

TERMS AND CONDITIONS

- 1. Services.** Pursuant to these terms and conditions ("terms and conditions") of Energo LLC d/b/a Energo Fuel Services and all its subsidiaries collectively "Energo", an independent energy and HVAC company, you ("Customer") authorize Energo to deliver fuel ("Fuel") or provide the services as set forth in the customer application, contract, purchase order, proposal, quote or service request (the "Services") for Customer and Customer agrees to pay for the Fuel delivered per the metered delivery ticket and Services invoiced including all fees and applicable taxes. Energo may, in its sole discretion, inspect Customer's premises and/or systems prior to delivering Fuel or initiating the Services. Energo reserves the right to refuse to deliver Fuel or provide the Services to Customer following its inspection of Customer's premises and/or systems. Authorized personnel or representatives of Customer may be present at Customer's premises to provide Energo's technician or other representative with access to Customer's premises or systems. In connection with delivering Fuel and providing Services, if Energo is unable to gain access to Customer's premises and/or systems, or Energo's technician or other representative, is required to wait for access, Customer shall be billed at Energo's then-current rates.
- 2. Hours of Service.** Non-emergency Services shall only be performed during normal business hours. Normal business hours are Monday through Friday, 7am to 5pm, excluding nationally recognized holidays. The customer shall pay a surcharge for all non-emergency requests for Fuel and Services specifically requested by Customer to be performed outside of normal business hours. All Customers, regardless of if in a service agreement, shall also pay a surcharge on all requests for Fuel and Services classified as an emergency. Energo deems an emergency as follows: No Heat, No Hot Water, Serious Fuel Leaks, or Dangerous Situations. This includes instances when, after inspection, it is determined to be an emergency by Energo, in its sole discretion, although situation may have been misrepresented as a non-emergency by Customer.
- 3. Suspension of Service.** Energo does not inspect Customer's equipment and systems prior to each Service or Delivery and expects that Customer's system(s), equipment, boiler(s), and/or petroleum bulk storage tanks are in good condition and working order and capable of accepting Service and/or Deliveries without issue, including fuel spillage or contamination to surrounding areas. Energo reserves the right to suspend Service on any equipment that Energo determines to be irreparable, or otherwise in need of replacement. Energo will notify Customer of such Service suspension verbally or in writing at the time of determination. Further Service calls required on equipment shall be an additional charge, billed at Energo's then-prevailing time and material rates. Energo shall have no obligation to provide Services to, including repairs or replacement of any equipment that, in Energo's sole discretion, is obsolete or irreparable. The Services contemplated hereunder shall be cancelled, these terms and conditions shall be terminated, and Energo shall not be required to, and shall not provide Services to Customer, in the event of any of the following: (a) Customer procures HVAC equipment service or has equipment (or any parts thereof) installed, modified or repaired by any person other than an employee or authorized service representative of Energo, without Energo's prior written consent, b) if Customer fails to maintain an acceptable credit rating; or (c) if Customer fails to make payments within thirty (30) days following receipt of invoice from Energo. In the event of such cancellation, absolutely no refunds (in whole or in part) shall be made to Customer for any Services whatsoever, including any unused Services remaining under the term of the agreement between Energo and Customer. Customer may also be liable for any Fuel remaining on their transaction confirmation or contract.
- 4. Routine Maintenance and Other Services Not Included.** The Services do not include performance by Energo of any regular or routine maintenance on any of Customer's equipment or unit(s), such as filter replacement or lubricating, cleaning filters, blow down valves or automatic feeder or addition or removal of water unless agreed to in writing between Energo and Customer. Customer acknowledges that Energo is not responsible, and assumes no liability whatsoever, for regular or routine maintenance to Customer's equipment or units. The customer accepts all responsibility to perform all regular and routine maintenance on its equipment and units. The Services do not include labor for any part of Customer's equipment related to domestic hot water, domestic plumbing or wiring, water tanks, cooling equipment, steam lines or steam related piping or issues, boiler water feed devices or low water cut-offs and columns, boiler combustion chamber, boiler leaks, boiler tubes, boiler sections, building department inspections or violations, chimney or breaching, governmental filings or permits, preparations or performance tests, boiler cleaning, fire damage repairs, low water conditions or cleaning of low water cut-offs, defective fuses or tripped circuit breakers, lack of fuel, insulation, gas lines, oil tanks, correcting repairs by others, water damage or boiler welding of any kind. Additionally, Energo does not provide, and the Services do not include, labor or repairs due to inadequate boiler room ventilation, vacant or unattended premises, changes in oil consumption, piping not directly related to the HVAC system, replacement of obsolete parts that are not available through regular sources of supply, or any labor that requires Energo to expose concealed piping, duct work, or oil lines for repair.
