

KIMLIN ENERGY

PROPANE•FUEL OIL•DIESEL•GASOLINE

www.KimlinEnergy.com

Kimlin Customer Agreement

The words “we”, “us”, “our”, “ours”, “Company”, “Kimlin” and “Kimlin Propane” refer to Kimlin Propane Co. Inc. The words “you”, “your”, “yours” and “Customer” refer to the person listed as Applicant on the Credit Application and Delivery Agreement or on the Kimlin Propane customer account. The word “premises” refer to the Delivery Address you indicated on your Credit Application, Delivery Agreement or in our records. The word Plans refers to your Price Plan, Service Plan and/or Basic Labor Plan, as applicable. The word agreement refers collectively to this Customer Agreement, the Credit Application and Delivery Agreement and, if applicable, the terms of the aforesaid Plans. “LP” stands for Liquid Propane gas. Your storage system means your own fuel tank and all appurtenant piping and lines between the tank and the burning appliance, but does not include equipment loaned to you by Kimlin.

Leased Tanks. Customer may terminate this Agreement at any time by giving the Kimlin (30) days written notice. The current charge for removal of tanks is \$160. In case of an underground propane tank leased to the Customer by the Company, the following clause takes precedence for this Agreement. Company agrees to lease the underground propane tank to Customer and Customer leases the propane tank from the Company. Company maintains ownership of underground propane tank unless Customer wishes to purchase the propane tank from Company. The purchase price of the tank is based on the current retail and/or replacement value.

Upon Company's request, Customer agrees to execute an easement or other proof of Company's ownership of the equipment leased to it under this Agreement and authorizes Company to file the same in the appropriate public records.

In the event Customer cancels this Agreement within the first year Customer agrees to an early termination fee of \$150.

The “tank” shall be used solely for the storage and handling of liquefied petroleum gas and sold exclusively by Company.

The “tank” shall not be removed from the location set by Company on the date of installation. If the “tank” fails to function or otherwise needs repairs or adjustment, Customer agrees to notify Company promptly. Company will make repairs or adjustments that, in its opinion, are necessary; provided however, if the need for such repairs or adjustment are occasioned by the negligence, misuse or servicing by the Customer or anyone not authorized by Company, such repairs and adjustments shall be at the Customer's expense. All appliances to be used with and served by the “tank” shall be installed by a competent mechanic experienced in making liquid petroleum gas installations and connections. Customer agrees that following any installation of new equipment or any modification to system, Customer will notify Company immediately after repair/installation is made, as it is required that a system check be performed. Customer assumes full responsibility for all connections made to Company's lines for the installation of any appliance unless Customer affords Company opportunity to inspect and supervise such installation and pays Company its regular service charge. The Customer shall be responsible for any loss or damage to the “tank”, unless caused by an act of God. Customer shall comply with all regulations and instructions supplied with or attached to the “tank”.

Company may terminate this Agreement immediately and without notice in any of the following events:

- a. If any product other than liquefied petroleum gas sold by Company is used in the “tank”;
- b. If customer fails to pay any moneys due Company;
- c. If the “tank” shall be moved from the location set by Company without Company's written consent;
- d. If the “tank” becomes damaged in any manner; or
- e. If the premises upon which the “tank” is located becomes subject to foreclosure proceedings upon any mortgage or lien, or upon the sale, transfer or conveyance of the premises or if unoccupied for an extended period.

Upon any termination, Customer shall, in accordance with Company's instruction, return the “tank” in as good order and condition as when leased, ordinary wear and tear expected or, Company or its authorized representative, may without notice or demand, and without legal process, enter any premises where the “tank” is located and take possession of it. Customer expressly waives all claims for damages and all rights under local or other ordinances or laws regulating the removal of the “tank”. Company shall not be liable for any damage to the premises necessarily incurred by the removal of the “tank” therefrom. The removal of the “tank” or the termination of this Agreement shall not be deemed a waiver by Company of any other remedies provided by law.

In the event the Customer requires removal of an underground tank, it is understood that the customer will be responsible for the cost of removal of tank on a time and materials basis and agrees in the event Customer elects to employ their choice excavator that it is understood that Kimlin Propane must approve of the excavator company chosen by Customer. Removal of said tank will occur within 90 days of Customer's notification to remove tank. In the event it exceeds 90 days Customer agrees to pay a rental fee for the equipment.

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Minimum Use Fee. In the case of Company owned above ground tanks, if Customer fails to meet the minimum use requirements, the Company may, in its sole discretion, exchange the “tank”, for a “tank” more compatible with the Customer’s use, or terminate this Agreement. In the case of all leased tanks by Kimlin Propane to the Customer, if you buy less than the minimum or use our tank for a back-up generator, we will charge an annual minimum use fee.

