in more detail in clause 29; and
  - 2.1.10. "**Sub-Committee**" means any Sub-Committee appointed in terms of clause 0.

## 3. LEGAL STATUS

- 3.1. The IGUA-SA is and shall continue to be a distinct and separate legal entity and body corporate, with the power to acquire, to hold and to alienate property of every description whatsoever, and with the capacity to acquire rights and obligations relating to the IGUA-SA's mandate.
- 3.2. The IGUA-SA shall be entitled, in its own name, to sue or be sued and to initiate or defend any legal proceedings, including by way of arbitration, mediation or other similar proceeding.

## 4. NON-PROFIT STATUS

- 4.1. Notwithstanding anything to the contrary herein contained, the IGUA-SA is not formed and does not exist for the purpose of carrying on any business that has as its object the acquisition of gain by the IGUA-SA or the Members.
- 4.2. The income and assets of the IGUA-SA shall be applied solely for investment and/or for the promotion of the objectives for which the IGUA-SA is established.
- 4.3. Save as provided for elsewhere in this Constitution, no part of the income or assets of the IGUA-SA shall be paid, directly or indirectly, by way of dividend, donation or otherwise to any Member or to any person.

- 4.4. The IGUA-SA shall not be entitled to carry on any trading or other profit making activities or participate in any business, profession or occupation carried on by any of its Members or provide to any of its Members financial assistance or any premises or continuous services or facilities for the purpose of carrying on any business, profession or occupation.

## 5. OBJECTIVES

- 5.1. Subject to the Rules on Competition Compliance and the Competition Act, the objectives of the IGUA-SA shall be to represent the interests of the Members insofar as the supply, transmission, distribution, consumption, usage and regulation of gas energy in Southern Africa may be concerned, including to:
- 5.1.1. provide specialized technical contributions to critical stakeholders in the gas energy-related industry;
  - 5.1.2. promote the development and maintenance of a healthy and sustainable gas energy-related industry throughout the Southern African business environment;
  - 5.1.3. unlock value in the gas energy sector by identifying and pursuing opportunities for improving efficiency and effectiveness;
  - 5.1.4. promote the establishment of sound relationships within the gas energy-related industry between suppliers and consumers of energy and energy-related producers as well as other stakeholders;
  - 5.1.5. provide input into proposed and existing legislative and regulatory measures pertaining to the gas energy industry in the Republic of South Africa;
  - 5.1.6. promote a healthy and beneficial communication structure and atmosphere with regard to all gas energy-related matters;
  - 5.1.7. facilitate the exchange of ideas and act as a clearing house for ideas, priorities and problems in the field of the external and internal supply, efficient consumption and storage of gas energy;
  - 5.1.8. establish and publish appropriate information channels for the benefit of the Members; and
  - 5.1.9. avoid unnecessary duplication of effort in the field of gas energy.
- 5.2. The major interests of the IGUA-SA, which will be reviewed annually and are subject to change, include:
- 5.2.1. the long term sustainable quality of gas supply;
  - 5.2.2. the long term sustainable reliability and availability of gas supply;
  - 5.2.3. equitable risk allocation in gas supply contracts in terms of existing and future legislation and/or regulation;
  - 5.2.4. internationally competitive gas tariffs; and
  - 5.2.5. technically feasible Energy Policy promotion and development.

## 6. POWERS OF THE IGUA-SA

- 6.1. The IGUA-SA shall have all such powers as are necessary for the proper attainment of the objectives set out in clause 5 above including, in particular, the following:
- 6.1.1. to raise, receive and hold funds, from any lawful source, for the purposes of the IGUA-SA and to manage, administer and disburse those funds in pursuance of the objectives of the IGUA-SA and for administrative purposes;
  - 6.1.2. to acquire movable property by purchase, lease, donation, bequest, exchange or in any lawful manner whatsoever, and to sell, lease, donate, give in exchange or in any lawful manner dispose of such movable property;
  - 6.1.3. to use any movable property acquired by it for any purpose consistent with the objectives of the IGUA-SA;
  - 6.1.4. to raise, accept and acquire, for the purpose of the IGUA-SA, any monies, gifts, bequests or payments from any persons or association of persons, provided that the IGUA-SA shall not

accept any donation which is unilaterally irrevocable at the insistence of the donor thereof, or which seeks to impose a condition on the IGUA-SA which is inconsistent with the terms and conditions of this Constitution;

