

# GARY'S FUEL SERVICE INC.

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www.garysfuel.com

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The Gary's Fuel Service terms and conditions for business and residential customers are set forth below. Please read this carefully, as it is intended to modify and/or replace all prior agreements and governs your relationship with Gary's Fuel Service.

## **TERMS AND CONDITIONS FOR ONGOING #2 FUEL, KEROSENE & PROPANE-RELATED SERVICES AND COMPANY OWNED EQUIPMENT, WHETHER LOANED OR LEASED FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS**

**1. ACCEPTANCE OF THESE TERMS AND CONDITIONS.** Your signature is not required. You (also referred to as "Customer" or "your") are deemed to have accepted these Terms and Conditions by conducting business with Gary's Fuel Service, (also referred to as "the Company", "us", "we", and "our"), which includes but is not limited to: (i) accepting or requesting #2 fuel, kerosene and/or liquid propane (also referred to as "heating fuel") delivery or related services; (ii) paying a Company invoice; or (iii) allowing Company-owned equipment to remain on your property for at least thirty (30) days. These Terms and Conditions become effective when you open an account with Gary's Fuel Service. These terms and conditions shall serve as a notice of termination of any previous agreement and is in effect once we agree to do business with you.

**2. SAFETY INFORMATION.** Propane related safety information is provided at [www.propanesafetyfirst.com](http://www.propanesafetyfirst.com). We recommend you regularly visit this website to view those and other important safety warnings. **If you smell propane or experience any adverse propane conditions or safety-related matters, you should immediately dial 9-1-1 and contact our office. For our propane customers, we recommend customers consider purchasing a LP gas detector.**

### **3. HEATING FUEL SERVICE, MAINTENANCE, AND DELIVERY.**

**A. General Conditions.** Company may choose not to deliver heating fuel or perform services if, in its sole discretion, it believes that doing so is not legal, will pose an unnecessary risk of injury or harm to you, its employees, or the public. You agree that Company may lock off your equipment, the Leased Equipment, or suspend service if Company believes an unsafe condition exists.

**B. Delivery Options.** Company offers two types of delivery:

- **"Automatic" delivery** customers are placed on a zone-based automatic delivery schedule, so no call in is generally needed. You must maintain a current account balance to remain on automatic delivery. We reserve the right to change your account to from automatic delivery to "will call" delivery if you have a balance exceeding \$200 that is more than 30 days overdue. You must keep your contact information up to date as we will attempt to notify you of the change. However, we are not responsible for any damages associated with fuel run out situations, so please continue watching your levels and advise us if you are low. ([Automatic delivery terms and conditions can be reviewed here.](#))
- **"Will call" delivery** customers must place a delivery request prior to your zone's scheduled delivery day to avoid run out situations and the associated fees for "off route", "bleed and relight", "leak check", etc. Please watch your tank level gauges, as it may take us 7 days or more to complete your delivery request. Consider automatic delivery or a tank level monitor to avoid running out.

### **C. PRICING, FEES, RATES, AND CHARGES.**

**A. Price.** Unless you enter into a pre-buy agreement you agree to pay Company's price per gallon in effect on the date of delivery. This price is set at Company's discretion, and includes, among other things, taxes, our costs to

procure the propane, freight and transportation. Price per gallon may vary depending on fuel type, your annual volume (in the case of propane), customer classification, propane tank ownership, competitive and other conditions. We encourage you to contact us to discuss which pricing options may be best for your needs and to receive current pricing information, as prices change frequently and without prior notice.

**B. Current Fees and Charges.** Company may apply other fees and charges 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 us for specific questions and updated information. **COMPANY RESERVES THE RIGHT TO CHANGE ITS FEES, RATES, AND CHARGES WITHOUT PRIOR NOTICE.**

- Business hours are weekdays from 7:30AM until 4PM. All else is considered “after hours”.
- Delivery minimum / Short fill fee - \$20. For all deliveries called in – whether “automatic” or “will call”. Minimum delivery volume is the lesser of 50% of tank volume or 100 gallons for #2 fuel and kerosene, or 50 gallons for propane. A \$20 fee will be added for deliveries less than specified herein.
- Technicians bill at \$85/hour during business hours / \$127.50/hour after hours. Please check emergency power shut off switch(s), reset button(s) and tank level(s) prior to calling for emergency service. Keep exterior basement entryways available for winter servicing needs.
- “Off-route” delivery fee - \$75 during business hours / \$127.50 after hours. For delivery requests to a specific delivery zone, which is not part of that day’s delivery zone. Call before noon.
- Propane “leak check” - \$85 during business hours / \$127.50 after hours. This is required by the state of Maine anytime gas is turned on – relighting, new appliance, etc. Someone must be present to sign the leak check form, or the gas must remain off.
- Boiler/furnace/appliance “bleed and relight” - \$85 during business hours / \$127.50 after hours. This service is often needed in run out situations.
- Returned Check Fee – \$35. The fee associated with the return of a customer check for insufficient funds.
- Credit terms are net 30 days. Unpaid balances beyond 45 days incur a finance charge of 1.5% /mth.
- Customers with a current account balance, who have no special pricing arrangement, can receive a “pay within 10 days” \$0.10/gallon discount.
- Budget customers who maintain required monthly budget payments receive a \$0.03/gallon discount in addition to the \$0.10/gallon “pay within 10 days” discount.
- Comfort Plan Service agreements have additional terms and conditions. ([see Comfort Plan details](#))
- Tank monitoring devices are available for \$60/year. Call for details.
- Pricing is subject to change without notice. Your fuel cost will be based on that day’s delivery price.

