

Terms & Conditions

THIS NOTICE OF THE FOLLOWING TERMS AND CONDITIONS MODIFIES OR REPLACES ALL PRIOR AGREEMENTS AND GOVERNS YOUR RELATIONSHIP WITH HARVEY FERTILIZER AND GAS CO. D.B.A. TIDEWATER ENERGY (HEREAFTER REFERRED TO AS THE COMPANY). PLEASE READ THIS NOTICE CAREFULLY AND KEEP IT WITH YOUR OTHER IMPORTANT RECORDS.

For all Tidewater Energy customers (“you” or “your”), the new Terms and Conditions will become effective thirty days after the date of this notice, unless your agreement does not permit such modification. In that event, this Notice will serve as a notice of termination and an offer to do business under the Terms and Conditions set forth below. If you find these new terms and conditions unacceptable, you have the right to terminate your service.

GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE OF THESE TERMS AND CONDITIONS:** By accepting delivery of propane or by paying any invoice from the Company, you are deemed to have accepted these Terms and Conditions.
2. **TERM:** Your term is the period of time for which you have agreed to maintain service with us. If you did not sign a customer contract, your term will be determined as the date you began service with the Company through the end of the third year (the “Initial Term”) and will automatically renew year to year thereafter (the “Renewal Term”).
3. **LEASED EQUIPMENT:**
 - A. **General Provisions:** Upon request, the Company (“us” or “our” or “we”) will lease and provide to you various equipment, including a propane storage tank or cylinder, regulator(s), and related equipment (the “Leased Equipment”). In the interest of safety, you will not allow anyone to make any adjustments, connections or disconnections to the Leased Equipment or remove or pump-out the tank without our written permission. You agree that if you sell the residence where the Leased Equipment has been installed, you will notify the Company at least 30 days in advance of the sale taking place and will inform the buyer that the Leased Equipment is owned by the Company. You agree that only propane sold by the Company will be used with the Leased Equipment.
 - B. **Propane System Maintenance & Repair:** Except for the Leased Equipment, you are responsible for the maintenance and repair of your entire propane

system, including compliance with applicable laws and regulations. You are required to notify us in the event that you disconnect the propane system or add or remove appliances so that we may conduct a leak check on the Leased Equipment. You will notify the Company immediately if the Leased Equipment is damaged or malfunctions, or if you experience any problems with the Leased Equipment.

- C. **Tank Rent:** The Company may charge you an annual tank rent during the period the Leased Equipment is installed at your residence. The amount of rent can vary depending on, among other things, the size of the tank, the location of the residence, and your actual annual usage. Please contact your local office if you have questions about the tank rent that is applicable to you. The rental fee can be up to \$200.00.
 - D. **Access to Equipment:** You agree that the Company has an irrevocable right of entry and exit to your property, without prior notice, to deliver propane or to install, repair, service, or remove the Leased Equipment, or to perform any other services that the Company deems reasonably necessary. You agree 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. You will mark or otherwise identify the location of septic systems, leach pits, underground ponds and similar underground features as necessary to allow the Company to safely install the Leased Equipment, perform services, and make deliveries. You agree that the Company has no obligation to contact you to access the Leased Equipment and may suspend deliveries or service in the event the Company is unable to reasonably access the Leased Equipment. You agree to promptly surrender to the Company the Leased Equipment when your relationship with the Company is terminated for any reason.
 - E. **Title to Equipment:** The Leased Equipment will at all times remain the property of the Company and will not become a fixture or a part of your real property.
4. **SAFETY INFORMATION:** Safety information may be viewed at www.propanesafetyfirst.com. We strongly advise you to regularly visit this website to view important safety warnings. If you smell propane or experience any other adverse propane condition or safety-related matter, you should immediately contact your local office.

