

## **GENERAL TERMS AND CONDITIONS RELATING TO THE SUPPLY OF PROPANE AND LEASE OF PROPANE RELATED EQUIPMENT TO COMMERCIAL CUSTOMERS\***

**1. RENT FOR LEASED EQUIPMENT.** When requested, the Company will install at Customer's premises one or more propane storage tanks or cylinders and related equipment (the "Equipment"). Company reserves the right to charge, and Customer agrees to pay, the equipment rental charge established by Company, where applicable. Customer is liable for all loss of, and damage to, the Equipment while in Customer's possession, normal wear and tear excepted. Customer will promptly surrender to the Company all of the Equipment when this Agreement is terminated for any reason. The number of cylinders and tanks may be changed from time to time based on Customer's needs and usage and the Agreement may be amended through the use of one or more Sales & Service Orders, which shall become part of the Agreement. Any Equipment that is lost or damaged during the term or is not returned at the end of this Agreement will be billed to Customer at replacement cost. Customer authorizes the Company to replace its Equipment at any time with no changes in the obligations of this Agreement.

**2. PROPANE SUPPLY.** Customer will purchase from the Company all of the propane Customer requires for use at the Customer location(s) for which a contract has been signed with the Company. For safety and other reasons, Customer agrees that only propane sold by the Company shall be used with the Equipment.

**3. TERM.** These terms and conditions shall continue from year to year, or until modified by Company by providing Customer with revised terms and conditions.

### **4. FEES, RATES, PRICING AND CHARGES.**

**A) Propane Pricing** - Customer agrees to pay the Company's applicable non-refundable prices in effect on the date that propane or Equipment is delivered or services are rendered. Customer acknowledges that the Company's fees, rates, pricing and charges include its various procurement costs and may vary depending upon, among other things, the volume of propane purchased, customer classification, derivative activity to reduce price volatility, ownership of equipment, and competitive conditions. If you have a fixed price contract, your price for propane will not change during the term of your agreement. If your agreement does not contain a fixed price, your price for propane may move either up or down, as it does with other energy commodities. Similarly, if you have no agreement that governs your price for propane, your price may likewise move either up or down. For those Customers without a fixed price agreement, the Company reserves the right to change its prices without prior written notice to Customer. All Customers agree to pay any taxes and licenses, permit or inspection fees associated with the sale or use of the propane and Equipment covered by the Agreement. For our Area Index customers, from time to time the geographic areas and supply points that comprise our Area Index may change slightly. In some instances these changes may result in slight price increases or decreases, depending on the unique market circumstances.

**B) Current Fees, Rates and Charges** - Customer agrees to pay the following applicable non-refundable fees, rates, and charges in effect on the date that propane or Equipment is delivered or services are rendered. Not all fees, rates and charges apply to all customers. If you have any questions in this regard, please contact our local office.

- **Fuel Recovery Fee** - This fee, which is assessed for propane deliveries and service calls, helps to offset the significant expenses incurred by the Company in fueling its fleet of commercial motor vehicles. This fee fluctuates on a monthly basis as the Company's cost of fuel fluctuates. The fee as of the date of this Notice is \$7.34. For updated fuel recovery fee information, please visit our website on a monthly basis.

- **HazMat & Safety Compliance Fee** - This fee, which is assessed for propane deliveries and service calls, helps to offset a portion of the costs the Company must incur to comply with federal, state and local government regulations, including, but not limited to, hazardous materials, homeland security, emergency preparedness and workplace safety. It is also used to fund, among other things, vital employee safety training and inspections, cylinder re-qualification, and environmental compliance. The fee is not government imposed, nor is any portion of it paid to any governmental agency. The current fee is \$9.59.

- **Late Charge** - This charge is assessed when a Customer does not pay his/her bill within the credit terms established and is designed to recover collection and related costs incurred by Company. The current charge is 1½% of the average daily balance or a minimum charge of \$36, whichever is greater.

- **Pump-Out/Restocking Charge** - This charge defrays the cost associated with pumping out a tank that contains in excess of five percent, and returning the tank to the Company's inventory. Customers can avoid this charge by continuing service with the Company until the supply of propane in the tank is less than five percent. The current charge is 35¢ per gallon of propane that is pumped out of the tank.

