

## **TERMS & CONDITIONS**

### **Non-Residential Customers**

From time-to-time, Superior Plus Energy Services and its affiliates hereinafter referred to as the “Company,” will send its customers (“You” or “Your”) updates of its Terms & Conditions. These revised Terms & Conditions modify or replace all prior agreements and govern Your relationship with the Company. If You have any questions related to billing, credit or terms of service, You should reach out to Your local Customer Service Center during regular business hours.

Your current supplier of propane, #2 distillate or other fuel products is owned by or otherwise affiliated with Superior Plus Propane.

### **I. GENERAL TERMS & CONDITIONS FOR NON-RESIDENTIAL CUSTOMERS OF SUPERIOR PLUS ENERGY SERVICES AND ITS ASSOCIATED/AFFILIATED COMPANIES’:**

**1. ACCEPTANCE OF THESE TERMS & CONDITIONS.** You will be considered to have accepted these Terms & Conditions by either accepting an automatic or fixed cycle delivery or requesting a delivery of propane, #2 distillate or other fuel, paying an invoice for propane, #2 distillate or other fuel received from the Company after the receipt of these Terms & Conditions or allowing Company-owned equipment to remain on Your property for 30 or more days after the receipt of these Terms & Conditions.

**2. TERM.** Your “Term” is the period of time for which You have agreed to maintain service with the Company. If You have not signed a customer contract with Superior Plus Propane or an affiliate, Your term will be three years from the date that You began service with the Company and unless terminated by either party will automatically renew from year-to-year thereafter.

### **3. METHODS OF PRODUCT DELIVERY**

**(The term “product” means propane, heating oil, sometimes referred to as #2 distillate, or any and all other distillates or fuels.)**

**A. Automatic Delivery** – The Company will make deliveries periodically based on its forecasting factors (that is, for example, based on such things as exterior temperatures, the number and types of appliances installed in the building being heated, degree days and Your prior history of usage at the same time of year). To ensure accurate forecasting for Your Automatic Delivery, we request that You notify Your local office of any changes of appliances, or whether there are other anticipated changes in Your usage that may require a larger volume of heating fuel.

**B. Fixed Cycle** deliveries are based on a set delivery schedule. An example of a Fixed Cycle is a scheduled delivery once a week, bi-weekly or once per month, etc.

**C. Will-Call** – With this option, the Company will make deliveries only when You affirmatively request a delivery of product. The Company recommends that You request a delivery when the level of product in Your tank is at 30%; allowing for a timely delivery to be scheduled. The scheduling of a will-call order for a delivery may take up to 5-10 business days to complete. Note: weather and any unforeseen factors may also affect the actual delivery time. A Special Trip Fee may be assessed if orders need to be expedited, that is, if You can't wait for the delivery to be made given the 5-10 business day time needed for the scheduling of the delivery.

**D. Metered Propane** - If the Company installed or You own a propane meter system, You will be invoiced for Your actual propane usage rather than per delivery.

#### **4. PROPANE EQUIPMENT LEASED FROM COMPANY**

**A. Leasing of Equipment** – The Company will lease and provide propane storage equipment, which includes, propane cylinders or above and/or underground tanks, regulators and other appurtenances and associated equipment. You understand and agree that in the interest of Safety, You will **only permit Company personnel** to make repairs or adjustments or to connect/disconnect the leased equipment or pump out propane from any Company-owned leased equipment to ensure safety-related ordinances, codes, regulations and laws are met.

**B. Maintenance of Leased Equipment** - Except for the equipment leased from the Company, You are responsible for the maintenance and repair of Your entire propane system, including, but not limited to, compliance with any and all applicable Federal, State or local laws, regulations, codes and ordinances. The Company shall maintain the leased equipment in good operating condition at all times. You are required to and **MUST** notify the Company immediately if You disconnect the propane system or add or remove appliances so that it can conduct applicable **safety checks** on the leased equipment or other portions of the installation. **You MUST contact the Company immediately if the leased equipment is damaged or malfunctions, or if You believe that there is a leak or experience any other problems with the leased equipment.**

**C. Equipment Operation & Access** – You agree that the Company shall have an irrevocable right of entry at all times (day or night) onto Your premises for the purpose of the removal, inspection, or the repair, maintenance or replacement of the leased equipment. Access will and must be granted to the Company without question or hindrance by You or Your agents. You will always be responsible for maintaining accessibility to said equipment, including, but not limited to, marking the location of the equipment prior to any snow storms and clearing a path to the tanks when necessary. **If You sell the location where the leased equipment has been installed, You must notify the Company within 30 days of the execution of the Agreement for the Sale of the property (or sooner, if the closing will occur in less than 30 days) and inform the new owner of the property that the propane equipment is leased from the Company.**