## **5. GARY’S FUEL SERVICE PROVIDED/LEASED EQUIPMENT.**

**A. General Provisions.** Company may lease and/or provide to you as part of service delivery propane storage tank(s) or cylinder(s), regulator(s), monitoring device(s) and related equipment (“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 leased equipment without our written permission. You will notify the Company immediately if you suspect that leased equipment is damaged, malfunctioning or if you experience any related problems. You agree that if you sell your residence, you will notify the Company at least thirty (30) days in advance and will inform the buyer that leased equipment is owned by the Company. Only propane sold by the Company will be used with our leased equipment. 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.

**B. Tank/Equipment Lease.** If you lease equipment or tanks from the Company, you agree to pay the lease while the leased equipment is installed at your residence/business. The amount of lease can vary depending on, among other things, the equipment involved, in the case of LP tanks, the size of the tank, the number of tanks involved,

the location of the tanks at your residence, and potentially your annual usage. Please contact us if you have questions about tank leasing as it applies to you.

**C. Access to Equipment.** The Company will have an irrevocable right to enter your property, without prior notice, for deliveries of propane, servicing and/or removal of leased equipment, and you agree to provide Company with safe and unimpeded access to it, including but not limited to, access free of physical impedances, overgrowth, ice, snow, water, and other hazards. Additionally, it is your responsibility to mark and identify the location of septic systems, leach pits, underground ponds and similar underground features. You agree to promptly surrender to Company all leased equipment upon termination of service.

**D. Fuel tank level monitoring devices.** If you have a Company provided/leased tank level monitor installed on any leased equipment, you will be billed annually in advance \$60/device. At your discretion and without technical assistance from the Company, you can download, install and maintain either an Android or Apple app to your smart device to access the tank monitor portal.

**C. Customer-owned System Maintenance and Repair.** You are responsible for the maintenance and repair of all equipment that you own, including compliance with applicable laws and regulations. You are required to notify us in the event that you disconnect the propane system, add or remove appliances, etc. so that we may conduct a leak check.

- Outside tank fill locations must be easily accessible and well maintained for our staff. Please keep these areas unimpeded, free of debris, snow and ice, shrubs and other overgrowth, etc. Driveways should be clear of any snow, ice, holes, etc, so our large delivery vehicles can navigate safely. If we can't get up your driveway or to your tank, we won't be able to fill your tank.

**6. PAYMENT TERMS AND LATE FEES.** If you have received credit terms from Company, you will be billed after propane is delivered or services are rendered, unless you have enrolled in a budget payment program. You agree to pay the invoiced amount on or before the due date indicated on the invoice. If you dispute an invoice, you must contact us within thirty (30) days of receipt. If you fail to timely pay all amounts owed to Company, we will add a monthly finance charge of 1.5% of the average daily. If you fail to make a payment on your outstanding amount owed, Company may, after providing written notice to you, suspend service, retract special pricing arrangements and/or place a lock on leased equipment. If Company places a lock on leased equipment, all amounts outstanding (including the applicable charges for reconnecting service, must be paid in full before service will be restored. Company may at any time require you to pay for heating fuel deliveries or services in advance, to post a cash deposit, or to provide other forms of credit enhancement. Company may apply any amounts it holds from you, whether a security deposit or otherwise, at any time in whole or in part against the outstanding balance. When paying by check, please include your Gary's account number for proper payment processing.

**7. 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. COMPANY IS NOT LIABLE FOR ANY LOSS SUSTAINED BY YOU AS A RESULT OF THE EXHAUSTION OF YOUR HEATING FUEL SUPPLY, INCLUDING WITHOUT LIMITATION, DAMAGE TO YOUR HOME OR PROPERTY RESULTING FROM WATER DAMAGE FROM FROZEN PIPES.**

**8. DISCLAIMER OF WARRANTIES.** COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY HEATING FUEL, TANK, CYLINDER, AND/ OR RELATED EQUIPMENT OR SERVICE PERFORMED UNDER THESE TERMS AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU ACCEPT ALL PRODUCTS AND GOODS DELIVERED AS IS.

**9. INDEMNIFICATION.** Both Company and Customer agree to indemnify, defend and hold the other 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.

