

# LPG TERMS AND CONDITIONS.

For Business Customers.

Effective 19 June 2023

# 1 INTRODUCTION.

- 1.1 These specific LPG Terms and Conditions ("**Specific Terms**") form part of our agreement with you and apply to our supply of LPG services ("**services**") and any add-on services you purchase from us from time to time ("**other services**"). These Specific Terms apply in addition to our General Terms for Business Customers, any Offer Terms that apply to you, any additional or special terms and our Privacy Policy. Together, these form our agreement with you, and are referred to as the "**agreement**". These Specific Terms commence from the date specified in the General Terms and replace any other agreement you may have had with us for the services.
- 1.2 In the event of a conflict or inconsistency between the parts of the agreement, the following order of priority will apply:
  - (a) any special terms;
  - (b) the Privacy Policy;
  - (c) any additional terms;
  - (d) any Offer Terms;
  - (e) the Specific Term(s) that apply to your services; and
  - (f) the General Business Terms & Conditions.

# 2 SUPPLYING YOU WITH SERVICES.

- 2.1 In order for us to provide you with the services, you must also receive electricity services from us.
- 2.2 We will supply you with services in accordance with:
  - (a) the agreement;
  - (b) all legal requirements (including the Consumer Guarantees Act 1993, to the extent that it applies to you), regulations and good industry practice; and
  - (c) applicable requirements of any equipment suppliers to which we are subject.
- 2.3 We do not guarantee the continuous supply of services to your premises. At any time, the supply or delivery of LPG or cylinders may be interrupted or reduced:
  - (a) for the purposes of repair, maintenance or inspection of equipment;
  - (b) due to interruption to scheduled deliveries of LPG to us;
  - (c) due to LPG use by other customers; and/or
  - (d) for any purposes necessary for us to perform our obligations at law or as otherwise permitted under these Specific Terms or this agreement.
- 2.4 We may also suspend supply at any time when, in our sole discretion, we believe it is necessary or expedient to do so for any reasons of health and safety.

# 3 SAFETY.

- 3.1 Your safety is important to us. For your safety and for the safety of those that are around you:
  - (a) dial 111 in an emergency in respect of your services;
  - (b) call us immediately on 0800 20 18 20 if you think there is an LPG leak or a possibility that your LPG supply could be a hazard or danger to people or property; and
  - (c) do not interfere with any pipes or equipment that supply LPG to your premises.
- 3.2 Please immediately report any unintended escape of LPG from the equipment or any interference with the equipment to us.
- 3.3 You must ensure that your gas installation, connection and supply has been certified by a registered gas fitter in accordance with any applicable regulations (including under the Gas Act 1992) and continues to comply with these or any modified or substituted regulations

- 3.4 All equipment must be used in a safe manner in accordance with the manufacturer's instructions and all applicable laws, regulations and procedures. Please do not tamper or interfere with any equipment except to the extent that action has to be taken to protect the health and safety of persons or to prevent damage to property.

## **4 DELIVERY OF CYLINDERS.**

- 4.1 We will provide services that meet with standards that would reasonably be expected of an operator of services in New Zealand. The LPG supplied by us will meet the applicable regulations and quality standards required in New Zealand.
- 4.2 We will use our reasonable endeavours to deliver the LPG cylinders to you within a reasonable time of receiving your request for delivery or in accordance with an agreed delivery schedule. Deliveries will be made during normal business hours unless we both agree otherwise.
- 4.3 If urgent delivery is required (meaning that delivery is required within 48 hours of you placing an order), we will consider all requests and if we are able to deliver, we will do so. Any urgent deliveries may incur a fee.
- 4.4 You must provide us and our representatives with safe and easy access to your premises to enable delivery of the LPG cylinders. If you do not provide us and our representatives with reasonable access, you may be charged a non-delivery fee or an additional delivery fee.
- 4.5 You must ensure that the premises at which the equipment is to be used comply at all times with any relevant laws and regulations and remain safe to use. We may delay or suspend delivery at any time if access to your premises is considered by us to be unsafe, if the delivery conditions are considered by us to represent a hazard to our delivery drivers or the distribution company's delivery drivers, or if the connection is not considered to be compliant, safe or serviceable.
- 4.6 The risk of any loss, damage, or deterioration of the LPG cylinders or of the LPG in those cylinders shall pass to you upon delivery.