**You agree to notify the Company immediately if You suspect that the leased equipment is damaged, malfunctioning or if You experience any issues or potentially safety-related problems with the equipment.**

**D. Leased Equipment Title** – The Company will provide You with appropriate propane storage tank(s) or cylinder(s) and related equipment as determined to be necessary based on Company's determination of the relevant factors, which tanks or cylinders will, at all times, remain the property of the Company, and will not become a fixture or part of Customer's real estate. A UCC-1 or a similar

document evidencing the Company's ownership may be filed with the appropriate State, county or other local office where the tanks or cylinders have been installed.

**E. Cancellation of Service** – The Company requires that any customer wishing to terminate his/her or its account must do so in writing to their local office that supplies them with propane, #2 distillate or other products. The effective date of the request to terminate service must be set forth in the communication and unfettered access must be provided to enable the Company to retrieve its equipment.

## **5. PRICE FOR PROPANE AND OTHER PRODUCTS**

You agree to pay the Company's price per gallon of propane and other products plus any associated fees, rates and charges in effect at the point of delivery at the time of the delivery, whether the delivery is automatic, will-call, fixed cycle or metered delivery.

The price may be based on a pricing agreement with the Company, which either specifies the price per gallon or provides a formula for determining the price for the product, plus any applicable standard fees, rates or charges in effect on the date that propane or another product is delivered to You. If there is not a contract between You and the Company for the price of the propane or another product, the Company may change its prices for propane or other products without prior notice. The price of propane or other products is based on a number of variables, including, but not limited to, market influences, the Company's costs, freight and transportation charges, the Customer's annual volume usage and other related factors plus any applicable standard fees, rates or charges in effect on the date that propane or another product is delivered to You.

## **6. FEES & CHARGES**

In addition to the price per gallon for propane and other products, the Company will charge the following fees and charges which may vary by service territory and are based on the services rendered. **The fees/charges ARE NOT governmentally imposed and no portion of any fee is paid to any governmental agency.** Please contact Your local Customer Service Center with any questions on applicable fees, rates or charges specific to Your area.

- **Hazardous Material Safety & Compliance Fee (also referred to as the “HazMat Fee”)** - This fee, which is assessed on every product delivery, is calculated to offset a portion of costs related to federal, state and local government-mandated compliance processes for the handling of hazardous materials, workplace safety, emergency preparedness, and environmental protection, among other things. It enables the Company to maintain its mandated safety standards, provide training and continue our goal of delivering superior service. The fee at the time of this notice is \$11.62.
- **Delivery/Off Route Fee (Special Trip Charge)** - This fee may be charged to customers who have elected to manage their own delivery schedule for propane, #2 distillate and/or other products and
  - a. have failed to monitor their usage and the volume of propane remaining in the tank and as such, have allowed their fuel tank to run out of product and/or
  - b. are not on a scheduled delivery route at their own request.

*This fee varies for each service area. Please contact Your local office for more details.*
- **Start Burner Fee** - This fee may be charged for customers who have run out of fuel during off-hours and require their heating system to be re-started.
 

*This fee will vary for each service area. Please contact Your local office for more details.*
- **Leak Check** - This is a fee that is assessed when the Company is required to test and verify that the propane system does not have any leaks. This test is mandated under State or local laws, regulations or ordinances when a customer runs out of propane or there is another interruption in service, among other circumstances.
 

*Contact Your local office for when this test is required and for the current rate of this fee.*
- **Service Labor Evaluation/Diagnostic Fee** - This fee may be applied in order to diagnose equipment service issues. A flat hourly rate plus materials needed to make necessary repairs will also be charged. This fee is not charged to customers on a service plan.
 

*Contact Your local office for more details.*
- **A Service Area or Location May Charge Either Tank Rent or a Minimum Usage Charge as follows:**

- **Tank Rent.** This fee may be assessed annually for Company-owned–leased equipment. The fee varies based on the water capacity of the Company-owned leased tank or cylinder.
- In some locations a **Minimum Usage Charge** may be used instead of **Tank Rent.** A Minimum Usage Charge is assessed annually if a customer’s annual propane purchases are less than one times the water capacity of the tank leased to Customer.