- 6.1.5. to borrow funds from any source, for the purposes of the IGUA-SA, consistent with the objectives of the IGUA-SA, upon such terms and conditions as the IGUA-SA may decide and to secure the repayment of such funds in any manner considered desirable by the Members over a period of no more than 5 (five) years;
- 6.1.6. from time to time to invest all or any part of the assets of the IGUA-SA, including the proceeds of any realization of any property of the IGUA-SA, in or with financial institutions as defined in Section 1 of the Financial Institutions (Investment of Funds) Act of 1984 and realize and vary any such investments from time to time;
- 6.1.7. to open and operate upon any accounts in banking institutions and other financial institutions, as further detailed in clause 28 below;
- 6.1.8. to enter into partnerships, joint ventures and similar contracts and relationships with others to achieve the objects of the IGUA-SA and to exercise all the rights and duties arising therefrom; and
- 6.1.9. generally to do all things necessary to give effect to the objectives of the IGUA-SA.

## **7. ADMISSION TO MEMBERSHIP**

- 7.1. Other than in respect of the founding members listed in Annexure A, membership of the IGUA-SA shall be by way of application on the form from time to time prescribed for this purpose by the Committee.
- 7.2. Each applicant shall be required to sign and to complete such application form correctly and in full and, in addition, upon request, to supply such further information as the Committee may require to demonstrate the applicant's eligibility.
- 7.3. The Committee will establish a set of objective, substantive and procedural criteria for the admission of new Members.
- 7.4. Applicants for membership shall be approved or declined, as the case may be, at the discretion of the Committee.
- 7.5. The Committee will in making decisions in terms of this clause 7, act reasonably and without bias or prejudice.

## **8. RIGHTS AND OBLIGATIONS OF MEMBERS**

- 8.1. Membership of the IGUA-SA does not and shall not give any Member a right to any of the monies, property or assets of the IGUA-SA but only confers on such Members the privilege of membership subject to the terms and conditions hereof.
- 8.2. A Member shall be bound by the provisions of this Constitution, and any rules and by-laws of the IGUA-SA in force from time to time.
- 8.3. No Member shall be absolved from the effect and the application of this Constitution, the rules and/or by-laws by reason of the fact that it may not have received a copy thereof.

## **9. LIABILITY OF MEMBERS**

- 9.1. The liability of any Member to the IGUA-SA is limited to the amount of any unpaid subscriptions or any other monies, if any, owing to the IGUA-SA.
- 9.2. No Member shall be liable for any obligations incurred by the IGUA-SA in its own name.

## **10. INDEMNITY**

Every Member, Committee Member, officer or servant of the IGUA-SA shall be indemnified by the IGUA-SA against all costs, losses and expenses which it may incur or become liable for by reason of any act or thing done by him/her or it in the discharge of his/her or its duties, unless the loss in question

is caused by his/her or its gross negligence or dishonesty or breach of trust.

## 11. **TERMINATION OF MEMBERSHIP**

- 11.1. Any Member may resign its membership by written notice to the secretary of the IGUA-SA given prior to the date upon which its next subscription becomes due.
- 11.2. Any Member's membership of the IGUA-SA may be terminated should that Member, in the reasonable opinion of the Committee:
- 11.2.1. commit any breach of this Constitution or the rules or by-laws of the IGUA-SA; or
  - 11.2.2. fail to make payment of any money due to the IGUA-SA after written notice to do so; or
  - 11.2.3. no longer meet the IGUA-SA membership eligibility criteria set out pursuant to clause 7 above; or
  - 11.2.4. contravene any provisions of the Competition Act or the Rules on Competition Compliance; or
  - 11.2.5. be guilty of any improper conduct or of behaving in a manner unbecoming a Member of the IGUA-SA or prejudicial to the interest and reputation of the IGUA-SA; or
  - 11.2.6. behave in a manner which is offensive or unbecoming towards any other Member or Committee Member of the IGUA-SA.
- 11.3. The hearing and investigation of an assertion by any Member that grounds exist for the termination of the membership of another Member, and the procedure to be adopted in connection therewith, shall be at the sole discretion of the Committee provided however that the Member whose termination is sought shall be informed in writing of the nature of the grounds of termination, and provided further that such Member shall be afforded an opportunity to reply to any such grounds in writing.
- 11.4. In addition to its power to terminate a Member's membership, the Committee may, through the secretary in writing, call upon a Member in respect of whom, in its opinion, any of the grounds set out in clause 11.2 apply, to resign, or may reprimand, or caution such Member.
- 11.5. A Member shall be notified in writing of the decision of the Committee under this rule.

