

Residential Propane Supply Agreement & Equipment Lease

Kludt Propane

This Propane Supply Agreement and Lease is between **Kludt Propane**, (the "Company"), **1126 E. Pine St., Lodi** and the Customer identified below ("Customer") and will be in effect for a minimum of one (1) year from the date it is signed by the Customer and from year-to-year thereafter or until terminated in accordance with paragraph 11 of this Agreement. Pricing will be _____ above our cost for the term of the Agreement. Tank Fees will be _____ per year per tank for the term of this Agreement.

Customer: _____ Business Phone: _____ Fax: _____ E-Mail: _____
Primary Contact: _____ Cell: _____ Fax: _____
Installation/Delivery Address: _____ City: _____ State: _____ Zip: _____
Billing Address: _____ City: _____ State: _____ Zip: _____

LEASE EQUIPMENT AGREEMENT

1. 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.

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. You agree to pay the Company 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 our office if you have questions about the tank rent that is applicable to you.

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 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.

F. Propane Meters. If you have a Company propane meter installed on the Leased Equipment, you will be billed for your actual propane usage rather than per delivery. The Company reserves the right to bill you based on an estimated usage amount, which will later be followed up by an actual reading, based on which: (i) you will receive a credit to the extent that the estimated amount exceeds the actual propane usage amount or (ii) you will be charged an additional amount to the extent that the actual amount of propane used exceeds the estimated amount.

2. TERMS. The term applicable to this Agreement shall be for three (3) years ("Term") beginning on the date signed by Customer and will automatically renew from year-to-year thereafter ("Renewal Term") until terminated by either party as provided herein.

3. SAFETY INFORMATION. Safety information has been or will be supplied in your Welcome Packet. If you did not receive the safety information, please contact 209-368-0634 and we will mail this information to you. Additionally, the Company's safety warnings are also available at www.propanesafetyfirst.com. We strongly advise you to regularly visit the website to view those and other important safety warnings. If you smell propane or experience any other adverse propane condition or safety-related matter, you should immediately contact our office.

4. PROPANE SUPPLY. You agree that only propane sold by the Company will be used with the Leased Equipment.

5. PROPANE DELIVERY. The Company offers two types of propane delivery:

Automatic – Under this delivery option, the Company will make periodic deliveries to you on either a fixed cycle basis or based upon several 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.

Will Call – Under this delivery option, you must request a propane delivery. 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 will 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.

A) Price. Unless you have an agreement which determines your price, you will receive the Company's daily market price per gallon that is set at the Company's discretion, which includes, among other things and without limitation, our costs to procure the propane, freight and transportation and may vary depending upon the volume of propane purchased by the customer, customer classification, ownership of propane tank and competitive conditions. You may contact our office to receive current pricing information as pricing changes 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 our office for specific questions regarding fees and charges and for updated 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.

- **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 \$149.99.
- **Fuel Recovery Fee** – This fee, which is assessed to propane deliveries and service calls, helps to offset the significant expenses incurred by the Company in fueling its fleet of motor vehicles. This fee fluctuates on a monthly basis as the Company's cost of fuel fluctuates. For updated Fuel Recovery Fee information, please contact our office or visit the Company's website.
- **HazMat & Safety 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 fee as of the date of this Agreement is \$10.99.
- **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 office can provide specifics on when a Leak Check is required and the current charge.
- **Meter Fee** – This fee is applicable to customers who are charged for their propane based on an amount of usage as measured by the Company's meter. This fee helps to offset the cost of the meter, meter reading and related administrative costs. The fee also helps to offset the costs otherwise covered by the HazMat & Safety Compliance fee (as described above), which is not charged to metered customers. The fee as of this date of the agreement is \$11.99 per month.
- **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 Agreement is \$79.99.

Returned Check 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 for insufficient funds. The Returned Check Fee is \$25.00 as of the date of this agreement.

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 appliance or to pick-up a Company-owned tank or cylinder. The Service Dispatch Charge as of the date of this agreement is \$59.99. 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 our office regarding the availability of appliance repair service.

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 our office.

Tank Rent – See Section 1C

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 payment program. If you dispute an invoice or believe your invoice is inaccurate, you must contact our office with 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 average daily balance until paid or a late charge of \$36.00, whichever is greater. 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, all amounts outstanding (including the applicable 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. 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 this Agreement.

9. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES WILL THE COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGE TO PLUMBING (INCLUDING WATER DAMAGE FROM FROZEN PIPES), SEPTIC SYSTEM, DRIVEWAY, LAWN AND/OR LANDSCAPING.

10. DISCLAIMER OF WARRANTIES. COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPANE TANK, CYLINDER AND/OR RELATED EQUIPMENT OR SERVICE SUPPLIED OR PERFORMED UNDER THIS AGREEMENT OR ANY PRIOR AGREEMENT OR UNDERSTANDING, INCLUDING, BUT NO LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. 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.

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 6(B). The Company may also charge you a Service Dispatch Charge.

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.

