

## HEATING SEASON PROGRAM TERMS AND CONDITIONS

(ALSO AVAILABLE AT [WWW.BAKERSPROPANE.COM/TERMS\\_CONDITIONS.HTML](http://WWW.BAKERSPROPANE.COM/TERMS_CONDITIONS.HTML); Effective as of June 27, 2014)

**1. APPLICATION.** These Heating Season Program Terms and Conditions ("Terms") apply to and are a part of an agreement for purchase and sale of liquid propane ("Propane") between Baker's Propane, Inc. or its affiliated business entity ("Company"), as seller, and a person or legal entity purchasing Propane from the Company ("Customer"), as buyer, that describes the Customer's agreement to purchase Propane under one of the Company's price programs (hereafter, "Contract"). These Terms and the terms of the applicable Propane price program shall have the same effect as if they were printed in full on the face of the Contract.

**2. PROGRAM PROPOSALS.** Any Propane price program proposal issued by Company to Customer in connection with any proposed sale of Propane, such as a Budget Program, a Prebuy Program or a Residential Price Protection Program or any equivalent of or a modification to any of the above (any such proposal, a "Proposal") is for Customer's informational purposes only. Any information in a Proposal is subject to change, and/or Company may suspend, discontinue or modify any price program, without notice prior to Customer's execution of the Contract. A Proposal is for Customer's use only, may not be used by Customer for any other purpose or disclosed by Customer to any third party without Company's written consent. The Proposal will expire and become void at 11:59 P.M. Eastern Standard Time on the date listed on the Proposal as the last day of Program enrollment, or if no date is listed, then at 11:59 P.M. Eastern Standard Time thirty (30) days after the date the Proposal was issued. Customer shall be deemed to have accepted these Terms upon Customer's execution of the Contract.

**3. CUSTOMER'S OFFER TO PURCHASE PROPANE.** Customer may offer to purchase Propane from the Company under any particular price program by completing the information on and executing a form of the Contract that is either printed on the reverse side of the Proposal or is otherwise provided to the Customer and returning it to the Company on or before the date listed in the Proposal together with the required payment. To participate in any Program, at the time of enrollment into any price program and at all times during the duration of the price program, Customer must be and remain a "qualified Customer" as defined in the applicable price program. Customer is responsible for correctness of all information it provides to the Company. Customer's offer to purchase Propane from the Company is subject to review, approval and acceptance by the Company. Company makes no representation as to the accuracy of its interpretation of Customer's information. If any information provided by the Customer is not acceptable to the Company, Company has the right, in its sole and absolute discretion, to reject the Customer's offer to purchase Propane or adjust the number of gallons of Propane requested by the Customer. Propane supply quantities are limited and Proposals executed by Customers shall be reviewed on a first come first serve basis and only while supplies last.

**4. PURCHASE AND SALE OF PROPANE.** The Contract shall be effective and binding on the parties only upon the Company's counter-execution of the Contract in writing. Upon Customer's and Company's execution of the Contract, Customer shall purchase from Company, and Company shall sell to Customer, the Propane as provided in the Contract. Company's obligation to sell Propane to the Customer pursuant to the terms of a particular Propane price program

that was the basis of the Contract shall expire as provided in the applicable Propane price program or upon termination of the Contract by the Company as provided in these Terms or in the applicable Propane price program.

**5. CUSTOMER'S ORDERS.** Customer shall order Propane from the Company at not less than Minimum Order Quantity listed in the Contract. ALL SALES ARE FINAL and Customer may not cancel an order after it is placed without Company's prior consent. Company may charge an order cancellation fee and Customer agrees to pay all charges resulting from order cancellation, including storage and delivery costs and costs of purchasing non-returnable materials.

**6. PAYMENT.** Except as otherwise provided, Customer shall pay, in U.S. Dollars, the purchase price for the Propane and other amounts listed in the Contract upon Customer's placement of an order for Propane. Customer authorizes Company to charge the debit or credit card that Customer provided to Company for all amounts due under the Contract. For debit or credit card payments, Customer will be charged a processing fee of 2% of the amount being charged to the card. Payment terms are subject to Customer maintaining a credit status acceptable to Company in its sole discretion. Customer's payment obligations are not subject to any setoffs, claims, conditions or contingencies and shall survive the expiration or termination of the Contract for any reason.

**7. TAXES AND FEES.** In addition to the purchase price for the Propane, Customer shall pay all of the applicable fees, assessments, charges and taxes (municipal, state and federal), which are due or may become due or imposed upon the sale, ownership, possession and/or use of any Propane. The total amount due may also include various itemized charges, such as charges for the handling of hazardous materials, none of which are a tax or fee paid to or imposed by a governmental authority and all of which are retained by Company, and which can vary by product, service, time and place, among other factors.