Customer shall indemnify and hold harmless Company, its successors and assigns of any and all liability for claims for loss, damage or injury to persons or property (including but not by way of limitation, Customer, his agents, servants and employees and members of his household or other occupants of the premises upon which the “tank” is located) caused or occasioned by any leakage, fire or explosion of any of the products stored in said “tank” or contained or drawn through said “tank” or any attachment or appliance used, connected, installed or furnished herewith which shall occur before notice to Company of any defect in the “tank” or between the time of notice and a reasonable time thereafter within which Company could have repaired or which shall occur by reason of failure of Customer to shut off gas in accordance with such regulations and instructions or failure of Customer to observe such regulations or instructions or which shall be the result of negligent damage to or misuse of the “tank” by Customer.

Your Fuel Storage System. Kimlin is not responsible for the condition of your storage system, unless on loan from us. Service Plans do not cover your storage system. You are responsible for the cost of installation, maintenance, repair, replacement, removal, or necessary modification of your storage system.

Limited Environmental Liability. You will be responsible for the cost of any cleanup, remediation, or other act of complying with any environmental legal requirements related to your storage system, unless resulting solely from Kimlin’s gross negligence.

Kimlin will not be liable for any loss, bodily injury, property damage, expense, or decrease in property value arising out of the disposal, discharge, dispersal, release, or escape of any hazardous substance into or upon your premises, surrounding property, the atmosphere or any water course or body of water unless in each case caused by our gross negligence.

Assignment. This Agreement is not assignable or transferable by Customer without the prior written consent of Company.

Leased Equipment. All equipment leased by this Company will remain the property of the Company and shall not become a fixture or a part of Customer's real property.

Entire Agreement; Waiver. This Agreement contains the entire contract between you and us as to the “tank” and supersedes all agreements, warranties or representations, oral or otherwise. This Agreement cannot be changed or any of its provisions varied except in writing, signed by the Customer and accepted by Company. Any waiver of any of the terms of conditions of this Agreement shall not be deemed to be a continuing waiver of such terms or conditions or waiver of any other term or condition hereof.

Severability. If a court or regulatory agency of competent jurisdiction holds any provision of this Agreement to be invalid, Void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

Automatic Delivery. It is Kimlin Propane's recommendation that all customers be on an automatic delivery schedule. If the Customer agrees to automatic delivery, we will deliver based on a degree-day projection. Only automatic delivery Customers can participate in Plans. Non-Plan Customers will pay Kimlin’s Daily Posted Retail Price posted on the date of fuel delivery. To enhance degree-day projection accuracy, you agree that Kimlin’s will be the only supplier of heating fuel to your premises. We will make every effort to keep you supplied with fuel, but we cannot be liable for damages or losses if your actual usage exceeds reasonable estimates based on your prior history or information you provided. If you use alternative heat sources, such as wood, pellets, electricity etc., we cannot be responsible if you run out of our fuel as a result of changes in your use of alternative heat sources. We will not honor top-off requests. Any change in delivery status must be made in writing.

Will Call Delivery. We will deliver your fuel only when you request if you so indicated in your Credit Application and Delivery Agreement or if you notify us in writing to discontinue your automatic delivery. Will Call Customers will pay Kimlin’s Daily Posted Retail Price posted on the date of fuel delivery. Will Call Customers are not eligible to participate in Plans. We generally need at least 5 business days notice for Will Call deliveries. Minimum delivery requirements may apply. We will not honor top-off requests. Any change in delivery status must be made in writing.

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Delivery Conditions. Customer grants the Company the irrevocable right to enter Customer's premises at any time to deliver propane or to install, repair, service or remove any or all of the equipment, or to perform any other services that the Company deems necessary under this Agreement, without prior notice, judgment or other process of law. Customer agrees to provide safe, free and unimpeded access to the tank and related equipment, including, but not limited to, access that is free of ice, snow, water, mud, debris and other hazards, as well as to provide a driveway that is sufficiently sturdy to withstand the weight of a filled propane truck. Customer acknowledges that failure to ensure safe and unimpeded access to the Equipment may cause an interruption in service. The Customer agrees that the Company shall have 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 the equipment when the Agreement is terminated for any reason. Unless you notify us otherwise, we will rely on your continuous representation that you have inspected your storage system and that it is in compliance with applicable legal requirements, leak-free, and otherwise safe to deliver into. We will not be liable for any damage or loss if we cannot deliver your fuel because (a) we cannot access your fuel tank, (b) a dangerous or unsanitary condition exists in or around the premises, for example ice, snow, or a wild, unruly, or menacing animal, (c) your storage system violates legal requirements, or (d) we are prevented by circumstances beyond our control. All deliveries may be subject to delivery fees, government fees and taxes.

Service and Service Warranty. You agree to pay us for parts and labor at our current rates for any service work that is not covered by a Plan or our warranty. Unless otherwise noted, Kimlin will repair or replace, at its option, any failed parts and labor for 1 year from the date of installation.