- **Special Trip Charge** - This charge is incurred by Customers who request immediate deliveries or non-emergency service after business hours or on weekends. This charge can vary greatly due to the distance involved and/or the time required to service this request and will be based on local labor rates which can be obtained from your local Company office.

- **Meter Service Fee** - This fee is incurred by Customers who are charged for their propane based on an amount of usage as measured by a Company meter. This fee defrays the expenses incurred in meter reading, meter maintenance and related administrative costs. The current fee is \$9.99 per month.

- **Service Dispatch Charge** - This charge is to cover the costs associated with dispatching a service technician to a Customer's location to perform service work on customer-owned equipment and appliances or to pick-up a Company-owned tank or cylinder. Customers should note that upon arrival at Customer's location, additional charges may be assessed depending upon the nature of the problem. The Service Dispatch Charge is \$39.99 and is collected at the time the service or tank/cylinder pick-up is scheduled. This charge will not be credited toward service work performed. Please check with your local Company office regarding the availability of appliance repair service.

- **Returned Check Charge** - \$33.

By accepting delivery of propane or by paying any changed fee, rate, price or charge, Customer will be deemed to have agreed to the changes. Because these fees are subject to change, we suggest you regularly visit our website in order to view a list of our most current fees and charges.

**C) Price Dispute Resolution Procedure:**

Due to the potential pricing volatility in energy markets, every Customer has the right to discuss the price of propane delivered to their account, and the Company will make reasonable efforts to resolve pricing disputes through a standardized process. If Customer would like to discuss the price of their propane with the Company, Customer should initially contact the Customer Relations Representative in his/her local office. If Customer is not satisfied with the resolution after discussions with the local Customer Relations Representative, Customer may advance the issue to the local District Manager. If a resolution still does not occur, Customer may request the issue be escalated to the Area Director. Any unresolved dispute can be further escalated to the office of the Operations Vice President if the Customer deems necessary. The local office can provide contact information.

**5. PAYMENT TERMS AND LATE FEES.** Customer agrees to pay all fees, rates, and charges required by the Terms and Conditions within ten days after the invoice date or on the due date, whichever is later, to the location designated by the Company. Where permitted by law, Customer agrees that the Company may send Customer an invoice instead of a delivery ticket. If Customer fails to pay any fees, rates, or charges within 25 days after the invoice or due date, the Company may, unless prohibited by law, add a monthly late charge of one and one-half percent of the average daily balance or a late charge of \$36.00, whichever is greater. The Company reserves the right to require Customer to pay for propane deliveries or services in advance or to post a cash deposit, which may be applied by the Company at any time in whole or in part to the outstanding balance. For customers billed on the road, Customer agrees to pay within 10 days of the delivery or service.

**6. TITLE TO EQUIPMENT.** All Equipment leased by the Company to Customer will remain the property of the Company and shall not become a fixture or a part of the Customer's real property. Customer will not, nor will it allow anyone other than Company, to pump-out or make any adjustments, connections or disconnections to the Equipment or remove the Equipment without written permission from the Company. Customer shall notify the Company immediately if the Equipment is damaged, appears defective, malfunctions or if Customer experiences any problems with the Equipment. Notwithstanding the foregoing, the propane line running from the tank to the Customer's premises shall become the property of the Customer upon installation and the Customer shall be billed by Company for any necessary repairs or work needed on that line.

**7. ACCESS TO EQUIPMENT.** The Customer agrees that the Company has, without prior notice, an irrevocable right of entry and exit to Customer's property to deliver propane or to install, repair, service, or remove the Leased Equipment, or to perform any other services that it deems necessary under the Terms and Conditions. Customer agrees to provide the Company with safe, free and unimpeded access to the Leased Equipment, including, but not limited to, access free of ice, snow, water, mud and other hazards, as well as to provide a driveway that is sufficiently sturdy to withstand the weight of a filled propane truck. Customer will mark or otherwise identify the location of septic systems, leach pits, underground ponds and similar underground features as necessary to install the Leased Equipment, perform services and make deliveries. The Customer agrees that the Company has no obligation to contact Customer to request access to the Equipment, but instead may suspend service until Customer has provided access as required by this Agreement. Customer agrees to promptly surrender to the Company the Leased Equipment when Customer terminates Customer's relationship with the Company for any reason.