- The Company may terminate service with you at any time, without prior notice, if you fail to satisfy any of the Terms and Conditions or if the Company determines, in its sole discretion, that a condition exists that poses a health or safety threat.

12. EXCUSED PERFORMANCE. 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. Company's inability to obtain propane or equipment from its customary suppliers, terminal, refinery or pipeline disruptions, allocation programs or lack of or inadequate transportation facilities. Under any of these or similar circumstances. Company may allocate propane and equipment among its Customers in any matter that Company, in its sole judgement, deems reasonable.

13. CHANGES TO THE AGREEMENT. The Company reserves the right to change this Agreement (other than price per gallon, 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 the delivery of propane or by paying any invoice, fees, rates or charges after you have been given notice of the change(s), you will be deemed to have agreed to the change(s). This Agreement may not be modified orally.

14. 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 to 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 the 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 sue more propane gas than customary. WE DO NOT ACCEPT RESPONSIBILITY FOR ANY DAMAGE CAUSED BY YOUR FAILURE TO NOTIFY OUR OFFICE OF A DELIVERY REQUEST. ADDITIONALLY, 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 YOUR PROPANE SUPPLY.

15. CLAIMS AND ARBITRATION

A. Arbitration Agreement. Upon the election of either party, a Dispute shall be resolved by binding arbitration. "Dispute" means any claim or controversy arising from or relating to the relationship between you and the Company, including without limitation any and all: (1) claims for relief or theories of liability, whether based in contract, tort, statute 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; (3) claims that arose before or after the expiration or termination of this or any prior Agreement; and (4) claims that are the subject of a putative class action in which no class has been certified. "Dispute" shall not, however, include: (1) issues relating to the scope, validity or enforceability of this arbitration agreement; (2) claims filed by you or the Company on an individual basis in small claims court; or (3) claims filed by or on behalf of the Company to collect money you owe the Company.

B. Right to Reject this Agreement or Changes to this Agreement. Notwithstanding anything in this Agreement to the contrary, you may

reject this arbitration agreement or future changes to this arbitration agreement. To do so you must send the Company written notice by certified mail postmarked no later than thirty (30) days after your first receipt of notice of this arbitration agreement (if rejecting the arbitration agreement) or notice of the change (if rejecting changes to the arbitration agreement to P.O. Box 166, Lodi, CA 95241-0166. Your decision will not adversely affect your relationship with or receipt of goods or services from the Company.

C. Procedures for Arbitration. This arbitration agreement is governed by the Federal Arbitration Act. Arbitrations shall be administered by the American Arbitration Association ("AAA") pursuant to its Commercial Arbitration Rules and Supplementary Procedures for Consumer Related Disputes (collectively the "AAA Rules") as modified by this arbitration agreement. If your claim is less than \$10,000, you may choose whether the arbitration will be decided on the papers or after a telephonic or in-person hearing.

D. Waiver of Jury Trials and Class Actions. IN ARBITRATION, DISPUTES ARE RESOLVED BY AN ARBITRATOR RATHER THAN A JUDGE OR JURY, WHETHER IN ARBITRATION OR COURT, YOU AND THE COMPANY WAIVE THE RIGHT TO PROSECUTE OR PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, OR OTHER REPRESENTATIVE ACTION. UNLESS YOU AND THE COMPANY AGREE OTHERWISE IN WRITING, THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION BASIS AND NEITHER THE ARBITRATOR NOR JUDGE MAY CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. THE ARBITRATOR/JUDGE 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 ACTION WAIVER IS A MATERIAL AND ESSENTIAL PART OF AND CANNOT BE SEVERED FROM THIS ARBITRATION AGREEMENT.

16. 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 the Agreement in accordance with applicable law. The remaining terms will remain unaffected by the invalid or unenforceable term, and each such term will continue to be valid and enforceable to the fullest extent of the law.

17. NOTICE. Any notice by you shall be sent by U.S. mail, postage prepaid, to the company at P.O. Box 166, Lodi, CA 95241-0166. 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 this Agreement at any time shall not excuse future breaches by the customer.

19. SURVIVAL. Paragraphs 1,5,6,8,11,16 and 18 shall survive termination of your relationship with the Company.

20. TERMS AND CONDITIONS. From time to time, the Company issues Terms & Conditions. The issuance of the terms & Conditions will replace this Agreement thirty (30) days after your receipt or upon the effective date listed on the Terms & Conditions, whoever is later. By accepting delivery of propane, or by paying any invoice, fees, rates or charges, you are deemed to have accepted the terms & Conditions and does not require your signature.

Please contact Mike Castner at the Company office for updated fees, rates and other charges.

If this box is checked, this Propane Supply Agreement and Equipment lease is further subject to the Terms and Conditions set forth in Attachment(s), which is/are attached hereto and made part hereof.

DESCRIPTION OF LEASED EQUIPMENT

Tank/Cylinder: _____

Regulator: _____

CUSTOMER:

BY: _____

PRINT NAME: _____

DATE: _____

KLUDT PROPANE REPRESENTATIVE:

BY: _____

TITLE: _____

DATE: _____



Serial Number: _____

Lease Cost: _____