



# J. J. Powell Inc Propane Terms & Conditions

Revised 08/01/2020

**THE COMPANY'S TERMS AND CONDITIONS FOR RESIDENTIAL AND COMMERCIAL CUSTOMERS ARE SET FORTH BELOW. PLEASE READ THIS CAREFULLY AS IT MODIFIES OR REPLACES ALL PRIOR AGREEMENTS AND GOVERNS YOUR RELATIONSHIP WITH THE COMPANY.**

## **TERMS AND CONDITIONS FOR ONGOING PROPANE-RELATED SERVICES AND EQUIPMENT RENTAL – RESIDENTIAL AND COMMERCIAL 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 revised Terms and Conditions by conducting business with the Company (also referred to as “us”, “we”, and “our”), which includes but is not limited to: (i) accepting or requesting propane delivery or propane- 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 will become effective thirty (30) days after you receive them. Unless your propane supply agreement does not permit modification, this shall serve as a notice of termination of your previous agreement and an offer to do business under these Terms and Conditions. If you find these Terms and Conditions unacceptable, you may reject this offer by terminating your service.

THESE TERMS AND CONDITIONS REQUIRE THAT DISPUTES BE RESOLVED INDIVIDUALLY IN BINDING ARBITRATION GOVERNED BY THE RULES SET FORTH BY THE AMERICAN ARBITRATION ASSOCIATION OR SMALL CLAIMS COURT.

**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 two years from the date on which you began service with Company (the “Initial Term”) and, unless terminated by either party, **WILL AUTOMATICALLY RENEW YEAR-TO-YEAR THEREAFTER** (the “Renewal Term”).

**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 us toll-free at 800-432-0866 and we will mail it to you. Additional 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 your local Company district office. We recommend purchasing a LP gas detector.**

#### **4.LEASED EQUIPMENT.**

- A. General Provisions.** Company will lease and provide to you a propane storage tank or cylinder, regulator(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 Company immediately if you suspect that Leased Equipment is damaged, malfunctions or if you experience any problems. You agree that if you sell your residence, you will notify Company at least thirty (30) days in advance and will inform the buyer that Leased Equipment is owned by Company. Only propane sold by Company will be used with Leased Equipment. Leased Equipment will at all times remain the property of Company and will not become a fixture or a part of your real property.
- B. Minimum Usage.** You agree to purchase a minimum of 1-1/2 times the water capacity of the Company-owned tank(s) provided in the Agreement each year. Should you purchase less, you will be billed Minimum Usage Fee based on your tank size.
- C. Access to Equipment.** Company will have an irrevocable right to enter your property without prior notice for deliveries of propane, servicing 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 ice, snow, water, and other hazards. You will 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. Change of Ownership of Premises.** Customer agrees that if Customer sells the Premises where the company-owned equipment has been installed, Customer will notify Company at least 14 days in advance, that the sale is taking place and will notify the buyer that the equipment is owned by the Company. Upon any change in ownership of the premises, Customer shall advise the new owner of the premises of these Terms & Conditions, and Company shall not be required to provide a refund to Customer or new owner for any product sold to Customer once Customer has moved from the premises. If the new owner does not engage the services of the Company at the premises, Customer shall be deemed to have terminated the Customer Agreement prior to the expiration of the current term and all termination fees payable hereunder shall apply.

#### **5.CUSTOMER OWNED EQUIPMENT**

- A. General Provisions.** After verifying tank ownership, Company will deliver gas on an either automatic or will-call basis, depending on Customer’s request. Additional fees may apply for Will-Call. In the interest of safety, Customer will only allow certified technicians to make any adjustments, connections or disconnections to the Customer Owned Equipment. You will notify Company immediately if you suspect that Customer Owned Equipment is damaged, malfunctions or if you experience any problems. If, at any time, Company identifies malfunctioning, faulty, or unsafe equipment, Customer agrees that Company may be required to take equipment out of service until corrective action has been taken by Company. Company will immediately notify Customer if this occurs. You agree that if you sell your residence, you will notify Company at least thirty

(30) days in advance. Customer agrees to only purchase propane from Company for the entirety of the Term of the Customer Agreement.

**B. Minimum Usage.** Not applicable.

**C. Access to Equipment.** Company will have an irrevocable right to enter your property without prior notice for deliveries of propane, and you agree to provide Company with safe and unimpeded access to it, including but not limited to, access free of ice, snow, water, and other hazards. You will mark and identify the location of septic systems, leach pits, underground ponds and similar underground features.