Liability Limited. We will not be responsible for loss or damage arising from changes in fuel consumption; your failure to schedule maintenance; frozen, gelled or leaking fuel line; power interruption or loss; vacant, unattended, or unoccupied premises; theft; abuse or misuse of equipment; spontaneous part failure; act of God; terrorism; war; riot; blockade; embargo; strike; lockout; shortage of fuel, labor, transport, electricity, or water; inability of hedging counterparty to perform its contract duties; explosion; fire; flood; snow; hurricane; extreme adverse weather; delay; accident; governmental act; or any other condition beyond our reasonable control. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE WILL NOT BE LIABLE FOR THIRD PARTY CLAIMS, OR FOR DIRECT OR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, LOSS OF USE, EVEN IF WE ARE INFORMED OF THEIR POSSIBILITY. Any and all suits and actions against us, whether based in contract, tort or otherwise, whether for personal injury or property damage, in any way related to this Agreement must be commenced within one year of the cause of action. IN NO EVENT SHALL OUR AGGREGATE LIABILITY TO YOU OR OTHERS UNDER THIS AGREEMENT OR OTHERWISE EXCEED \$1,000 OR THE COST OF REPLACEMENT OR REPAIR OF SERVICES OR PRODUCT, WHICHEVER IS LESS.

Termination. You can terminate your account and this Agreement by writing to us and we will close your account on the next business day after receiving it. You will remain responsible for paying your unpaid balance and for any product or services provided to you prior to the effective termination date. If you have certain active Plans, you may incur an early termination fee for terminating this Agreement.

Fees, Pricing, Rates & Charges. *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 Customer has a fixed price contract, Customer's price for propane will not change during the term of this Agreement. If this Agreement does not contain a fixed price, Customer's price for propane may move either up or down, as it does with other energy commodities. Similarly, if there is no agreement that governs Customer's price for propane, Customer's 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.

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Environmental Compliance Fee - This fee, which is assessed to propane deliveries and service calls, helps to offset a portion of the costs the Company incurs 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, employee safety training and inspections, cylinder re-qualification, and environmental compliance. The current fee is \$6.99.

Minimum Use Fee - Minimum use fees do not apply to Customer owned tanks. The Company reserves the right to change its minimum use fee cost and qualifications without prior written notice to Customer. Current Minimum use fees are as follows: 24 Gallon Tank: 65.00, 50 Gallon Tank: \$65.00, 100 Gallon Tank \$95.00, 250 Gallon Tank: \$199.00, 330 Gallon Tank: \$299.00, 500 Gallon Tank: \$450.00, 1000 Gallon Tank: \$550.00.

Late Charge – This charge is assessed when a Customer does not pay his/her bill within the credit terms established which are “net due upon receipt”. A finance charge will be applied on invoice balances remaining unpaid at 30 days. The finance charge is computed by a periodic rate which is an annual percentage rate of 24%

Tank Removal Fee – This charge covers the labor to remove a tank. The Company reserves the right to change its Tank Removal fee cost and qualifications without prior written notice to Customer. The current charge for removal is \$150.

Special Trip Charge or Emergency Deliveries – This fee is charged when Customers choose not to be on Automatic Delivery and call in and ask for an immediate delivery. The fee is also 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.

Returned Check Charge. The charge for a returned check is \$60.

TERMS OF PRICE PLANS. The provisions of this section apply to your Fixed Prepay Plan, CAP Plan, CAP and similar pricing plan from us (collectively referred to as Price Plans).

Eligibility. Price Plans require you to be on automatic delivery. If you cancel automatic delivery during the Plan Period, your Price Plans will be terminated, which may subject you to early termination fees

Plan Period; Plan Gallons. The Plan Period and Plan Gallons are specified at the time you purchase your Price Plan.

Automatic Delivery after Plan Expires, is Exhausted, or is Terminated. After the Plan Period expires, or your Plan Gallons are delivered, or you terminate your Price Plan, whichever is earlier, we will continue to make automatic deliveries to your premises at the Kimlin’s Daily Posted Retail Price, unless you request otherwise in writing.

Unused Plan Balance. Balances remaining in your account at the Plan Period end will convert to a credit to your account. Substantial under usage may subject unused gallons to penalties equal to the early termination fee. The credit may be used for any other charges against your account. You may request a refund in writing and we will send you a refund check within thirty (30) days of receiving your written refund request.

Budget Plan Payments. You must remain current with your Price Plan payments at all times. If your account is overdue, your Price Plan may be terminated and subject to early termination, lateness and other fees and charges.

Service Not Included. Service Plans are sold separately from Price Plans. Services covered by the Service Plan and the Basic Labor Plan are not included in Price Plans, unless expressly specified in our written offer of the Price Plan.

Early Termination Fee. If your Price Plan or account is terminated for any reason prior to the end of the Plan Period, you agree to pay us an early termination fee unless you show that you no longer occupy the account premises. The early termination fee will be calculated by multiplying 75 cents by the difference between your Price Plan estimated gallons and gallons delivered to you since the start of the Plan Period. You and we acknowledge and agree that it would be extremely difficult to determine our actual damages from the early termination of your Price Plan, and that the early termination fee as liquidated damages is a fair and reasonable estimate of actual damages in light of the magnitude of the actual or anticipated harm to us that would result.