## 12. **APPEAL**

- 12.1. Any Member whose membership is terminated or is called upon to resign or is reprimanded or cautioned by the Committee in terms of clause 10 above, shall have the right, within 21 (TWENTY ONE) days of receipt of any written notice contemplated in clause 10 above, to lodge an appeal in writing to that decision of the Committee and to call for a Special General Meeting of the Members.
- 12.2. This Special General Meeting shall be convened at the earliest possible convenience by the secretary upon receipt of the notice of appeal.
- 12.3. The notice of an appeal shall not have the effect of suspending the operation of such decision pending the hearing of the appeal.

## 13. **SUBSCRIPTIONS**

- 13.1. The annual subscription for membership for any 1 (ONE) year shall be such sum as the Committee may from time to time determine, as approved by at least 75% (SEVENTY FIVE PERCENT) of the Members.
- 13.2. The annual subscriptions are to be determined by the Committee in respect of the forthcoming financial year and by not later than 15 February of the previous financial year.
- 13.3. Subscriptions shall be payable by the Members within 30 (THIRTY) days of the commencement of the relevant financial year or the first day of membership, as the case may be.
- 13.4. Should a Member join the IGUA-SA during the first half of any financial year, the full annual subscription shall be payable. Should a Member join the IGUA-SA in the second half of any financial year, but prior to 30 November of that year, 50% (FIFTY PERCENT) of the annual subscription shall be payable. Should a Member join the IGUA-SA after 30 November of any year, no subscription shall be payable by that Member in respect of that financial year.
- 13.5. Notwithstanding clause 13.1 above, the Committee shall be entitled to request contributions, called special levies, from the Members to fund particular projects in respect of which the annual

subscriptions will be insufficient, provided that each project, to which such special levies relate, must have a detailed budget and project charter approved by at least 75% (SEVENTY FIVE PERCENT) of the membership at a General Meeting.

13.6. The Members shall pay such approved special levies within 30 (THIRTY) days after receipt of written notification from the secretary requesting payment of such special levy.

13.7. To the extent that any Member has not made payment of any subscription or special levy imposed upon such Member in terms of the above, within 14 (FOURTEEN) days of written notice thereof, and to the extent that the Committee has not exercised its power in terms of clause 10 above, such Member's rights of membership shall be suspended.

#### 14. **COMMITTEE**

14.1. At the Annual General Meeting, Members will have the opportunity to vote for at least 5 (FIVE) Committee Members by majority vote of those present (in person or by proxy) and voting. For continuity purposes, as far as possible, at least 2 (TWO) Committee Members should be re-elected. Committee membership is conditional on subscriptions being up to date.

14.2. The Committee in turn shall, by a majority vote, elect the following office bearers of the IGUA-SA, who shall hold office for 12 (TWELVE) months from the date of the appointment (or such shorter period as the Committee may, on such appointment, decide) and who are eligible for re-appointment:

14.2.1. Chairman;

14.2.2. Vice-Chairman; and

14.2.3. Treasurer.

14.3. Save in respect of the first 2 (TWO) years of the IGUA-SA's existence, the Chairman may only be elected if s/he has been Vice-Chairman previously or has been a Committee Member for 2 (TWO) or more years.

14.4. Committee Members shall hold their appointment for 1 (ONE) year or until the end of the financial year of the IGUA-SA whichever occurs first.