**10. TERMINATION OF PROPANE SERVICE.** Unless otherwise specified, and subject to any volume commitment agreement, **YOU MAY TERMINATE YOUR PROPANE SERVICE UPON THE PROVISION OF THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO COMPANY.**

- For customers with Leased Equipment, upon termination, in order to remove leased equipment, Company may charge you a Service Dispatch Charge and a Pump-Out/Restocking Charge if the supply of propane remaining in the tank is more than 5% water capacity.
- Company may or may not repurchase propane remaining in the tank or provide customer refunds for any unused propane, in its sole discretion, depending on the individual circumstances. If 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 Company's current price.
- Company may terminate your service immediately and without prior notice if you fail to satisfy any material provision contained in these Terms and Conditions, including but not limited to making payment. Company reserves the right to terminate service or suspend deliveries if Company determines, in its sole discretion, that a condition exists that poses a health or safety threat to its employees, you or the public.

**11. 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, pandemic, terrorism, technology interruptions or failures, changes in laws or regulations, Company's inability to obtain propane or equipment from its suppliers, as well as terminal, refinery, pipeline, or transportation disruptions. Under any of these or similar circumstances, Company may allocate propane and equipment among its Customers in any manner that Company deems reasonable.

**12. CHANGES TO THE TERMS AND CONDITIONS.** 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 prior written notice of the change(s). The notice may be in the form of a bill insert, verbiage on your statement, email, or other written notification. These Terms and Conditions may not be modified orally and describe the entire agreement between Company and you with respect to its subject matter. Any prior arrangements, agreements, contracts, representations, warranties, purchase orders, bids, proposals, offers, or other communications, written or oral, that are inconsistent with these Terms and Conditions, are superseded and of no force or effect.

**13. CUSTOMERS WITH RESIDENCES THAT ARE NOT OCCUPIED YEAR-ROUND. IF YOU HAVE CHOSEN AUTOMATIC DELIVERY, IT IS DIFFICULT TO FORECAST HOMES THAT ARE NOT OCCUPIED YEAR-ROUND AS YOUR USAGE PATTERNS CHANGE. IT IS YOUR RESPONSIBILITY TO MONITOR THE HEATING SYSTEM ON YOUR PROPERTY YEAR-ROUND. COMPANY IS NOT LIABLE FOR DIRECT OR INDIRECT DAMAGES TO PERSONAL AND REAL PROPERTY (INCLUDING, BUT NOT LIMITED TO, DAMAGE RESULTING FROM FROZEN PIPES OR OTHER WATER DAMAGE) THAT OCCURS AS A RESULT OF THE EXHAUSTION OF PROPANE IN YOUR SYSTEM. WE RECOMMEND YOU PLACE A TANK MONITOR ON YOUR SYSTEM TO MONITOR THE AMOUNT OF HEATING FUEL REMAINING IN YOUR TANK(S). YOU MUST PROVIDE COMPANY WITH AT LEAST TEN (10) BUSINESS DAYS' ADVANCED NOTICE OF A NEED FOR A DELIVERY TO AVOID THE EXHAUSTION OF YOUR HEATING FUEL SUPPLY.**

**14. SEVERABILITY.** If any provisions of these Terms and Conditions are determined to be invalid under applicable law or unenforceable by a court, 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 will remain unaffected by the invalid or unenforceable term, and each term will continue to be valid and enforceable to the fullest extent of the law.

**15. NOTICE.** Any notice by you shall be sent by U.S. mail, postage prepaid, to Company at 1441 Castine Rd, Penobscot, ME 04476, Attn: Customer Service. Notice to you may be in the form of verbiage on your statement, a bill insert, stand-alone mailing, email or other written notification.

**16. WAIVER.** If we delay in exercising any of our rights, Company will not be prevented from exercising our rights at a later date. Company's waiver of any breach of these Terms and Conditions at any time shall not excuse future breaches by the customer.

**17. YOUR CONTACT AND PAYMENT INFORMATION.** You represent and warrant that the name, address, telephone number(s), and other contact and payment information you provide to Company is accurate, complete, and current. You agree to notify Company immediately if there is any change to any of that information. FAILURE TO DO SO IS A BREACH OF THESE TERMS AND CONDITIONS.

**18. YOUR CONSENT TO BEING CONTACTED.** By providing a telephone number or email address, now or in the future, you agree that Company may contact you at that email address or at your telephone number regardless of whether you will incur charges. You further agree that such communications may include, without limitation, delivery reminders, delivery confirmations, past-due account notices, account notifications, and attempts to collect any debts from you. YOU ACKNOWLEDGE AND AGREE THAT YOUR CONSENT TO SUCH COMMUNICATIONS IS A MATERIAL AND ESSENTIAL PART OF THIS AGREEMENT AND THAT YOU PROVIDED IT AS PART OF A BARGAINED-FOR EXCHANGE.

**19. SURVIVAL.** These terms and conditions shall survive termination of your relationship with Company, which includes your permission for Company to contact you to collect any debts owed or your return of Leased Equipment.