- 5. Title to Equipment.** Title to any and all equipment and materials provided pursuant to the Services shall not transfer to Customer, and shall remain with Energo, until payment in full of all amounts due and owing to Energo in connection therewith is made. In the event of any failure to pay or delay in payment by Customer, Energo shall have the right to remove the equipment from the premises or project site, at Customer's sole cost and expense, and Customer grants Energo permission to enter the premises or project site as necessary to remove such equipment.
- 6. Petroleum Bulk Storage Tank.** The customer is responsible, and Energo shall not be liable whatsoever, for the condition and maintenance of Customer's petroleum bulk storage tank, if any. Energo does not inspect fuel storage tanks and expects that Customer equipment and/or tank(s) are in good condition and working order and capable of accepting deliveries without spillage or contamination to surrounding areas. Energo is not responsible, and assumes no liability whatsoever, for any of the following: (a) claims or issues related to bulk storage tanks including without limitation leaks, spills, damage to persons or property, or any damage or contamination to the atmosphere, environment, any water course, or body of water resulting from leaks or spills; (b) any remedial or any other costs of compliance with any environmental or other laws, rules, or regulations applicable to use, storage or maintenance of bulk storage tanks; or (c) Losses caused by failure to make a delivery or other circumstances that prevent or limit the operation of Customer's equipment or systems. Customer is responsible for providing supplemental heat or taking steps to prevent freeze-up in the event of HVAC system failure, and to monitor premises and ensure proper temperatures are maintained. Energo will attempt to maintain an adequate fuel level in Customer's tank, based on historical usage and tank monitor readings, when Customer is on automatic delivery with Energo. Since changes in usage and weather factors cannot be anticipated, Energo will not be responsible for any loss or damage due to fuel tank runouts. Customers should check fuel tank and promptly notify Energo of any change in consumption levels. Energo does not represent, warrant or guarantee that no spill or other contamination will occur in connection with the provision of the Services. Customer is responsible for compliance with all laws requiring notice from government agencies or officials in the event of a leak or other contamination from its storage tanks. Customer shall indemnify, defend, and hold harmless Energo and its parent companies, subsidiaries, and affiliates and their respective officers, managers, members, successors, assigns, subcontractors, technicians and agents (each, an "Indemnified Party") from and against any and all third party losses, damages, liabilities, expenses, penalties, costs, fines and fees (including attorney's fees) (collectively, "Losses") incurred in connection with any claims, suits, proceedings or causes of action (collectively, "Proceedings") made or brought against an Indemnified Party based upon or arising out of spills, leaks, contamination or pollution in connection with Customer's premises, facilities, equipment, systems, units or bulk storage tanks.
- 7. Subcontractors.** Customer acknowledges and agrees that Energo is authorized to subcontract all or any part of the Services to third parties, and that Energo shall not be liable for any loss or damage sustained by Customer as a result of or in connection with the negligence of such subcontracts and Customer appoints Energo to act as Customer's agent with respect to such subcontracts.
- 8. Limits of Liability.** Energo shall not be liable to Customer, its affiliates, or any third party for any Losses whatsoever, including personal injury or property damage, related to pre-existing conditions, relighting pilot, blown fuses, Customer's failure to turn on main switch, operation or failure of operation of or defect in Customer's equipment or systems, oil spills, leaks, smoke, vapors, odors, fire, equipment failure, tank failure, or any other conditions beyond the control of Energo or any other circumstance or cause, regardless of whether or not such Loss was caused by or contributed to by Energo's negligent performance or failure to perform any obligation. ENERGO'S MAXIMUM LIABILITY TO CUSTOMER, WHETHER ARISING FROM ENERGO'S BREACH OF THESE TERMS AND CONDITIONS OR ANY OTHER AGREEMENT WITH CUSTOMER OR NEGLIGENCE OR OTHERWISE WITH RESPECT TO ANY ACTUAL OR ALLEGED LOSSES SHALL BE LIMITED TO THE AMOUNT OF CUSTOMER'S SINGLE LARGEST MONTHLY INVOICE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING CUSTOMER'S INITIAL CLAIM FOR LOSS. This is an aggregate limit and the existence or more than one claim for Losses hereunder shall not increase this limit. THE FOREGOING LIMITATIONS ON LIABILITY APPLY WITHOUT REGARD TO THE CAUSE OF ANY LOSSES. CUSTOMER AND