#### 15. **POWERS OF THE COMMITTEE**

15.1. The management and control of the affairs of the IGUA-SA shall vest in the Committee, subject to the rights and directives of the Members at a General Meeting. In addition to the general powers and authorities hereby conferred on the Committee, and without limiting such powers and authorities, the Committee shall have the following special powers:

15.1.1. to employ agents and/or consultants as they may think fit in accordance with the approved budget, to carry out the objectives of the IGUA-SA upon such terms and conditions as they may from time to time consider desirable, to terminate such employment, and to pay their salaries, fees, commissions, remuneration or other charges out of the funds of the IGUA-SA and to confer upon the agents or consultants so appointed the right to exercise any discretion which may be vested in the Committee, provided that such employment must be justified and transparent to the membership;

15.1.2. to execute in the name of the IGUA-SA any contracts;

15.1.3. to refer any claim or demand by or against the IGUA-SA to litigation and to perform or execute any judgment, award or decision;

15.1.4. to make and give receipts, releases and any other discharges for monies payable to the IGUA-SA and for the claims and demands of the IGUA-SA;

15.1.5. to appoint Committee Members who shall be entitled, on behalf of the IGUA-SA, to sign bills of exchange, cheques, receipts, negotiable instruments and make electronic funds transfers;

15.1.6. to make recommendations regarding the making, variation and/or repeal of rules and by-laws for the regulation of the affairs of the IGUA-SA, its officers and servants, provided that such are not inconsistent with or contrary to the Constitution;

15.1.7. to appoint persons with special skills and expertise, deemed to be useful to the Committee and its activities, to be non-voting Members of the Committee and to terminate such appointments from time to time;

- 15.1.8. to appoint and to delegate to any Sub-Committee or Sub-Committees all or any of the authorities conferred on the Committee by these rules comprising Committee Members and/or other appropriate persons;
- 15.1.9. to sign up the IGUA-SA as a member of other organizations or associations; and
- 15.1.10. to authorize any person or persons to act on behalf of the IGUA-SA and to sign all such documents and to take all such steps as may be necessary in connection with any legal proceedings without binding any individual Member in any way.

## 16. **SIGNATORIES TO CONTRACTS**

All contracts and other documents pertaining to the IGUA-SA's affairs that are to be signed on behalf of the IGUA-SA shall not be binding on the IGUA-SA unless signed by the Chairman and the Treasurer, or either of them together with one other Committee Member or anyone else appointed in writing by the Chairman for this purpose.

## 17. **RECORDS**

- 17.1. The following records shall be properly kept and maintained by the Committee and shall be made available to any Member for inspection on reasonable request:
  - 17.1.1. a register of Members and their physical, postal and email addresses;
  - 17.1.2. copies of notices for all General Meetings and the Committee meetings;
  - 17.1.3. attendance and apologies registers of all General Meetings and the Committee meetings;
  - 17.1.4. minutes of all General Meetings and Committee meetings;
  - 17.1.5. books of account and supporting vouchers, as further detailed in clause 28 below; and
  - 17.1.6. all other records required by law or necessary or desirable for the proper and efficient conduct of the affairs of the IGUA-SA.

## 18. **SUB-COMMITTEES**

- 18.1. In amplification of the power referred to in clause 15.1.8 above:
  - 18.1.1. each Sub-Committee shall have such powers as may be conferred on it at the time of its appointment or thereafter by the Committee;
  - 18.1.2. each Sub-Committee shall be subject to such rules or instructions as may from time to time be framed, given or approved by the Committee;
  - 18.1.3. each Sub-Committee shall be accountable to, and be subject to the overall supervision of the Committee;
  - 18.1.4. the Committee may at any time disband a Sub-Committee and/or alter or amend a Sub-Committee's terms of reference; and
  - 18.1.5. each Sub-Committee shall submit such reports of its activities to the Committee as the Committee shall from time to time require.

## 19. **MEETINGS OF THE COMMITTEE**

- 19.1. The quorum for all meetings of the Committee shall be a majority of the Committee Members from time to time, provided that a quorum for a meeting where a resolution is tabled that relates to the termination of membership, amendment of the Constitution of the IGUA-SA, the winding up of the IGUA-SA, subscriptions, special levies or other financial issues that may affect the IGUA-SA, shall be 75% (SEVENTY FIVE PERCENT) of the Committee Members from time to time.
- 19.2. The Committee may meet as often as it deems necessary, but it shall meet at least once every quarter.
- 19.3. 14 (FOURTEEN) days' written notice at least shall be given of all meetings of the Committee, unless the Committee Members agree to accept shorter notice.
- 19.4. The Committee shall ensure there at least 2 (TWO) General Meetings are held per year, including the Annual General Meeting.
- 19.5. Minutes of each meeting of the Committee shall be prepared and delivered to each Member at least

3 (THREE) days prior to the date of the next meeting, and they shall be approved at a subsequent meeting of the Committee.