*Rates and charges, if applicable, may vary based on the service area – contact Your local office for more information.*

- **Tank Pump Out** - This charge covers the costs associated with pumping out a propane ASME tank that contains in excess of five percent of the water capacity of the tank and returning the tank to the Company's location. Customers can avoid this charge by continuing service with the Company until the supply of fuel in the tank is less than five percent.
- **Meter Fee** – This fee is applicable to propane customers who are charged for their propane usage based on the Company’s measurement of the usage by meter. This fee helps to offset the costs associated with the maintenance of the meter system and administrative costs. The fee is charged for each monthly statement.
- **Early Termination Fee** – Customers with Leased Equipment who terminate their Propane Supply Agreement prior to the end of the term can be assessed an Early Termination Fee. This fee may be combined with equipment removal fees & other costs.

*This fee varies by service area – contact Your local office for more details.*

- **Fuel Cost Recovery Fee** – This fee, which is assessed on deliveries and service calls, is designed to offset the expenses incurred by the Company in fueling its fleet of motor vehicles.

*This fee varies by service area because the costs vary – contact Your local office for more details.*

- **Re-Connect Charge** – This fee is assessed in the event that the Company locked off the tank or cylinder due to non-payment. This fee is assessed based on the time it takes to travel to the customer location, remove the lock, perform a Leak Check and put the propane system back into service.

*This fee varies by service area. Contact Your local office for more details*

- **Returned Check Fee** – This fee offsets the fees and related a customer check due to insufficient funds.

*This rate will vary by service area – contact Your local office for more details.*

- **Service Technician Dispatch Charge** – This charge is billed when a service technician is dispatched to a customer location to perform diagnostic and other service work. Other charges may apply if service work is performed.

*Rates may vary by service area – contact Your local office for more details.*

- **Credit Card Processing Fee** – This fee is charged to process credit card transactions made over the phone. To clarify, this fee is charged to a customer who provides the Company representative with his credit card number and requests the Company to input the data and process it with the Bank or other entity with whom the customer has an account.
- **Minimum Delivery Fee** – A fee for a requested delivery of propane or both propane and heating fuel volume under (100) gallons.

*Rates may vary by service area – contact Your local office for more details.*

## **7. INVOICES & STATEMENTS**

**Terms:** Payments for deliveries and service are due within 30 days after the delivery of propane or another product or a service call. Some contracts, in certain service areas may specify that payment is due on the earlier of 30 days after the date that the customer received the invoice, or the due date as set forth on the invoice. Payment terms may also be changed if Your account becomes delinquent. Any such change will be communicated to You in writing.

A Late Payment Fee (sometimes also referred to as a “Finance Charge” or “Service Charge”) is computed at a periodic rate of 12% to 18% annually (1% to 1.5% per month) (rates may vary by delivery state) and is applied to the past due balance. When a Late Payment Fee is imposed, the minimum charge is \$0.50.

This rate may vary based on Your service area. Check with Your local office if you want more information

### **8. LICENSES, PERMITS & TAXES.**

You agree to pay for all licenses, permits, and taxes associated with the sale, use or lease of the propane, leased equipment or service covered by this Agreement.

### **9. LIMITATION OF LIABILITY.**

UNDER NO CIRCUMSTANCES WILL COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES. THIS LIMITATION APPLIES REGARDLESS OF WHETHER A CLAIM OR REMEDY IS SOUGHT IN CONTRACT, TORT OR OTHERWISE. THE COMPANY IS NOT LIABLE FOR ANY LOSS SUSTAINED BY YOU AS A RESULT OF THE EXHAUSTION OF YOUR PROPANE SUPPLY OR THE SUPPLY OF ANY OTHER PRODUCT PROVIDED, INCLUDING WITHOUT LIMITATION, DAMAGE TO YOUR HOME OR PERSONAL PROPERTY RESULTING FROM WATER DAMAGE FROM FROZEN PIPES. FURTHER THE COMPANY IS NOT LIABLE FOR DAMAGES TO THE SEPTIC SYSTEM, DRIVEWAY, LAWN AND/OR LANDSCAPING, AMONG OTHER THINGS, IF EQUIPMENT MUST TRAVEL OVER THE LAWN, DRIVEWAY, ETC. WHEN INITIATING SERVICE, PERFORMING REPAIRS OR REMOVING EQUIPMENT.

