

# PARSCH OIL & PROPANE CO.

5923 W. Imlay City Rd., Imlay City, MI 48444 810.724.6425

## COMMERCIAL APPLICATION TERMS AND CONDITIONS

The Application includes these Terms and Conditions. The Application and these Terms and Conditions are collectively referred to as our "Agreement." This Agreement takes the place of any prior agreements or terms and conditions you have had with Parsch Oil & Propane Co. If you enter into a contract with Parsch Oil & Propane Co. for a protected price, the terms and conditions of that contract will supersede these Terms and Conditions during the term of the protected price contract. In these Terms and Conditions the words we, us, our, Seller and ours mean Parsch Oil & Propane Co. The words you, your and yours mean the Buyer.

- DELIVERIES; PRICING.** We offer to sell you and you agree to purchase fuel from us under the terms of this Agreement on a delivery by delivery basis at the price set forth on the front of this Agreement or as otherwise agreed in a signed writing. Fuel deliveries will be made to you at the location identified on the front of this application subject to the terms and conditions of this Agreement. The price for the fuel will fluctuate from delivery to delivery and be set forth on the delivery ticket or invoice provided in connection with each delivery. You agree to the use of electronic communication, including telephonic recordings and similar technology, to enter into other contracts, place orders and create other records with us.
- PAYMENT TERMS.** Payments hereunder are **net thirty (30) days from the day of delivery**. In the event that payments are not received on or before the due date, Buyer agrees to pay Seller a late fee of 1½% per month on the daily unpaid balance from the due date to date of payment.
- PRICE ADJUSTMENT.** If (a) any federal, state, or local government, or any agency or subdivision thereof increases any existing tax, tariff, duty, impost, levy, charge or assessment (collectively, a "tax"), imposes any new or additional tax, or amends, modifies, or otherwise changes the provisions of any existing law, regulation or rule that imposes a tax upon any Product, or upon the storage, production, sale transportation, delivery or use of any Product to create a new or additional tax and if (b) Seller, directly or indirectly, is required to pay or collect such tax, then to the extent that such tax is not reflected in the Price herein, Buyer shall pay the tax within thirty (30) days after it is billed by Seller. If any governmental law, regulation, rule or action (collectively, a "bar") prevents or hinders Seller from collecting such tax, Seller at its option may cancel this Agreement upon thirty (30) days notice to Buyer, or may suspend deliveries of Product under this Agreement while such bar preventing or hindering collection of such tax by Seller is in effect.
- FORCE MAJEURE.** Seller shall not be responsible for damages caused by its delay or failure to perform or comply with this Agreement, when such delay, failure or noncompliance is attributable in whole or part to or causes beyond Seller's control including, without limitation: acts of God, strikes, differences with workmen, lockouts, fires, floods, storms, terrorism, explosions, embargoes, acts or compliance with requests of any governmental authority without regard to legal validity, war, power outages, accidents, delays in transportation, any allocation program or rationing or priorities in effect pursuant to governmental direction or request or instituted in cooperation with any governmental authority (a "force majeure" event). In the event of a force majeure, Seller may suspend or terminate performance of this Agreement in whole or in part without liability for damages of any kind and shall be excused, discharged and released from performance hereunder. Seller shall not be obligated to prorate Product and/or deliveries hereunder, nor shall Seller be obligated to deliver from a terminal other than the terminal(s) customarily used in the delivery of Products. If by reason of any of force majeure event, Seller's supply of a Products shall be insufficient to meet all of the requirements hereunder, under its contracts with its other customers and for its own uses, Seller may, without liability hereunder, apportion its available supply of Products among any and all of its customers, including its affiliates and itself, in such manner as Seller in its sole judgment believes equitable. The parties are aware that no governmentally enforced mandatory allocation programs for the Products are presently in effect. The parties further understand that it is foreseeable that an allocation program(s) may be reimposed by the federal, state or local government or that, due to shortages or unavailability of any or all of Products, Seller may have to impose its own allocation or rationing program to limit the amount of Products available to