**8. DISCLAIMER OF WARRANTIES.** To the extent permitted by applicable state law, the Company disclaims all representations or warranties, either express or implied, with respect to any propane, equipment or service now or hereafter supplied pursuant to this agreement, including any warranties of merchantability or fitness for a particular purpose.

**9. LIMITATION OF LIABILITY.** Under no circumstances shall the Company be liable for incidental, consequential or special damages, including, without limitation, lost profits and business interruption damages. This limitation shall apply regardless of whether a claim or remedy is sought in contract, tort (including negligence and strict liability) or otherwise. The Company is not liable for any loss sustained by customer as a result of the temporary exhaustion of Customer's supply of propane.

**10. INDEMNIFICATION.** Both Company and Customer agree to indemnify, defend and hold the other harmless from and against any and all claims, liens, demands, suits, damages and liabilities for personal injuries and/or property damage, arising out of or caused by any negligent act or omission on the part of that party, its agents or employees.

**11. TERMINATION.** Either party may terminate this Agreement at the expiration of the original term, or any anniversary thereof, by giving the other party at least sixty (60) days prior written notice. The Company may terminate this Agreement at any time and without prior notice or take such other action as may be permitted by law if Customer fails to satisfy any of the terms and conditions of this Agreement or if there are safety concerns that cannot be remedied after consultation between the parties. Customer agrees to pay Company's pump-out/restocking charge at the termination of this Agreement.

**12. MEET COMPETITION CLAUSE.** Under all non-fixed pricing Agreements, Company has the right to revise the price(s) charged to Customer. If within thirty (30) days after the revision, the Customer furnishes Company with a copy of a *bona fide* firm written offer from an established propane supplier to sell propane at the designated location in the same quantity under similar terms and conditions at a lower price than Company's revised price, Company may within ten (10) days either meet the lower price or rescind the price change. If Company fails to meet the competition's price or rescind the price change, Customer may, at its option, upon thirty (30) days written notice to Company, cancel and terminate this Agreement. If Company agrees to meet the lower price or revert to its previous price,

Company has the right to extend the term of this Agreement until the end of the contract term specified in the firm written offer. If Customer elects to terminate this Agreement, Customer is responsible for all Equipment removal costs and pump-out/restocking charges.

**13. EXCUSED PERFORMANCE.** The Company shall not be responsible for any delay or damages caused by events or circumstances beyond its reasonable control, including without limitation, acts of God, fires, storms, floods, wars, hostilities, terrorism, compliance with laws or regulations, the Company's inability to obtain propane from its customary suppliers, terminal, refinery or pipeline disruptions, allocation programs, lack of or inadequate transportation facilities, or other similar causes. Under any of these circumstances, the Company may in its sole discretion allocate propane and equipment among its customers as it deems appropriate.

**14. CUSTOMERS WITH UNDERGROUND TANKS.** At the time of installation and removal of the underground propane supply tank and equipment, Customer will mark or otherwise accurately identify the location of all underground systems that are not marked by the State's "Call Before You Dig" program, including, but not limited to, sprinkler lines, septic systems, leach pits, underground ponds and similar underground features. Customer is responsible for all costs of the excavation and removal of the Leased Equipment and the Company is not responsible for furnishing fill, resurfacing, landscaping or restoring Customer's property to its previous condition when the Leased Equipment is removed. The charge to remove an underground tank can vary greatly and is affected by the size of the tank, access to the tank, the soil conditions and other impediments near or around the tank, among other factors. Customer will be billed on an hourly basis for this work with local labor rates prevailing. The Company will invoice Customer for any third party excavation work performed in conjunction with the removal of the underground tank. The Company may at its option charge Customer for the value of the underground tank in lieu of physically removing the tank from the Premises.

**15. LICENSES, PERMITS AND TAXES.** Customer agrees to pay for all licenses, permits, and taxes associated with the sale or use of the propane and Leased Equipment or service covered by these Terms and Conditions.

**16. PROPANE SYSTEM MAINTENANCE & REPAIR.** Except for the Leased Equipment, Customer is responsible for the maintenance and repair of Customer's entire propane system.