- 19.6. Each Committee Member shall have 1 (ONE) vote.
- 19.7. The Chairman shall, in addition to his deliberative vote, also have a casting vote.
- 19.8. A resolution in writing signed by all the Committee Members shall be valid and effectual as if it had been passed at a meeting of the Committee duly called and constituted.
- 19.9. The secretary of the Committee shall convene a special meeting of the Committee at the request of the Chairman, or on the written request of any 2 (TWO) or more Committee Members.
- 19.10. Committee Members serve in their representative capacity and not in their personal capacity.
- 19.11. The proceedings of the Committee shall be valid notwithstanding any temporary vacancy in the Committee.

## 20. REIMBURSEMENT OF MEMBERS OF THE COMMITTEE

- 20.1. The IGUA-SA in a General Meeting may from time to time determine the nature or the extent, if any, of the reimbursement of the Committee Members in respect of any necessary disbursements they have incurred in attending meetings or otherwise in the execution of their duties.
- 20.2. No Committee Member may incur any expense without the prior authorisation of the Committee.

## 21. ANNUAL GENERAL MEETING

- 21.1. The Annual General Meeting of the Members of the IGUA-SA shall be held at such time and place as the Committee may determine but as soon as may be possible after the 1st (FIRST) day of March in each year.
- 21.2. Notice of the date, time and place for holding of the Annual General Meeting shall be sent by email to each of the Members of the IGUA-SA at its nominated email address as appearing in the register of Members, at least 21 (TWENTY ONE) days before the date of the holding of such meeting.
- 21.3. Notice of the terms of any resolution to be proposed at an Annual General Meeting, other than concerning ordinary and general business, shall be lodged with the secretary at least 14 (FOURTEEN) days before the date fixed for such meeting.

## 22. PROCEEDINGS AT ANNUAL GENERAL MEETING

- 22.1. At the Annual General Meeting, the Committee shall present an audited set of financial statements drawn as at 28 or 29 February of the preceding financial year, together with its report.
- 22.2. The ordinary business to be carried out at an Annual General Meeting shall be as follows:
  - 22.2.1. to confirm the minutes of the previous Annual General Meeting and any Special General Meeting held since the previous Annual General Meeting;
  - 22.2.2. to receive and consider the report of the Committee and the financial statements for the preceding financial year;
  - 22.2.3. to receive and note a summary report of all activities, listed by project, of the IGUA-SA;
  - 22.2.4. to receive and approve the annual budgets, the subscriptions and special levies of the IGUA-SA;
  - 22.2.5. to elect the Members of the Committee;
  - 22.2.6. to consider and to pass, with or without amendment, any proposals or resolutions concerning the affairs of the IGUA-SA of which due and proper notice has been given; and
  - 22.2.7. to conduct any other business concerning the affairs of the IGUA-SA, including the appointment, conditions and remuneration of the Secretariat of the IGUA-SA.

## 23. SPECIAL GENERAL MEETING

- 23.1. The Committee may at any time through the secretary, call a Special General Meeting of the Members.
- 23.2. A majority of the Members may, by notice to the secretary, signed by not less than a majority of the Members, request a Special General Meeting specifying any resolution or resolutions proposed to be

moved or other business to be discussed.

- 23.3. The secretary shall convene a Special General Meeting by posting, faxing or e-mailing a copy of notice to that effect to each Member at least 14 (FOURTEEN) days prior to the holding of such meeting.
- 23.4. A Special General Meeting may be called in order to approve special levies of the IGUA-SA.

24. **QUORUM AT GENERAL MEETINGS**

The quorum for a General Meeting of Members shall be the majority of Members of the IGUA-SA at such time; provided that if no quorum is present within 15 (FIFTEEN) minutes after the time fixed for the meeting, the meeting shall be postponed to the same day and hour in the following week and, at such adjourned meeting, the Members present shall be deemed to constitute a quorum for the transaction of the business of the meeting.

25. **CHAIRMAN AT GENERAL MEETINGS**

The Chairman at all General Meetings shall be the Chairman of the IGUA-SA or, in his/her absence, the Vice-Chairman.

