

# COST-PLUS AGREEMENT



Company name (hereinafter referred to as "Company")

Customer name  Account number

Billing address(es)  Phone number

City  State  ZIP

## PRICING:

☐ **BULK:** Your price will be set by adding a fixed margin of  cents per gallon to the basing point.  
**Special Provisions/Definition of basing point:**

☐ **CYLINDER:** Your price will be set by adding a fixed margin of  cents per gallon to the basing point.  
 Gallons (number of gallons in a cylinder) are then multiplied by the price per gallon for a total cost per cylinder.  
**Special Provisions/Definition of basing point:**

Your price shall be set and adjusted in reference to the cost at the basing point defined above. Select the option desired below.

☐ **DAILY** Your price shall be set in reference to the cost at the basing point on the day the agreement is activated and adjusted daily with the cost at the basing point.

☐ **WEEKLY** Your price shall be set in reference to the cost at the basing point on the day the agreement is activated and adjusted, if the cost at the basing point has changed, every seven days after that.

☐ **MONTHLY** Your price shall be set in reference to the cost at the basing point on the day the agreement is activated. It will be adjusted, if the cost at the basing point has changed, on the  of each month (1st, 15th, etc.).

For the weekly and monthly pricing options, if during the pricing period the daily cost at the relevant basing point varies by more than 15 percent from the cost being used for the current pricing period (whether the variation reflects an increase or decrease in the cost of product), your price shall be adjusted to reflect the current market cost and future purchases during that period will be priced in reference to the cost at the time of the adjustment.

**SALE OF PROPANE.** Ferrellgas agrees to sell and deliver to Customer and Customer agrees to accept and purchase from Ferrellgas all of Customer's propane requirements in accordance with this Agreement and the Terms and Conditions contained herein. Payment terms shall be net 30 days from invoice date, unless otherwise agreed. Customer's failure to keep his or her account current is a breach of this Agreement and future gas purchases will, at Ferrellgas' option, be at Ferrellgas' current daily price.

This Agreement will remain in effect initially from  <sup>Date</sup>,  <sup>Year</sup>, to  <sup>Date</sup>,  <sup>Year</sup>

☐ **AUTOMATIC RENEWAL** This Agreement will automatically renew for additional one year terms unless terminated pursuant to the terms of this Agreement or unless one party sends to the other a written notice of its intent not to renew this Agreement no later than 30 days prior to the end of the then-current term. Such notice is effective at the end of the then-current term.

☐ **NON-RENEWABLE** This Agreement will expire on the date specified above.

### CUSTOMER MUST BE CREDIT-APPROVED FOR TERMS.

I have read and understand all the Terms and Conditions provided to me by Company. I further understand that by signing this Agreement, I agree to the Terms and Conditions and acknowledge that this Agreement contains a binding arbitration provision that may be enforced by the parties. This supplements existing lease agreements with Company.

Please complete and sign this Agreement and return to Company postmarked no later than  <sup>Date</sup>,  <sup>Year</sup>.

Customer signature/date

Company representative signature/date

**MARGIN.** In the event that Company desires to change the fixed margin, it shall notify Customer of the new margin no later than 30 days prior to the end of any anniversary date of this Agreement; Customer will then have the option of accepting the new margin or terminating the contract by sending notice to Company by that anniversary date, which notice shall be effective on that anniversary date only if received by Company. The new margin will be effective at the beginning of the next contract year. By accepting and paying for product at the new fixed margin, Customer consents to the new fixed margin for the remainder of the term.

**EQUIPMENT.** Company agrees to provide the propane equipment shown on the attached exhibit to store the product purchased by Customer. Customer agrees to pay to Company the sum of \$[ ] for the first year's equipment rental, and \$[ ] for each subsequent year's equipment rental. All equipment provided is the property of Company. Customer agrees to pay Company's costs for removal of equipment upon expiration of the agreement term or termination of this Agreement. Customer is responsible for any missing or damaged equipment, ordinary wear and tear excepted. The rental charges may be changed if additional equipment is provided or by the parties by a separate written agreement. Customer agrees that only Company may fill, pump out, alter, modify or service the tank and equipment, and agrees not to permit any other propane provider or contractor to do so.

**DELIVERY POINTS.** Any change in delivery points must be agreed upon by both parties. Alternate delivery points must be within Company's normal operating area. Customer agrees to pay additional transportation charges if any.

**TITLE; RISK OF LOSS.** Title and risk of loss to propane shall pass to Customer upon delivery by Company to the propane tank on Customer's property.

**SPECIFICATIONS; MEASURE.** The propane shall be commercial grade propane as that term is defined in GPA Liquefied Petroleum Gas Specifications (Publication 2140-90 as amended from time to time). The propane delivered hereunder will be odorized by Company at or before delivery by the addition of ethyl mercaptan in the ratio of approximately one and one-half (1.50) pounds per 10,000 gallons. One gallon shall be liquid capacity equal to 231 cubic inches.

**LIABILITY; INDEMNIFICATION; HOLD HARMLESS.** Each party ("Indemnitor") shall indemnify and hold harmless the other party and any of the other party's employees, contractors and agents (collectively the "Indemnities"), from and against any and all claims, losses, damages, causes of action, suits, liabilities, and judgments of every kind and character, including all expenses of litigation, court costs, and reasonable attorneys' fees, for bodily injury, death, or damage to or destruction of property, that Indemnities may sustain, to the extent proximately caused by the Indemnitor's employees, contractors or agents negligent or unlawful conduct. In cases of joint or concurrent negligence, each party shall be responsible to the extent of its respective negligence.