**17. ASSIGNABILITY.** Customer may not assign this Agreement without the prior written consent of the Company. The Company may assign or pledge this Agreement as collateral without notice to or consent of Customer.

**18. TRAINING.** Customer will properly train each of its employees, or any individual who handles propane or uses the Equipment, as to how to safely fill containers, if applicable, and use propane. Customer will not allow anyone to handle propane or use the Equipment unless and until that individual has been properly trained to do so. It is Customer's responsibility to provide Company with written notice if Customer, or any of its employees or agents, need additional training in order to comply with this provision. If Customer fails to comply with any portion of this provision, then Customer agrees it shall be solely responsible for any and all injuries or damages that result, and Customer will indemnify, defend and hold Company harmless from all claims, suits, demands and judgments, including those claims brought by Customer's employees or agents.

**19. MODIFYING THE AGREEMENT.** This Agreement is the final understanding between the Company and the Customer and may not be modified orally.

**20. CLAIMS & ARBITRATION.** Aside from credit or collection matters, Customer and Company agree that upon the request of either party, any dispute or controversy between the parties that in any way arises out of or relates to this Agreement or Company's provision of goods or services to Customer, will be decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Neither Customer nor Company shall be entitled to arbitrate joint or consolidated claims by or against other customers, or arbitrate any claim as a representative or member of a class or in or as part of a private attorney general capacity. Judgment upon any arbitration award shall be final and binding on Customer and Company and may be entered in any court having jurisdiction. If a court of competent jurisdiction, or an arbitrator with authority to adjudicate the matter, should declare all or any part of this arbitration provision invalid or unenforceable, then the remainder of this arbitration provision shall be valid and enforceable to the fullest extent permitted by law. *In the absence of this arbitration provision, you may have otherwise had an opportunity to litigate claims in court and/or to have claims decided by a jury.* Within thirty (30) days of receipt of this arbitration provision, Customer can elect to opt out of this provision (that is, exclude it from this Agreement) by sending a written notice to Company by certified mail at Box 965, Valley Forge, PA 19482, Attn: General Counsel stating that Customer wishes to opt out of this arbitration provision.

**21. ENFORCEABILITY.** If any part of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement will continue to be valid and enforceable.

**22. NOTICE.** Any notice by Customer under this Agreement shall be sent by U.S. mail, postage prepaid, to the Company at the address of the Company shown on invoices received by Customer. Notice to the Customer may be in the form of a bill insert, stand-alone mailing, email or other written notification.

**23. WAIVER.** If the Company delays in exercising any of its rights under this Agreement, the Company will not be prevented from exercising its rights at a later date. The Company's waiver of any breach of this Agreement at any time shall not excuse future breaches by Customer.

**24. SURVIVAL.** All covenants, conditions and indemnifications contained in this Agreement which may involve performance subsequent to any termination of this Agreement, or which cannot be ascertained or fully performed until after termination of this Agreement, shall survive.

**25. WARNINGS.** Customer hereby acknowledges that Customer has read and understands the safety warnings it has received. Customer shall distribute a copy of the safety warnings to anyone who will be handling propane or Equipment. Company's safety warnings are also contained on its website and we strongly advise Customer to regularly visit our website to view those important safety warnings.

**26. CUSTOMER-OWNED EQUIPMENT.** For Customer-owned equipment, the following provisions do not apply:

Paragraph 1, Rent for Leased Equipment;

Meter Service Fee in Paragraph 4;

Paragraph 6, Title to Equipment;

The container removal provisions in Paragraphs 7 and 12; and

The Service Dispatch Charge and Pump-Out/Restocking Charge in Paragraphs 4 and 11.

**27. EFFECTIVE DATE.** For most non-residential Customers, these Terms and Conditions will become effective 30 days after the date of this Notice.

**Exclusions:**

**CONNECTICUT**

The Fuel Recovery Fee and Hazmat & Safety Compliance Fee do not apply to customers in Connecticut.

**VERMONT**

These Terms & Conditions do not apply to any non-residential customer who purchased propane for consumption and not for resale, through a meter or has propane delivered to one or more storage tanks of 2000 gallons or less.

*\*This information has been provided to you in order to make you aware of the Company's current Terms and Conditions, as well as our current fees, rates and charges. Please visit our website or call us for updates and/or changes.*

August 20, 2012