26. **PROCEDURE AT GENERAL MEETINGS**

- 26.1. The following competition law caution shall be read out at the commencement of all General Meetings and also be recorded in the minutes of the meeting:

*"In terms of IGUA-SA's Constitution, IGUA-SA Members are required, at all times, to ensure that they are fully compliant with the Competition Act. In this regard, IGUA-SA and its Members will not engage in any discussion, activity or conduct that may contravene any provisions of the Competition Act. In particular, Members shall not discuss, communicate or exchange any commercially sensitive information, including non-public prices, marketing and advertisement strategy, costs and revenues, trading terms and conditions, purchasing strategies, terms of supply, or distribution strategies. This applies not only to interactions in the context of formal IGUA-SA meetings but also to discussions, communications or exchanges between Members before, during or after IGUA-SA meetings."*

- 26.2. Subject to clauses 30 and 31 below, any business, resolution or questions submitted to a General Meeting for decision shall be decided by a majority vote of the Members represented, with each Member being entitled to exercise 1 (ONE) vote.
- 26.3. A Member may be represented by a representative whose identity has previously been notified to the secretary or through proxy registered in writing with the secretary.

27. **INCOME AND ASSETS**

- 27.1. All income and assets of the IGUA-SA shall vest in the IGUA-SA and no Member shall have any right, title or interest in or to any of the assets of the IGUA-SA.
- 27.2. The income and assets of the IGUA-SA, from any source whatsoever, shall be applied solely towards the promotion of its objects and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise in any manner, to the Members; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the IGUA-SA or to any Member in return for any services actually rendered to the IGUA-SA in terms of a written agreement with the Committee.

28. **ACCOUNTING MATTERS**

- 28.1. The Committee shall cause the IGUA-SA to keep proper books of account (being such books of account as are necessary to reflect the state of the IGUA-SA's financial affairs in a true and fair manner) with respect to:
- 28.1.1. all sums of money received and expended by the IGUA-SA and the matters in respect of which such receipts and expenditure occurred;

- 28.1.2. all sales and purchases of goods by the IGUA-SA; and
- 28.1.3. the assets and liabilities of the IGUA-SA.
- 28.2. The books of account shall be kept at the head office of the IGUA-SA or at such other place or places as the Committee may determine from time to time, but they shall always be open to inspection by the Members of the IGUA-SA.
- 28.3. The Committee shall appoint an auditor (who shall not be a Member) and shall cause to be prepared and to be laid before the IGUA-SA at its Annual General Meeting, audited financial statements together with a copy of the auditor's report for the previous financial year of the IGUA-SA.
- 28.4. The financial year end of the IGUA-SA will be 28 February each year, and 29 February in each leap year.
- 28.5. All expenditure shall be approved by the Committee and minuted, and a financial report shall be presented to the Committee quarterly by the Treasurer.
- 28.6. The Committee shall open a bank account in the name of the IGUA-SA, and all income received by the IGUA-SA shall be deposited forthwith in such bank account.
- 28.7. Any funds not immediately required for disbursement may be invested in a savings or similar account with any registered bank or financial institution approved by the Committee from time to time.
- 28.8. Interest on moneys invested shall be used by the Committee for any lawful purpose.

## 29. COMPLIANCE WITH COMPETITION ACT

- 29.1. Members shall not, in any manner, engage in any conduct that could be construed as a potential contravention of the Competition Act, including not, in any respect, engaging in or associating with:
  - 29.1.1. directly or indirectly fixing a purchase or selling price or any other trading condition;
  - 29.1.2. division of markets by allocating customers, suppliers or territories; or
  - 29.1.3. collusive tendering.
- 29.2. The IGUA-SA shall be subject to the following Rules on Competition Compliance:
  - 29.2.1. detailed agendas will be circulated (in advance) for each General Meeting and discussions at the relevant meetings will be confined to the topics described in the agenda;
  - 29.2.2. no informal meetings prior to, or after, the General Meetings may be held;
  - 29.2.3. any person representing a Member at any meeting or function relating to the IGUA-SA must have received adequate training in relation to the Competition Act and such person may not be involved directly in marketing or sales;
  - 29.2.4. each Member's representatives at the relevant meetings or functions should be limited in number and, to the extent possible, the same representative will represent it on the Committee and any Sub-Committee; and
  - 29.2.5. Prohibited Information will not be disclosed or discussed or in any manner exchanged between the Members, save and unless legal advice has been provided in advance of such discussions and such advice confirms that the information may be exchanged and prescribing the manner in which the information is provided.
- 29.3. For the purposes of this clause, "**Prohibited information**" means commercially sensitive current or future business information that is detailed (as opposed to aggregated) and which is not in the public domain, including that comprising or relating to:
  - 29.3.1. data (historical, present or future) regarding prices, output, production, sales, capacity, costs, profit margins or the identity of customers or suppliers;
  - 29.3.2. negotiations with individual customers or suppliers (including negotiation strategies, pricing models or methods, discounts or rebates);
  - 29.3.3. marketing strategies;
  - 29.3.4. research and development plans;
  - 29.3.5. expansion plans, including in respect of output, capacity, export destinations, domestic marketing and procurement;
  - 29.3.6. stock levels;
  - 29.3.7. service levels and trading terms (including credit terms),
  - 29.3.8. the financial position of customers or potential customers;
  - 29.3.9. production costs;
  - 29.3.10. standard terms and conditions or technical standards, the sharing of which may have the effect