## **5 OWNERSHIP, RENTAL AND SECURITY OF EQUIPMENT.**

- 5.1 We will rent to you certain equipment, including the LPG cylinders, for the supply of LPG to your premises. The equipment will remain the property of Mercury or the equipment supplier at all times and may not be sold, rented, charged or otherwise transferred without our prior written consent. Title to the equipment will not pass to you at any time unless otherwise agreed in writing, and you will ensure that the equipment is not, and does not, become a fixture or fitting of the premises.
- 5.2 The LPG delivered to you remains our sole and absolute property until we have received payment in full of all money (whether for the LPG or otherwise) owed by you to us.
- 5.3 If you are in default, we may (without prejudice to any other rights or remedies) enter any premises occupied by you to recover the equipment. If the premises are those of a third party, we may enter and recover the equipment as your agent.
- 5.4 You agree to grant us a security interest (as defined in the Personal Property Securities Act 1999 ("the PPSA")) in all goods supplied by us to you (as detailed in each invoice supplied to you) as well as the proceeds of such goods, as security for all amounts owing by you to us at any time from any cause of present or future indebtedness.
- (a) You acknowledge that, to the extent we have rights in addition to those set out in Part 9 of the PPSA, we may elect to enforce those rights, irrespective of the position under the PPSA.
- (b) To the maximum extent permitted under the PPSA, you agree to waive rights as debtor. You have no rights under (or by reference to) sections 114(1) (a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA. In particular, but without limitation, you agree to waive your right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to any security interest that we may have in goods supplied to you from time to time.
- 5.5 You will only allow the LPG cylinders to be filled with LPG supplied by us or our distribution company.

- 5.6 You will keep the equipment in your possession at the premises during the term of these Specific Terms and will be responsible for its security and condition. You will notify us of any damage to the equipment and will not undertake any work on the equipment except where authorised by us. You will comply with all reasonable instructions given by us, the distribution company and the equipment supplier in relation to the equipment. Any equipment lost or damaged by you or while in your possession will be invoiced at replacement value.

## **6 HOUSING OF EQUIPMENT.**

- 6.1 You must provide and maintain, at your cost, a suitable space for the secure housing of the equipment.
- 6.2 Equipment should not be installed:
- (a) in an inaccessible location;
  - (b) under a stairway;
  - (c) in a location where there would be no air movement across the equipment;
  - (d) under a building (unless permitted by the Gas New Zealand guidelines);
  - (e) in a position that would obstruct exits from a building;
  - (f) buried in the ground; or
  - (g) where damage is likely to occur, unless adequate protection is provided.

## **7 CHARGES.**

- 7.1 Unless we have agreed otherwise, you will be charged the standard published LPG bottle rental, LPG bottle refill and LPG delivery charges by us for our services.

## **8 DISCONTINUING YOUR SUPPLY OF LPG.**

- 8.1 In addition to our other rights of discontinuation set out in these Specific Terms and the agreement, we may discontinue your services and terminate this agreement if you materially or persistently breach these Specific Terms or the agreement and that breach is clearly established and not the subject of a dispute resolution proceeding and, if the breach is capable of being remedied, we have given you notice of the need to remedy the breach in order to avoid discontinuation and you have not remedied that breach within 10 working days after we have given you that notice. We will also provide you with a final warning not less than 24 hours before disconnection. Termination for non-payment will follow the process specified in the General Terms.
- 8.2 Persistent breaches of these Specific Terms or the agreement can include, for example, but are not limited to, regular non-payment of invoices on their due date, persistent abusiveness to our staff, continued vexatious complaints, or the regular failure to grant access to your premises at reasonable times.
- 8.3 Except in the case of emergencies, for safety reasons, or where we suspect you have tampered or interfered with the equipment at your premises supplied by us or our equipment supplier, we will provide reasonable advance notice to you before we discontinue your supply of LPG. There may be fees charged for LPG supply discontinuations and reconnections.

## **9 RECONNECTIONS.**

- 9.1 When you want reconnection after we've discontinued the services (or if the services have been disconnected due to a safety or emergency issue) - just call us. We will let you know the procedure for reconnection and our requirements to re-connect.
- 9.2 We may require that you are present at the time of reconnection or accept responsibility for the safety of the premises where you cannot be present.