## **6. PROPANE SERVICE, MAINTENANCE, AND DELIVERY.**

**A. General Conditions.** Company may choose not to deliver propane or perform services if, in its sole discretion, it believes that doing so 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 propane delivery:

1. **Automatic** – Under this worry-free delivery option, Company will make deliveries to you on either a fixed-cycle basis or upon a number of forecasting factors, including temperatures and usage patterns. To ensure accurate forecasting, please update Company with any changes in your usage.
2. **Will Call (Customer Owned Tanks Only)** – Under this delivery option, Company will deliver propane only after you request a delivery. Company recommends you order a delivery when your tank is approximately 30% full to ensure a timely delivery. Most Will Call deliveries are made within 5-10 business days after you place an order. Weather and other factors may affect delivery times. Expedited delivery requests may be assessed a Special Trip Charge.

**C. Propane System Maintenance and Repair.** Only the Company may maintain and repair Company Owned equipment. You are responsible for the maintenance and repair of all equipment that you own, including compliance with applicable laws and regulations. Whether you have Company or Customer Owned equipment, you are required to notify us any time you disconnect the propane system or add or remove appliances so that we may conduct a leak check.

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

**A. Price.** Unless you enter into a fixed-pricing agreement you agree to pay Company's price per gallon of propane in effect when you place an order or for Automatic deliveries, 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. Your price per gallon may vary depending upon the volume of propane you purchase, customer classification, propane tank ownership, and competitive conditions. We encourage you to contact your local Company office 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 these and/or 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 your local office for specific questions and updated amount information. **THE FEES LISTED BELOW ARE NOT GOVERNMENT IMPOSED, NOR IS ANY PORTION OF THEM PAID TO ANY GOVERNMENT AGENCY. COMPANY RESERVES THE RIGHT TO CHANGE ITS FEES, RATES, AND CHARGES WITHOUT PRIOR NOTICE.**
- C. Early Termination Fee** – You have received certain benefits from Company in exchange for your service commitment. If you terminate propane service with Company prior to the end of the Initial Term, Company will charge you an Early Termination Fee of \$149.99. Upon early termination, Customer shall forfeit to the Company all propane remaining in the tank for no consideration.
- D. Safety Compliance Fee** – This fee is assessed on propane deliveries and helps to offset the costs Company incurs to comply with federal, state and local government regulations, such as those relating to hazardous materials, homeland security, emergency preparedness and workplace safety. It is also used to fund, among other things, employee safety training, inspections, cylinder requalification, and environmental compliance. This fee is \$7.99 per delivery.
- E. Leak Check Charge** – This charge is applied when Company performs a gas system check to verify that the propane system does not have a leak. 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, if there has been an interruption of gas service (including an empty tank), or if a leak in the system is suspected. Your local office can provide specifics on when a leak check is required and the current charge.
- F. Pump-Out/Restocking Charge** – Upon termination of service, Company may be required to pump out the propane from a Company-owned tank that contains propane in excess of 5% water capacity in order to remove it. The process may occur at the Company's facility due to safety requirements. You can avoid this charge by continuing service with Company until the supply of propane in the tank is less than 5%. This charge is \$149.99.
- G. Reconnect Charge** – If your tank is locked off by Company due to nonpayment, this fee will be assessed to remove the lock, perform a Gas Check and put your propane system back into service. This charge is \$79.99.
- H. 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. This fee is \$40.00.
- I. Service Dispatch Charge** – This applies when a service technician is requested to perform diagnostic or other service work on a Customer-owned propane storage system equipment or needs to pick-up Leased Equipment. This charge is \$75.00. 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.
- J. Special Trip Charge** – This applies when you request a delivery 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 meet the request and can be obtained by contacting your local office.

K. **Late Fees** – See Section 9.

L. **Minimum Usage Fee** – See Section 4B.

**9. 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 your local office within thirty (30) days of receipt. If you fail to timely pay all amounts owed to Company, Company may, unless prohibited by law, add a monthly late charge of 1.5% of the average daily balance until paid. If you fail to make a payment on your outstanding amount owed, Company may, after providing written notice to you, suspend service and/or place a lock on Leased Equipment. If Company places a lock on Leased Equipment, all amounts outstanding (including the applicable Reconnect Charge) must be paid in full before service will be restored. Company may at any time require you to pay for propane 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.

**9. 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 PROPANE SUPPLY, INCLUDING WITHOUT LIMITATION, DAMAGE TO YOUR HOME OR PROPERTY RESULTING FROM WATER DAMAGE FROM FROZEN PIPES.**

**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 OR 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.

**11. INDEMNIFICATION AND INSURANCE.** 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. Customer shall obtain and keep in force during the entire term of the Agreement, homeowners' and other appropriate hazard insurance (at commercially reasonable maximum coverage amounts) with respect to the premises and use of propane and related equipment. Company reserves the right to request a copy of a Certificate of Insurance showing active coverage.