- of reducing competition between Members;
- 29.3.11. particular customers or geographic areas of supply;
- 29.3.12. assessment of customers' creditworthiness;
- 29.3.13. what constitutes an "acceptable" price for customers with certain credit ratings; and
- 29.3.14. advertising policies that reinforce uniformity of prices and products.

### 30. **ADOPTION OF CONSTITUTION**

This Constitution may be adopted if at least 75% of the Members present (in person or by proxy) and voting at a General Meeting of the IGUA-SA convened for the purpose of considering such adoption and attended (in person or by proxy) by a majority of the Members, vote in favour of such adoption.

### 31. **AMENDMENTS TO CONSTITUTION**

- 31.1. This Constitution shall not be repealed or amended, save by resolution adopted by not less than 75% (SEVENTY FIVE PERCENT) vote of the Member present (in person or by proxy) at a General Meeting of the IGUA-SA.
- 31.2. Notice of any proposed resolution to amend this Constitution shall be given to all Members in writing at least 21 (TWENTY ONE) days prior to the date of the meeting of the Committee at which the resolution will be considered.

### 32. **COPIES OF CONSTITUTION**

- 32.1. A copy of this Constitution and of any repeal or amendment thereto or new by-law or rule effected from time to time shall be available for the inspection of the Members upon application to the secretary.
- 32.2. Every person, upon becoming a Member of the IGUA-SA shall receive on request a copy of the Constitution together with such by-laws and rules as may be in force.

### 33. **WINDING UP**

- 33.1. The IGUA-SA may be dissolved by a resolution passed by the Committee, provided that such resolution is confirmed at a Special General Meeting held not less than 30 (THIRTY) days thereafter by not less than 75% (SEVENTY FIVE PERCENT) of Members entitled to be present (in person or by proxy) and voting thereon.
- 33.2. In the event of such resolution being passed at the Special General Meeting, that meeting shall also have the power to pass resolutions by majority vote for the appointment of a liquidator and the disposal of any surplus funds and assets of the IGUA-SA after winding up and after payment of all the debts and obligations of the IGUA-SA, provided that any surplus funds or assets may be given or transferred to some other association or institution, with non-profit objects similar to those of the IGUA-SA.

### 34. **GOVERNANCE**

The objective of this Constitution is to ensure effective governance, financial transparency and the upholding of the reputation of the IGUA-SA and its Members, and to prevent unilateral and uncontrolled activities by the elected Committee, who will be fully accountable to the membership.

### 35. **MEMBERSHIP CONFIRMATION**

- 35.1. Signature of the Founding Members List (refer Annexure A) confirms membership of the IGUA-SA by the respective organisations.
- 35.2. Signature may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single document.

**ANNEXURE A – FOUNDING MEMBERS LIST**

The respective organisations hereby confirm membership of the IGUA-SA, whose appointed signatory warrants authority to sign on behalf of the organisation.

**Need to insert full, correct names of member organisations and registration numbers**

INDUSTRIAL GAS USERS ASSOCIATION - Southern Africa			
Organisation	Signatory name	Signature	Date
Ceramic Industries (Pty) Ltd 1982/008520/07			
Columbus Stainless (Pty) Ltd 1999/002477/07			
Consol Glass (Pty) Ltd 2006/034503/07			
Illovo Sugar (Pty) Ltd 1915/000879/07			
Mondi Ltd 1967/013038/06			
PFG Building Glass (Pty) Ltd 1949/032383/07			