5. **PROPANE DELIVERY:** The Company will make periodic deliveries to you on either a fixed cycle basis or based upon a number of forecasting factors, including temperature conditions and your specific usage patterns. To ensure accurate forecasting, we request that you update the Company with any changes in your usage or appliances. In select situations the Company may agree to deliver to you on a “Will Call” basis, in which you must request a propane delivery. In this case, the Company recommends you order a delivery when your tank is at approximately 30% to ensure a timely delivery. Most Will Call deliveries will be made within 5-7 business days after your request. The Company may assess a Will Call Convenience Fee per delivery. Weather and other factors may affect delivery times. Expedited delivery requests may be assessed a Special Trip Charge.
6. **PRICING, FEES, RATES AND CHARGES:** You agree to pay the Company’s price per gallon, fees, rates, and charges in effect on the date that propane is delivered for Automatic delivery or ordered for Will Call delivery, when services are rendered, or as may be set forth on the delivery ticket, or office invoice.
- A. **Price:** Unless you have a contract which determines your price, you will receive the Company’s daily market price per gallon. You may contact your local office to receive current pricing information as pricing can change frequently and without prior notice to the customer.
- B. **Current Fees and Charges:** In addition to the price per gallon, the Company will apply other fees and charges to your account depending on the services requested and/or required. The fees and charges provided below are the most frequently assessed, but other fees and charges may apply depending on the services rendered. Please contact your local office for specific questions regarding fees and charges and for updated amount information. THE FEES LISTED BELOW ARE NOT GOVERNMENT IMPOSED, NOR ARE ANY PORTION OF THEM PAID TO ANY GOVERNMENT AGENCY. THE COMPANY RESERVES THE RIGHT TO CHANGE ITS FEES, RATES, AND CHARGES WITHOUT PRIOR NOTICE.
- i. **Early Termination Fee**—For customers with Leased Equipment, you have received certain benefits from the Company in exchange for your service commitment, which may include, but are not limited to, the installation costs of the Leased Equipment. In the event that you terminate propane service with the Company prior to the end of the Initial Term, the Company will charge you an Early Termination Fee as of the date of your request. The Early Termination Fee is \$150.00.

- ii. **Leak Check Charge**—This charge is applied when the Company must perform a leak check to verify that the propane system does not have any leaks. This test is required by law under certain circumstances, which may include: when a new piping system is installed, if the gas has been turned off for any reason or if there has been an interruption of gas service, or in the event a leak in the system is suspected. The local office can provide specifics on when a leak check is required and the current charge. This fee can be up to \$200.00 for test only.
- iii. **Pump-Out/Restocking Charge**—This charge is assessed when the Company removes a Company-owned tank from the customer's property that contains propane in excess of five percent water capacity. You can avoid this charge by continuing service with the Company until the supply of propane in the tank is less than five percent. The Company may, however, remove the tank before the propane is less than five percent if it deems, in its sole discretion, that you will not burn the gas in a timely fashion. This charge may be up to \$150.00.
- iv. **Reconnect Charge**—In the event that your tank is locked off by the Company due to nonpayment; this fee will be assessed to remove the lock, perform a leak check, and put your propane system back into service. The fee as of the date of this notice is \$150.00.
- v. **Returned Check/ACH Fee**—This fee is intended to cover the deposit return fee assessed by financial institutions and related administrative expenses associated with the return of a customer check/ACH for insufficient funds. The returned check/ACH fee is \$30.00.
- vi. **Service Dispatch Charge**—This charge is applied when a service technician is requested to a customer's residence or other location to perform diagnostic or other service work on customer-owned equipment and appliances or to pick-up a Company-owned tank or cylinder. This charge will not be credited toward service work performed and additional charges may be assessed depending upon the nature of the service work required. Please check with your local office regarding the availability of appliance repair service.

- vii. **Special Trip Charge**—This charge is incurred by customers who request deliveries within forty-eight (48) hours or non-emergency service after business hours or on weekends. This charge can vary due to the distance involved and/or the time required to service the request and can be obtained from your local office.
- viii. **Tank Rent**—See Section 3C.
- ix. **Will Call Convenience Fee**—This fee is assessed for propane deliveries to customers enrolled in the Will Call delivery option. Eligible customers may avoid this fee by switching to Automatic delivery. This fee may be up to \$150.00.

7. **PAYMENT TERMS AND LATE FEES:** If you have received credit terms from the Company, you will be billed after propane is delivered or services are rendered, unless you have enrolled in a budget program. If you dispute an invoice or believe your invoice is inaccurate, you must contact your local office within thirty (30) days of receipt. You agree to pay the Company's price per gallon and all fees, rates, and charges on or before the due date indicated on the invoice. If you fail to pay all amounts owed to the Company by the applicable due date, the Company may, unless prohibited by law, add a monthly late charge of 1.5% of the ending monthly balance until paid. In the event you fail to make a payment on the outstanding amount owed, the Company may, after providing written notice to you, suspend service and/or place a lock on the Leased Equipment. If the Company places a lock on the Leased Equipment, all amounts outstanding (including the Reconnect Fee) must be paid in full before service will be restored. The Company reserves the right to require you 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.
8. **ATTORNEY FEES:** If the Company initiates any legal proceedings or incurs any legal expense or attorneys' fees in exercising any of the Company's rights or remedies upon your failure to comply with any provision hereunder, whether or not there is a lawsuit, such expenses and reasonable attorneys' fees shall be added to the principal balance due and you shall be liable for the payment of same as an additional obligation hereunder.
9. **LICENSES, PERMITS, AND TAXES:** You agree 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.