**12. 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. IF YOU TERMINATE SERVICE PRIOR TO THE END OF THE INITIAL TERM, COMPANY WILL CHARGE YOU AN EARLY TERMINATION FEE OF \$149.99.**

1. For customers with Leased Equipment, upon termination, in order to remove Leased Equipment, Company will 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. This Pump-Out/Restocking process may occur at Company's facility due to safety requirements.
2. Upon termination, Customer shall arrange for a certified third-party (NFPA Gas Check) to promptly perform a Gas Check test as described in NFPA (National Fire Protection Association) 54 and 58 and provide documentation of that test to Company within 10 days of termination.
3. Unless required by law, Company does not repurchase propane remaining in the tank or provide customer refunds for any unused propane. Company, may however, in its sole discretion, repurchase the propane remaining in the tank in certain 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.
4. 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.

**13. 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, changes in laws or regulations, pandemics, Company's inability to obtain propane or equipment from its suppliers, as well as terminal, refinery, pipeline, or transportation disruptions. (Force Majeure) Under any of these or similar circumstances, Company may allocate propane and equipment among its Customers in any manner that Company deems reasonable.

**14. 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, 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. For the avoidance of doubt, these Terms and Conditions do not replace, amend, or eliminate your prior fixed propane pricing, exclusivity, or volume contract commitment(s).

**15. 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 PROPANE DISTRIBUTION SYSTEM ON YOUR PROPERTY YEAR-ROUND. COMPANY IS NOT LIABLE FOR DIRECT 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 PROPANE REMAINING IN YOUR TANK.**

**16. CLAIMS AND ARBITRATION.**

**A. Arbitration Agreement.** Upon the election of either party (or any other entity or individual with the right to invoke arbitration under this provision, including without limitation those entities or individuals named in this Section 16(A)(2), a Dispute shall be resolved by binding arbitration. "Dispute" means any claim or controversy arising from or relating to these Terms and Conditions, your agreement with Company, or the relationship between you and 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 Company or its parents, subsidiaries, affiliates, predecessors, successors or assigns and any of their directors, officers, employees and agents (any of whom may elect arbitration of claims to which they are a party pursuant to these Terms and Conditions); (3) claims that arose before this Arbitration Agreement; (4) claims that arise after the expiration or termination of this Arbitration Agreement; and (5) claims that are the subject of a purported class action or other representative or collective action. "Dispute" shall not, however, include claims filed by you or Company on an individual basis in small claims court if the amount claimed is within the jurisdiction of that court.

**C. Procedures for Arbitration.** This Arbitration Agreement is governed by the Federal Arbitration Act. Arbitrations shall be conducted by a single arbitrator and administered by the American Arbitration Association ("AAA") pursuant to its Consumer Arbitration Rules (collectively the "AAA Rules") in effect when notice of a Dispute is given. 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. At your election, arbitration hearings will take place in the federal judicial district of your residence.

**D. Right to Attorneys' Fees and Costs.** You may hire an attorney to represent you. You are responsible for your attorneys' fees and costs. You may recover them from the Company to the same extent as in court. You will be responsible for paying your share of any arbitration fees (including filing, administrative, hearing or other fees), but only up to the amount of the filing fees you would have incurred if you had brought a claim in court. The Company will be responsible for any additional arbitration fees.

**E. Waiver of Jury Trials and Class Actions.** IN ARBITRATION, DISPUTES ARE RESOLVED BY AN ARBITRATOR RATHER THAN A JUDGE OR JURY. BY THIS ARBITRATION AGREEMENT, YOU AND COMPANY WAIVE THE RIGHT TO PROSECUTE OR PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, OR

OTHER REPRESENTATIVE ACTION. UNLESS YOU AND COMPANY AGREE OTHERWISE IN WRITING, THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED ON A CLASS ACTION OR COLLECTIVE BASIS, AND NEITHER THE ARBITRATOR NOR THE JUDGE MAY CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. THE ARBITRATOR 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 AND COLLECTIVE ACTION WAIVER IS A MATERIAL AND ESSENTIAL PART OF AND CANNOT BE SEVERED FROM THIS ARBITRATION AGREEMENT.

**17. 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.

**18. NOTICE.** Any notice by you shall be sent by U.S. mail, postage prepaid, to J. J. Powell Inc at PO Box 30, Philipsburg, PA 16866, Attn: Customer Service. Notice to you may be in the form of a bill insert, stand-alone mailing, email or other written notification.

**19. 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.

**20. 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.

**21. YOUR CONSENT TO BEING CONTACTED.** By providing a telephone number or email address, now or in the future, you agree that Company (and others on its behalf) may contact you at that email address by emailing you or at your telephone number via text message (whether manually or automatically dialed) and telephone call (whether manually or automatically dialed, and whether using a live, artificial, or prerecorded voice) 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.

**22. SURVIVAL.** Paragraphs 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, and 21 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.



These Terms and Conditions shall apply to customers in all states except where specifically prohibited by law.