**8. DELIVERY.** Company's delivery times are between 8:00 AM and 5:00 PM on regular business days. Company shall use reasonable efforts to, but shall not be required to, accommodate Customer's requests for delivery of Propane at other hours, and Customer shall compensate Company for any additional costs incurred in making such deliveries. All delivery dates and times are estimates. Partial deliveries are allowed. Risk of loss, theft, destruction and damage to Propane shall pass to Customer upon delivery of Propane to Customer. In the event of any actual or reasonably anticipated default by Customer, Company may decline to make further deliveries, stop Propane in transit and/or repossess same.

**9. ACCEPTANCE.** Customer shall be deemed to have received and accepted Propane as required by the Contract unless upon receipt of Propane the Customer immediately notifies the Company of any shortage or other problems with delivered Propane.

**10. CUSTOMER'S ASSUMPTION OF RISK.** If Customer will be moving or transporting Propane, Company has informed the Customer, and Customer acknowledges and agrees, that:

- A. Moving and/or transporting Propane by any means not specifically designed or equipped for transportation of gas is

extremely dangerous, should be avoided, and may cause an explosion or fire;

- B. Propane must never be moved in closed spaces such as cars, vans, car trunks or in passenger compartments;
- C. Propane cylinder(s) should be moved and transported in a fixed upright position, with windows open for sufficient ventilation;
- D. It may be safer to transport Propane cylinder(s) by open truck; and
- E. Company offered to transport and deliver Propane to Customer, but Customer declined.

11. **INDEMNIFICATION.** Company shall not be responsible or liable to Customer or any third party for, and Customer ASSUMES ALL RISK and shall be solely responsible and/or liable for and shall indemnify, defend and hold harmless Company and its affiliated legal entities, and their respective shareholders, directors, officers, employees and representatives from and against, any and all liability, loss, cost, damage and expense (including court costs and reasonable attorneys' fees), including those arising out of any injuries to or death of persons or damage to or destruction of property, in any manner caused by, incident to, connected with or arising out of (i) any use, misuse, possession, operation, replacement, return, moving and/or transportation of any gas cylinder(s) and/or any other Propane by Customer, Customer's employees, representatives or others under Customer's direction or control, and/or (ii) any breach by Customer of any representation, warranty or obligation to Company. The indemnities contained in this Section shall survive and continue in full force and effect after the purchase and sale of Propane is completed and after any expiration or termination of the Contract for any reason.

12. **USE AND OPERATION.** Customer shall use, possess, move and transport Propane strictly in accordance with the applicable instructions and warnings on the labels on any cylinder(s) containing Propane, and in compliance with all laws, regulations and ordinances related to Propane. Customer shall use only qualified and trained professionals in handling Propane.

13. **LIMITED WARRANTY.** Company warrants only that at the time of delivery of Propane to Customer, the delivered Propane shall be in the quantity ordered by Customer and conform to industry-acceptable purity specifications. This limited warranty does not cover any negligence, abuse, mishandling, or misuse of Propane by Customer, Customer's employees, representatives or others under Customer's direction or control, or any loss or damage caused by any cause beyond Company's reasonable control. If Customer discovers that any Propane does not meet the above purity specifications, Customer shall immediately discontinue all use of Propane and notify the Company.

14. **EXCHANGE OF PROPANE AS CUSTOMER'S SOLE REMEDY.** Upon receipt of timely notice from the Customer that Propane delivered by Company does not conform to industry-acceptable purity specifications, Company has the right to conduct industry-recognized standard testing of the allegedly non-conforming Propane. If Company either (i) does not conduct testing within a reasonable period of time after receipt of Customer's notice or (ii) determines that Propane clearly does not meet the industry acceptable purity specifications through no fault of Customer, then Company shall, AS CUSTOMER'S SOLE REMEDY, exchange, at no additional charge, any non-conforming Propane it delivered to Customer within a reasonable period of time after and/or adjust the amount due under the Contract. Except as provided above, in no

event shall Customer be entitled to any refunds, replacements, substitutions, or rejection after any acceptance.

15. **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE CONTRACT, COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING ANY PROPANE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE, OR OTHER WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND ALL SUCH WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED. ORAL STATEMENTS ARE NOT WARRANTIES AND SHALL NOT BE RELIED ON BY CUSTOMER AND ARE NOT PART OF ANY AGREEMENT BETWEEN THE PARTIES. SUBJECT TO THE PROVISIONS OF THE CONTRACT, CUSTOMER ACCEPTS PROPANE IN ITS "AS IS" "HOW IS" CONDITION.

16. **LIMITATION OF LIABILITY.** COMPANY SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES RELATING TO LOSS OF PROFIT, LOSS OF INCOME OR REVENUE OR LOSS OF GOODWILL, IN CONNECTION WITH OR RELATED TO ANY PROPANE, THE CONTRACT OR ANY RELATED MATTER, EVEN IF IT HAS BEEN PUT ON NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL COMPANY'S LIABILITY IN CONNECTION WITH ANY PROPANE OR THE CONTRACT EXCEED THE AMOUNT THAT CUSTOMER ACTUALLY PAYS TO COMPANY FOR THE DELIVERY OF PROPANE WITH RESPECT TO WHICH THE LIABILITY AROSE.