its customers. Buyer signs this Agreement subject to any future laws, regulations, or Seller-imposed allocation or rationing programs affecting the supply and/or distribution of Products. Buyer waives any right or remedy it may have to require Seller to sell or otherwise make available surplus Product, if there is any, and agrees that the distribution and allocation level thereof shall be within the exclusive determination of Seller. Furthermore, Buyer will fully cooperate and assist Seller in obtaining governmental authorization to supply Buyer and to establish an authorized level of supply, if required by law, regulation, or ordinance, as well as the approval of Buyer as a customer of Seller by Seller's supplier, if required. Buyer will, upon demand, execute and deliver to Seller any documents which may be required to carry out the provisions hereof. Buyer further agrees that no application or request for adjustment to volumes or Product shall be submitted to any governmental body without the prior written approval of Seller.
- NON-DELIVERY CONDITIONS.** We will not be responsible for damages for failure to deliver fuel to vacant or unattended premises (in this Agreement, the term "vacant or unattended premises" shall mean premises at which no adult occupant is present for at least twenty-four (24) consecutive hours). We will not be responsible for damages for failure to deliver fuel when there is impeded ingress and egress to and from the delivery point(s) or because all or a substantial part of any delivery point is destroyed. In each and every case, we have the right either to cancel or to postpone any delivery without any liability whatsoever.
- TERMINATION.** In addition to provisions for termination elsewhere in this Agreement, Seller may terminate this Agreement without liability at any time upon seven (7) days prior written notice to Buyer, except where circumstances warrant a shorter notice period, if (I) Buyer fails to provide free and unimpeded ingress and egress to and from the delivery point(s), or (II) all or a substantial part of any delivery point is destroyed.
- DISCLAIMER.** NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE GIVEN OR SHALL APPLY TO PRODUCTS SOLD HEREUNDER (EXCEPT AS TO TITLE) AND SELLER SPECIFICALLY DISCLAIMS WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR PARTICULAR PURPOSE.
- LIMITATION OF LIABILITY.** Nothing contained in this Agreement shall excuse Buyer from the obligation of paying for Product delivered. Seller shall not be liable to Buyer (or to any party claiming through Buyer) for any claim arising out of or relating to this Agreement or the transactions contemplated herein, regardless of the form of action (including, but not limited to, actions for breach of contract, negligence, strict liability, rescission, and breach of warranty), in an amount exceeding the amount Buyer actually paid Seller for Product hereunder. In no event shall Seller be liable for any lost profits, consequential, incidental, special or other damages or costs of any kind. Seller's failure to deliver or delay in delivering any delivery of Product, or Seller's delivery of Products that are non-conforming in any one delivery, shall be deemed to be a breach with respect to that delivery only, and such a default shall not be deemed substantially to impair the value to Buyer of this Agreement as a whole, nor shall it constitute a breach of this Agreement as a whole. Buyer shall notify Seller of any failure to deliver or delay in delivering any delivery of Product and afford Seller a reasonable opportunity to cure such failure or delay.
- TITLE, RISK OF LOSS AND DELIVERY.** Title to Product and risk of loss thereof shall pass from Seller to Buyer when Product passes from Seller's truck delivery hose at Buyer's receiving point. Quantities of Product delivered to Buyer shall be determined conclusively, at Seller's option, by calibrated truck meters or truck calibration charts at Buyer's receiving point. Buyer shall promptly receive all deliveries, provide adequate facilities for them, and pay demurrage, delay expenses, and all damages and charges for the time Seller's trucks are held at Buyer's receiving point beyond one hour after such truck arrives at said receiving point, and Buyer will indemnify and defend Seller regarding, and assume full responsibility for, any spill, overflow or other incident arising out of the inability of Buyer's tank(s) or facilities to receive the full load of oil being delivered. If Buyer asks Seller or his agent to gauge the tank(s) and/or manipulate valves, Buyer will indemnify and defend Seller regarding and assume full responsibility for any spill, overflow, contamination or other incident. Buyer hereby authorizes the janitor, superintendent, caretaker, foreman or other agent or occupant at Buyer's receiving point to sign receipts for deliveries, which signed receipts shall be binding on Buyer.