**DEFAULT; REMEDY.** An event of default shall occur if Customer fails to perform or observe any covenant, condition, or agreement to be performed or observed hereunder, and such failure continues uncured for fifteen (15) days after written notice thereof. Upon the occurrence of default, Company may withhold further performance hereunder until such conditions have been complied with or, at its option, immediately terminate and cancel the Agreement as to further shipments. If Company terminates this Agreement upon a default by Customer or Customer terminates this Agreement without cause, Company is entitled to take possession of its equipment from Customer and Customer will be assessed damages for the lost margins of Company based upon past actual volume usage at the fixed margin stated above, computed for the remainder of the contract term. The parties recognize that it would be extremely difficult to ascertain the extent of actual damages caused by Customer's default, and that said fixed margin computation represents as fair an approximation of such actual damages as the parties can now determine. Customer agrees to pay Company's costs for removal of equipment upon default or early termination, and shall further pay a pro rata share of Company's installation and capital costs in such event, prorated based upon the date of termination or default in relation to the contracted expiration of the term of this Agreement.

**TERMINATION.** This Agreement may be terminated by the non-defaulting party in the event of a default, as described above. In the absence of a default, either party may terminate this Agreement effective at the end of the current term by sending notice of intent not to renew as provided in the Term section.

**FORCE MAJEURE.** Except with respect to the obligation of Customer to make

payment for propane received, each party shall be excused for delay or failure in performance by reason of any cause beyond the party's control, including war, fire, strikes, revolutions, riot, acts of hostility, governmental acts and requests, governmental interference, flood, storm, any act of God, or any other extraordinary cause over which neither party has control, whether or not similar to any of the foregoing, including, but not limited to, pipeline allocations or shortage of product. Upon cessation of the cause or causes for any such failure or delay, performance hereof shall be resumed, but such failure or delay shall not operate to extend the term of this Agreement nor obligate either party to make up deliveries or receipts as the case may be. Nothing herein contained shall excuse Customer from paying Company, when due, any amounts payable hereunder or pursuant hereto. Company shall not be obligated to purchase propane for delivery and sale hereunder from others in order to replace the quantities of propane so curtailed or cut off by reason of circumstances beyond its control. Notice of party's claims of excused performance due to circumstances beyond its control shall be given to the other party as soon as reasonably possible after the occurrence of the cause upon which nonperformance is based.

**SUCCESSORS AND ASSIGNS.** The rights of the Customer shall not be assignable without the prior written consent of Company. This Agreement shall inure to the benefit of and be binding upon the personal representatives and successors of the parties.

**WAIVER.** No failure or delay in executing any of Company's rights hereunder shall prevent its execution at a later date and neither shall a waiver by Company of any breach by the Customer be deemed a waiver of subsequent breach.

**GENERAL.** This contract shall embody the entire Agreement between Customer and Company on propane pricing. No modification hereof shall be of any effect unless such modification is in writing and executed by the parties hereto. A duplicate of the signed original of this Agreement shall be as binding on Customer as the original.

**CONFIDENTIALITY.** Material in this Agreement is confidential. It is intended only for the use of Customer. Any disclosure, unauthorized use, distribution, or taking of any action based on this information by any individual or organization other than Customer is strictly prohibited and will void this Agreement.

**SAFETY WARNINGS.** The odor of ethyl mercaptan can fade in certain circumstances, which are described in the warning materials Company has provided to Customer. Customer acknowledges receipt of this warning material and understands the important safety information contained in it.

**LIMITED WARRANTY; DISCLAIMER.** Company warrants that title to the propane delivered hereunder, at the time of its transfer to Customer, shall be good and valid, free from all liens, claims, and encumbrances and that its transfer to Customer shall be rightful. Company makes no other representations or warranties of any kind whatsoever, direct or indirect, express or implied, including, without limitation, none as to the suitability, merchantability, fitness for use, or fitness for a particular purpose of such propane. Company expressly disclaims and excludes all such representations and warranties.

**DAMAGES.** Company is not responsible for damage caused by LP gas or equipment, delivery trucks, bulk storage containers, and regulators, as a result of conditions beyond Company's control. Neither party shall be liable to the other for indirect, consequential or special damages arising from the performance or breach of this Agreement, except to the extent required to indemnify a party for such damages due to a third party pursuant to the indemnity provisions of this Agreement.

**ARBITRATION.** Except with respect to claims by Company for payment of amounts due for propane purchases or equipment rental, removal and/or installation costs (including all applicable fees, late payment charges, returned check charges and collection costs), Customer and Company agree that any claim, dispute or controversy, whether in contract, tort (intentional or otherwise), including without limitation, product liability, property damage, personal injury claims, or claims based on strict liability, whether pre-existing, present or future, and including constitutional, statutory, common law, regulatory, and equitable claims in any way related to (a) the services or equipment leased or sold herein, (b) the propane delivered or sold hereunder, (c) this Agreement, or (d) the safety materials, advertisements or any other materials provided by Company in any way relating to the services, equipment or business dealings of the parties, including the validity, enforceability or scope of this arbitration provision (collectively a "Claim") shall be resolved, upon the election of either party by binding arbitration administered by and under the applicable rules

## ADDITIONAL TERMS

The following terms are a part of this Agreement

either the American Arbitration Association, JAMS/Endispute or the National Arbitration Forum in effect at the time the Claim is filed. The number of arbitrators shall be three, including at least one attorney with at least 10 years' experience. The place of arbitration shall be Overland Park, KS. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

**NO CLASS ACTIONS OR JOINDER OR CONSOLIDATION OF CLAIMS WITH OTHER PERSONS SHALL BE PERMITTED IN THE ARBITRATION WITHOUT THE CONSENT OF BOTH COMPANY AND CUSTOMER.**

Customer initials

Date