## 10 TERMINATION.

- 10.1 Except where you have an agreement with us for a fixed or minimum term, either party may terminate the services under these Specific Terms or the agreement at any time by providing a minimum of 3 weeks' notice. If you are moving house or changing premises, you must also give us a forwarding address. These Specific Terms or the agreement will terminate when we receive payment in full of all outstanding fees and charges.
- 10.2 If we agree to supply LPG to your new premises, these Specific Terms and the agreement will apply to your new premises.
- 10.3 Where a fixed or minimum term applies, if you terminate these Specific Terms or the agreement before the end of the fixed or minimum term (or we do so for any of the reasons specified below in clause 10.4 before the end of the fixed or minimum term), you will incur any applicable early termination fee(s).
- 10.4 We may terminate these Specific Terms and the agreement with you as set out in these Specific Terms (in particular clause 8), and as set out in the General Terms.
- 10.5 If we terminate these Specific Terms or the agreement under clause 10.4, you will:
- (a) be liable for any applicable disconnection and termination fees, including any early termination fees;
  - (b) still have to pay for all services that we provide to you up until the effective date of termination;
  - (c) pay any recurring charges or charges that are subsequently billed that are owed by you until the effective date of termination or the end of your current billing period (whichever is later); and
  - (d) be liable for any subsequent reconnection fees.
- 10.6 If you terminate these Specific Terms or the agreement, you will:
- (a) be liable for any applicable disconnection and termination fees, including any early termination fees, unless you are terminating in accordance with clause 20.7 of our General Terms (Detrimental Change);
  - (b) still have to pay for all services that we provide to you up until the effective date of termination;
  - (c) pay any recurring charges or charges that are subsequently billed that are owed by you until the effective date of termination or the end of your current billing period (whichever is later), unless you are terminating in accordance with clause 20.7 of our General Terms (Detrimental Change); and
  - (d) be liable for any subsequent reconnection fees.
- 10.7 Upon termination of this agreement, you will allow us, the equipment supplier and/or our representatives and agents to immediately enter the premises and collect the equipment. On termination of your LPG supply, you will not be entitled to any refund (in whole or in part) of any part of the charges.
- 10.8 You will not be liable to pay early termination fees under clauses 10.5 or 10.6 where we or our service providers have caused the termination, or where we have otherwise breached our agreement with you.
- 10.9 If the new occupier does not take over the supply from us, there may be a fee to collect the equipment, that is payable by you. We will make all reasonable endeavours to collect the equipment as soon as practicable, but this may be in line with the distribution cycle for your area, and the passing of risk will occur when we have collected the equipment.

## 11 DEFINITIONS AND INTERPRETATION.

11.1 Clause and other headings must be ignored in construing these Specific Terms and references to the plural include the singular and vice versa. In these Specific Terms, "Mercury", "we", "our", or "us" are used when referring to Mercury NZ Ltd (including its employees, agents, contractors, successors and assignees), and we say "you" or "your" when referring to you, our customer. If we use the word "includes", "including" or "for example", this applies as if the words "but without limitation" were also set out. Where the following terms are used in these Specific Terms, they have the following meanings:

**"discontinue"** and **"discontinuation"** means the removal of equipment from your premises.

**"distribution company"** means On Gas Limited or any other person appointed by Mercury to deliver LPG and/or equipment to you from time to time and includes, where applicable, such person's employees, agents, contractors and representatives.

**"equipment supplier"** means the person or company who owns the LPG cylinders and/or associated equipment situated on your premises and who may, depending on the circumstances, be responsible for installing, maintaining, repairing, and servicing the LPG cylinders and/or associated equipment.

**"equipment"** means the LPG cylinders and any other LPG equipment, which is provided by us or our equipment supplier or the distribution company.

**"fee"** means a charge for services provided such as (but not limited to) account establishment, reconnections, discontinuations, discontinuation notices, payment dishonours, arrangement fees, lodgement and agency payment arrangements, internal fault call outs, non-registration administration, tariff changes or tariff combining, and other sundry services provided as determined from time to time by Mercury.

**"good industry practice"** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar conditions in New Zealand at that time.

**"LPG"** means Liquefied Petroleum Gas, which complies to NZS5435 (as that standard may be modified or changed from time to time).

**"premises"** means the property or properties supplied with LPG under these Specific Terms including all pipes, equipment and appliances on your site that use LPG other than those owned by us or our equipment supplier.

**"regulations"** means the Gas Act 1992, the Gas (Safety and Measurement) Regulations 2010, technical gas codes of practice, and other relevant regulations, guidelines, protocols, industry standards and codes of practice as may be amended or substituted from time to time.

**"representatives"** means employees, agents, contractors, professional advisors, invitees, or other authorised persons, or persons for whom any of the foregoing is responsible including sub-agents and sub-contractors.

## 12 OUR CONTACT DETAILS.

We're here to help. If there's anything here that seems unclear, or if there's any question you want to ask us:

- You can email questions to [customerservice@mercury.co.nz](mailto:customerservice@mercury.co.nz) or call us on 0800 20 18 20.
- You can visit our website, [mercury.co.nz](http://mercury.co.nz), or contact us via web chat at [ask.mercury.co.nz](http://ask.mercury.co.nz)
- You can write to us at:  
Mercury  
Private Bag 12023  
Tauranga Mail Centre  
Tauranga 3143

Mercury 