10. **COMPLIANCE WITH LAWS; ENVIRONMENTAL.** Buyer shall comply with all health, labeling and other requirements of any governmental agency with jurisdiction over the supply, sale and storage of petroleum products, and with any requirements of Seller. Buyer further agrees to comply in all respects with all statutes, rules, regulations, and ordinances of the federal United States Environmental Protection Administration, applicable State departments of health, safety and the environment and comparable local authorities. Buyer shall pay all expenses, taxes, and fees in connection with the maintenance and operation of its equipment and delivery point(s), including all equipment and facilities, shall obtain all necessary permits or licenses and shall comply with all applicable government regulations. Buyer shall notify Seller immediately of any spill, leakage, or other state of facts under which Seller is required to cease delivery or take action by reason of any local, state, or federal statute, rule, regulation or ordinance. Buyer acknowledges that Seller has not taken any action (which for this purpose means, without limitation, repair, reconditioning, reinforcement, replacement, drainage, filling with inert material, removal, maintenance, testing, certification or any other action relating to the existence of an underground tank in an environmentally sensitive manner) with respect to any underground tank at Buyer's premises or under Buyer's control and that it is not, and has not been, obligated to take any such action. Buyer releases Seller from liability relating to any underground tank of Buyer or under Buyer's control.
11. **INDEMNITY.** Buyer shall defend, protect, indemnify and hold harmless Seller, its employees and agents, from and against each and every claim, demand or cause of action and any and all liability, costs, expenses, fines, penalties (including reasonable attorney's fees and expenses), damage, loss or other casualty in connection therewith that may be made or asserted on account of any personal injury, death, property damage or any other injury or claim caused by, arising out of or in any way incidental to or in connection with Buyer's performance or non-performance of any of the terms and provisions of this Agreement or arising out of Buyer's business or businesses and/or the use, occupancy, operation and maintenance of the delivery point(s) (including adjacent sidewalks, drives and curbs), by Buyer or any of its agents, contractors or employees or imposed on Seller, whether by private party or by a governmental agency, or incurred by Seller, for violations of any law, ordinance or regulation caused by any act or omission of Buyer or its agents, servants or employee, whether negligent or otherwise, or relating to any underground storage tank of Buyer or under Buyer's control.
12. **GOVERNING LAW; ARBITRATION.** This Agreement shall be construed under and governed by the laws of the state where the delivery is made or service is provided, without regard to the application of its conflict of laws principles. The parties hereby agree that any controversy or claim arising out of or relating to this contract or any breach thereof shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The site of the arbitration proceeding shall be in the City of New York. Any judgment on the award rendered by the arbitrator may be entered exclusively in the state or federal courts located in the state where the delivery is made or the service is provided. Notwithstanding the forgoing, any controversy or claim may be submitted by either Buyer or Seller to a small claims court having jurisdiction of the controversy or claim. Buyer and Seller agree that for any claim initiated after the Effective Date either MAY BRING CLAIMS AGAINST THE OTHER ONLY IN BUYER OR SELLER'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, Buyer and Seller agree that the arbitrator may not consolidate proceedings or more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The prevailing party will be entitled (in addition to any and all other remedies) to recover any and all costs and expenses (including, without limitation, reasonable attorneys' fees) that it may incur in connection with any legal action to enforce this Agreement or to recover damages or other relief on account of any breach of this Agreement.
13. **LIMITATION OF RIGHT TO SUE OR TO ARBITRATE.** Any claim by Buyer against Seller of any kind, nature or description is barred and waived unless Buyer institutes arbitration proceedings within one (1) year after the claimed breach occurs. The failure to institute arbitration proceedings within this period shall constitute an absolute bar to the institution of any arbitration or other proceedings by Buyer and a waiver of all claims on Buyer's part. Claims for damages and claims of every other kind, including claims regarding prices, shortage in quantity, variance or defects in quality are waived, unless made by Buyer to Seller by certified mail, return receipt requested, within ten (10) days after such delivery to which the claim relates. Buyer expressly agrees that the only recourse against Seller shall be a separate arbitration proceeding. The commingling of the Products complained of with Products obtained from other suppliers shall operate as a complete waiver of Buyer's rights to make any claim.
14. **SELLER'S REMEDIES.** All rights and remedies of Seller under this Agreement shall be in addition to all of Seller's other rights and remedies under any other contract, under the Uniform Commercial Code and other applicable law, all of which rights and remedies shall be nonexclusive, cumulative and may be exercised or asserted as Seller shall elect.
15. **ASSIGNMENT.** Buyer shall not assign this Agreement except upon Seller's prior written consent. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties.
16. **COLLECTION COSTS.** If we hire an attorney or collection agency to collect your outstanding balance or otherwise enforce our rights hereunder, you agree to pay, in addition to your balance, all costs of collection as permitted by law, including without limitation, reasonable attorneys' fees and court costs. We can accept late payments, partial payments or payments marked "payment in full" without losing any of our rights under this Agreement.
17. **SERVICES; CHARGES.** If Seller performs service work for Buyer that is not covered by any type of service agreement, warranty or guarantee, Seller will mail Buyer an invoice that shall cover both parts and labor, and Buyer agrees to pay it in full within the time stated in the invoice. If Buyer has a service agreement, Buyer agrees to pay the invoice within the time stated therein.
18. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the parties. Seller has made no oral statements or representations to Buyer that are not expressly set forth in this Agreement and Buyer acknowledges that it has not relied upon any statement or representations other than those set forth in this Agreement. Seller's sales personnel are not authorized to modify any of the terms of this Agreement or to make any statements of representations not set forth in this Agreement. This Agreement may not be changed or terminated orally.
19. **SEVERABILITY.** If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstance other than those to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the full extent permitted by law.
20. **NOTICE.** No notice, request, consent, approval, waiver, or other communications under this Agreement shall be effective unless the same is in writing and is personally delivered or mailed by certified mail, return receipt requested, addressed to the parties hereto at the address set forth on the Application front page, or such other address as a party designates by giving notice thereof to the other party.
21. **CAPTIONS.** Captions used herein are for convenience only, and are not a part of this Agreement, and shall not be used in construing it.
22. **WAIVER; AMENDMENT.** Waiver by either of the parties hereto of any breach of, or exercise of any right under this Agreement, shall not be deemed a waiver of similar or other breaches or rights. The failure of a party to take any action by reason of any such breach, or to exercise any such right, shall not deprive such party of the right to take action while such breach or condition giving rise to such right continues.
23. **FUTURE TRANSACTIONS.** Except to the extent a future transaction is governed by a later dated separate signed contract between the parties, the Terms and Conditions hereof, including, without limitation, the arbitration provision, shall govern.

Please initial and date to acknowledge receipt of a copy of the  
Commercial Account Application Terms and Conditions numbered 1-23.