### **10. DISCLAIMER OF WARRANTIES.**

THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPANE OR OTHER PRODUCT SOLD, TANK, CYLINDER, AND/OR RELATED EQUIPMENT OR SERVICE SUPPLIED OR PERFORMED UNDER THIS AGREEMENT OR ANY PRIOR AGREEMENT OR UNDERSTANDING, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL PRODUCTS SOLD, SERVICES RENDERED AND/OR EQUIPMENT SOLD OR LEASED TO YOU ARE SOLD OR PROVIDED TO YOU "AS IS." SOME STATES (CT, KS, ME, MS, NH, WA, AND WV) MAY NOT ALLOW THIS EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMERS WHERE DELIVERIES AND/OR SERVICE ARE PROVIDED IN THOSE STATES.

**11. INDEMNIFICATION.** All parties to this Agreement agree to indemnify, defend and hold any and all other parties 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.

**12. EXCUSED PERFORMANCE.** The Company will not be responsible for any delay or damages caused by events or circumstances beyond its reasonable control, including without limitation, acts of God, fire, storms, floods, labor disputes, wars, hostilities, terrorism, compliance with laws or regulations, the Company's inability to obtain propane or any other product or equipment from its customary suppliers or terminal, refinery or pipeline disruptions, allocation programs or lack of or inadequate transportation facilities. Under any of these or similar circumstances, the Company may allocate propane or any other products and equipment among its Customers in any manner that the Company, in its sole judgment, deems reasonable.

**13. CHANGES TO THE TERMS & CONDITIONS.** The Company reserves the right to amend or add to these Terms & Conditions (other than price per gallon and fees, rates, and charges, which may be changed without prior notice) at any time by giving You prior written notice of the change(s). The notice may be in the form of a bill insert, email, or other written notification. By accepting delivery of propane or by paying any invoice, or other charges after You have been given notice of the change(s), You will be deemed to have agreed to the change(s). These Terms & Conditions may not be modified orally.

**14. CUSTOMERS WITH UNDERGROUND LEASED TANKS.** At the time of the installation, replacement and/or removal of the Leased Equipment, You will mark or otherwise accurately identify the location of all underground systems that are not marked by Your State's "Call Before You Dig" program, including, but not limited to, sprinkler lines, septic systems, leach pits, underground ponds and similar underground features. You are responsible for all costs incurred in the excavation and removal of the Leased Equipment and the Company is not responsible for furnishing fill, resurfacing, landscaping or restoring Your property to its previous condition upon removal. You will be billed on an hourly basis for this work based on the labor rates of the Company location performing the work, unless other arrangements are provided. The charge to remove an underground tank

can vary greatly and is affected by numerous factors, including, but not limited to, the size of the tank, the difficulty in accessing the tank, the soil conditions and other impediments. **THE COMPANY MAY AT ITS OPTION CHARGE YOU FOR THE VALUE OF THE UNDERGROUND TANK IN LIEU OF PHYSICALLY REMOVING THE TANK FROM YOUR PROPERTY.**

**15. CUSTOMERS WITH PREMISES THAT ARE NOT OCCUPIED YEAR-ROUND.** If You are enrolled in the Company's Automatic delivery program, we will make periodic deliveries to Your vacation/seasonal residence based upon a number of factors, including temperature conditions and the number and types of appliances using the products purchased from the Company in Your vacation/seasonal residence. **HOWEVER, IT IS YOUR RESPONSIBILITY TO NOTIFY US IF YOUR TANK PERCENTAGE FALLS BELOW 30% even when Your account is on automatic delivery if the residence is not occupied year-round.** Moreover, You must notify Your local office if You change any propane appliances or any appliance using any other product sold to you by the Company, use Your vacation/seasonal residence more than customary, or if any other change or development occurs that may cause Your residence to use more propane or other products sold to you by the Company than customary. **THE COMPANY DOES NOT ACCEPT RESPONSIBILITY FOR ANY DAMAGE CAUSED BY YOUR FAILURE TO NOTIFY YOUR LOCAL OFFICE OF A DELIVERY REQUEST. ADDITIONALLY, THE COMPANY IS NOT LIABLE FOR DIRECT DAMAGES TO PERSONAL AND REAL PROPERTY (INCLUDING, BUT NOT LIMITED TO, DAMAGE RESULTING FROM FROZEN PIPES) THAT OCCUR AS A RESULT OF YOUR INCREASE IN USAGE OR YOUR FAILURE TO PROVIDE ADEQUATE ADVANCED NOTICE OF A NEED FOR A DELIVERY TO AVOID THE EXHAUSTION OF PROPANE OR ANY OTHER PRODUCT PURCHASED FROM THE COMPANY.**