10. **LIMITATION OF LIABILITY:** UNDER NO CIRCUMSTANCES WILL THE COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES. THIS LIMITATION SHALL APPLY 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 COMPANY'S SUPPLY OF PROPANE.
11. **DISCLAIMER OF WARRANTIES:** THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPANE, TANK, CYLINDER, AND/OR RELATED EQUIPMENT OR SERVICE PERFORMED UNDER THESE TERMS AND CONDITIONS OR ANY PRIOR AGREEMENT OR UNDERSTANDING, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
12. **TERMINATION OF PROPANE SERVICE:** Unless otherwise specified, your propane service may be terminated for convenience at the end of the Initial Term or Renewal Term upon the provision of thirty (30) days prior written notice to the Company.
- A. For Leased Equipment customers only: In the event service is terminated prior to the end of the Initial Term, the Company will charge you an Early Termination Fee, as outlined in Section 6B. The Company may also charge you a Service Dispatch Charge, and the Pump-Out Restocking Charge if applicable as outlined in Section 6B.
 - B. For Leased Equipment customers only: If propane service is terminated after your Initial Term, the Company will charge you a Service Dispatch Charge, and the Pump-Out/Restocking Charge if applicable as outlined in Section 6B.
 - C. Unless required by law, the Company does not repurchase propane remaining in the tank or provide customer refunds for any unused propane. The Company, may however, in its sole discretion, repurchase the propane remaining in the tank in certain circumstances. If the Company determines to repurchase the remaining propane, the repurchase price will be based upon the lower of the price per gallon that you paid or the Company's current daily market price.
 - D. The Company may terminate service with you at any time, without prior notice, if you fail to satisfy any of these Terms and Conditions or if the Company determines, in its sole discretion, that (A) a condition exists that poses a health or safety threat, or (B) your purchases are insufficient to justify continued service.

13. **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, compliance with laws or regulations, the Company's inability to obtain propane or equipment from its customary suppliers, terminal, refiner or pipeline disruptions, allocation programs, lack of or inadequate transportation facilities, or terrorism. Under any of these or similar circumstances, the Company may allocate propane and equipment among its customers in any manner that the Company, in its sole judgement, deems reasonable.
14. **CHANGES TO THE TERMS AND CONDITIONS:** The Company reserves the right to amend or add to these Terms and Conditions (other than price per gallon, fees, rates, and charges, which may be changed without prior notice) at any time by giving you 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 after you have been given notice of the change(s), you will be deemed to have agreed to the change(s).
15. **CUSTOMERS WITH UNDERGROUND LEASED TANKS:** At the time of installation and 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 of 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 the removal with local labor rates prevailing, unless other arrangements are provided. The charge to remove an underground tank can vary greatly and is affected by numerous factors, including the size of the tank, access to 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.
16. **CUSTOMERS WITH RESIDENCES THAT ARE NOT OCCUPIED YEAR-ROUND:** If you are enrolled in the Company's Automatic delivery program, we will make periodic deliveries for your vacation/seasonal residence based upon a number of factors, including temperature conditions and the number and types of propane appliances in your vacation/seasonal residence. However, it is your responsibility to notify us if your tank percentage falls below 30%. Moreover, you must notify your

local office if you should change any propane appliances, 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 gas than customary. We do not accept responsibility for any damage caused by 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 OCCURS 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 YOUR PROPANE SUPPLY.**

17. **NOTICE:** Any notice by you shall be sent to your local office, Attn: Customer Service. Notice to you may be in the form of a bill insert, stand-alone mailing, email, or other written notification.
18. **WAIVER:** If we delay in exercising any of our rights, the Company will not be prevented from exercising our rights at a later date. The Company's waiver of any breach of the Terms and Conditions at any time shall not excuse future breaches by the customer.
19. **SURVIVAL:** Sections 3, 7, 8, 10, 11, 12, 15, and 17 shall survive termination of your relationship with the Company.
20. **CUSTOMER OWNED EQUIPMENT:** The following provisions do not apply to Customer-owned equipment:
Section 3—Leased Equipment
Section 6B—Early Termination Fee and Pump-Out/Restocking Charge as it relates to the pick-up of the Company-owned equipment; however, the remaining provisions of Section 6B apply.
21. **APPLICABILITY:** These Terms and Conditions shall apply to customers in all states except where specifically prohibited by law.