17. **NOTICES.** Any communication required or permitted hereunder shall be in writing and delivered in person, or sent by overnight courier, fax or electronic mail.

18. **RELATIONSHIP.** Relationship between the parties under the Contract is that of buyer and seller and nothing contained herein shall be construed to make either party an agent, servant, or employee of the other or to create any joint venture, partnership, or any other association between the parties.

19. **DEFAULT.** Customer shall be in default if: (a) Customer fails to make any payment to Company when due; (b) Customer is in breach under any other condition, warranty or covenant hereof, and fails to cure within 5 days of notice from Company; (c) any information the Customer provided to the Company is at any time determined to be incorrect, (d) Customer ceases to be a "qualified Customer," as defined in the applicable price program, for any reason, or (e) Customer ceases doing business as a going concern, becomes insolvent or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Customer, or of all or a substantial part of its assets, or if a petition in bankruptcy is filed by or against Customer.

20. **REMEDIES.** In the event of any default by Customer, Company may: (i) terminate the Contract; (ii) suspend further deliveries of Propane, (iii) declare entire outstanding amount immediately due, which shall become immediately due and payable; and (iv) without demand or legal process, and without being guilty of trespass or conversion, and without constituting a termination of the Contract or relieving Customer of its original obligations, enter any premises where Propane delivered by the Company or its representative(s)

may be found, take possession of and remove the Propane for which Company has not received payment, at which point all rights of Customer in and to such Propane shall terminate absolutely and any damages occasioned by such taking are hereby expressly waived by Customer. Company reserves the right to charge Customer interest at a rate of 1½ % per month (or the maximum rate permitted by law, if less) on any payments that were not made timely until the entire unpaid balance is paid in full. Customer shall be liable for all costs Company incurs in the enforcement of any of its rights or remedies against Customer, including reasonable attorney fees. Company's rights and remedies stated herein are cumulative and are not exclusive of any other rights or remedies.

21. **FORCE MAJEURE.** Any delay or failure by Company to perform any of its obligations under the Contract will be excused without liability if such a delay or failure is caused by an event or occurrence beyond Company's reasonable control, such as by way of example and without limitation, any act of God such as landslide, severe weather conditions, earthquake, fire, or flood; a declared state of emergency; any strike, lockout or other industrial disturbance; act of public enemy, terrorism, or war; epidemic; civil disturbance; explosion, breakage or accident to machinery or lines of pipe; freezing of wells or lines of pipe; the necessity for making repairs to or alterations of machinery or lines of pipe; interruptions of supply or the inability to obtain Propane or other materials or supplies in the required quality or quantity; the inability to obtain permits or labor; any law, rule, order, regulation, act or restraint of any government body or authority, civil or military, regardless of its validity; and/or any act omission (including failure to deliver Propane) by a transporter of the Propane to the Company or to the Customer which is excused by any event or occurrence of the character herein described. Company shall use commercially reasonable efforts to resume performance of its obligations as soon as practicable following the cessation of such an event or occurrence.

22. **LAW, JURISDICTION, VENUE.** The Contract and these Terms are governed by Michigan law, without reference to its conflict of law principles. The parties agree and consent to the exclusive jurisdiction of federal and/or state courts in the State of Michigan for any dispute

arising from the Contract, said venues being convenient for both parties.

23. **ENTIRE AGREEMENT.** The Contract (including these Terms and the terms and conditions of the applicable Propane price program) is the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, with respect to subject matter hereof and shall be binding on the parties and their respective successors and permitted assigns. Under no circumstances is performance or failure to perform or receipt of any payment by Company to be construed as Company's acceptance of any terms or conditions of Customer. All pre-printed terms, boilerplate language, disclaimers, and any other terms and/or conditions of Customer, including those referenced or included on any of its purchase orders or other documents issued or referenced by Customer at any time and in any way, shall not apply or be deemed to be a term or condition for purposes of the Contract and are hereby excluded without further notice. Any amendment of the Contract must be in writing and signed by both parties, provided however that Company may amend these Terms at any time on a prospective basis but such amendments shall not apply to any Contract that was executed by the Customer and the Company. Customer may not assign the Contract, in whole or in part, or any right or obligation hereunder, without Company's prior written consent.

24. **MISCELLANEOUS.** Any provision of Contract which is determined to be invalid or unenforceable shall not affect the remainder of the Contract. Section headings are for reference purposes only and shall not affect the meaning or interpretation of the Contract. Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute only one agreement. Time is of the essence and Company's failure at any time to require strict performance by Customer of any provision hereof shall not waive or diminish its right thereafter to demand strict compliance therewith or with any other provisions. The parties do not intend to confer any benefits hereunder on any third party other than the parties. Acceptance by Company of any payments from the Customer shall not be a waiver of breach or default under the Contract. "Including" means "including without limitation."