**16. CLAIMS AND ARBITRATION.**

**A. What is an Arbitration Agreement?** Upon the choice of either party to these Terms & Conditions (or any other entity or individual with the right to require arbitration under this provision, including, but not limited to, those entities or individuals named in this Section 16(A)(2), immediately below), a Dispute shall be resolved by binding arbitration. The term "Dispute" means any claim or controversy arising from or relating to these Terms and Conditions, Your

agreement with the Company, or the relationship between You and Company, including without limitation, any and all: (1) claims for damages or other relief or theories of liability, whether based in contract, tort, statutory or regulatory law or otherwise; (2) claims against the Company or its parents, subsidiaries, affiliates, predecessors, successors or assigns and any of their directors, officers, employees and agents (any of whom may elect arbitration of claims to which they are a party pursuant to these Terms and Conditions); (3) claims that arose before this Arbitration Agreement; (4) claims that arise during or after the expiration or termination of this Arbitration Agreement; and (5) claims that are the subject of a purported class action or other representative or collective action. "Dispute" shall not, however, include claims filed by you or Company on an individual basis in small claims court if the amount claimed is within the jurisdiction of that court.

**B. Can I Reject this Arbitration Agreement?** Notwithstanding anything in this Arbitration Agreement to the contrary, you may reject this Arbitration Agreement. To do so, you must send the Company written notice by mail postmarked no later than thirty (30) days after your first receipt of notice of this Arbitration Agreement to Superior Plus Propane, 1870 S. Winton Road, Suite 200, Rochester, NY 14618, Attention: Arbitration Office to whom the rejection should be addressed. Your rejection notice must be signed, must state that you reject this Arbitration Agreement, and must include your name, address, and Company account number and the location providing You with service. Your decision will not adversely affect your relationship with or receipt of goods or services from Company.

**C. How Does Arbitration Work?** This Arbitration Agreement is governed by the Federal Arbitration Act. Arbitrations shall be conducted by a single arbitrator and administered by the American Arbitration Association ("AAA") pursuant to its Consumer Arbitration Rules (collectively the "AAA Rules") in effect when notice of a Dispute is given. If your claim is less than \$10,000, you may choose whether the arbitration will be decided based only on the papers that relate to the dispute or after a telephonic or in-person hearing. At Your choose

to do so, arbitration hearings will take place in the federal judicial district where Your residence is located.

**D. Can I Have a Lawyer Represent Me & Recover Attorneys' Fees and Costs in Arbitration?** You may retain an attorney to represent you at the arbitration. In general, You are responsible for your attorneys' fees and costs; however, You may recover them from the Company to the same extent as in court if You are the prevailing party. You will also be responsible for paying your share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees You would have incurred if you had brought a claim in court. The Company will be responsible for any additional arbitration fees.

**E. Waiver of Jury Trials and Class Actions.** IN ARBITRATION, DISPUTES ARE RESOLVED BY AN ARBITRATOR RATHER THAN A JUDGE OR JURY. AS A RESULT OF THE TERMS OF THIS ARBITRATION AGREEMENT, YOU AND COMPANY WAIVE THE RIGHT TO PROSECUTE OR PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, OR OTHER REPRESENTATIVE ACTION. UNLESS YOU AND COMPANY AGREE OTHERWISE IN WRITING, THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED ON A CLASS ACTION OR COLLECTIVE BASIS, AND NEITHER THE ARBITRATOR NOR THE JUDGE MAY CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF TO THAT INDIVIDUAL PARTY.

**THIS CLASS AND COLLECTIVE ACTION WAIVER IS A MATERIAL AND ESSENTIAL PART OF AND CANNOT BE SEVERED FROM THIS ARBITRATION AGREEMENT.**

**17. SEVERABILITY.** In the event that any provisions of this Agreement are determined to be invalid under applicable law or unenforceable by a court

with appropriate jurisdiction, such provision shall be deemed to be restated to reflect, as nearly as possible, the original intention of this Agreement in accordance with applicable law. The remaining terms of this Agreement will remain unaffected by any other invalid or unenforceable term, and each such term will continue to be valid and enforceable to the fullest extent of the law.

**These Terms and Conditions have been updated and in effect as of December 15, 2018**