ENERGO ACKNOWLEDGE AND AGREE THAT THERE ARE NO THIRD-PARTY BENEFICIARIES TO THESE TERMS AND CONDITIONS OR THE SERVICES. Customer releases Energo from any claims for contribution, indemnity, or subrogation. Customer on its behalf and for any insurance carrier waives any right of subrogation that Customer's insurance carrier may otherwise have against Energo or Energo subcontractors arising out of this Services or the relation of the parties hereto. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER CUSTOMER NOR ENERGO SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, LOST PROFITS, LOST REVENUES, INCIDENTAL, OR INDIRECT DAMAGES, WHETHER IN TORT OR CONTRACT, ARISING OUT OF OR IN CONNECTION WITH, THESE TERMS AND CONDITIONS OR OTHER ANY AGREEMENT BETWEEN CUSTOMER AND ENERGO INCLUDING, WITHOUT LIMITATION, A PARTY'S PERFORMANCE OR NONPERFORMANCE HEREUNDER, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO THE OTHER PARTY IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY THE OTHER PARTY. Customer's right to seek recovery of any Losses against Energo with respect to the Services as set forth herein is strictly conditioned on Customer having first complied with the following: (a) Customer shall have inspected the site where the Services will be performed within ten (10) days of receipt of Energo's invoice, (b) Customer shall provide Energo with written notice of Customer's claim specifying in detail the nature and precise extent of the claim (including photographs if applicable); and (c) Customer shall have afforded Energo an opportunity to inspect the site and to make whatever modifications are necessary.

9. **Indemnification.** Customer shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Losses incurred in connection with any Proceedings made or brought against an Indemnified Party based upon or arising out of (a) the acts and omissions of Customer and its employees, agents, and representatives, (b) any breach of these terms and conditions by Customer or its employees, agents, and representatives, and (c) operation of, or any alleged or actual defects in, Customer's premises, building, equipment or systems including, without limitation, any previous or future fuel oil leaks or contamination resulting from Customer's fuel storage tank(s).

10. **Permits.** Customer shall assist Energo in obtaining all necessary governmental permits, licenses, approvals, and documents required for the performance of the Services. Energo's obligation to perform the Services is specifically subject to and conditioned upon the issuance of all permits, licenses, approvals, or other documents required by any governmental or regulatory authority applicable to Energo's performance of the Services. Customer agrees that Energo may act and sign on its behalf any papers necessary to obtain required permits. Energo reserves the right to correct any or all violations and/or objections issued during inspection at Customer's expense in order for Energo to obtain any required permit or license. Any or all violations or objections issued during any inspection shall be billed to the Customer separately and/or shall be corrected by Customer prior to re-inspection. Permits may not be held open due to objections or violations as a result of pre-existing conditions; any such pre-existing condition shall be remedied expeditiously by the Customer and at Customer's sole cost and expense. If receipt of any required permits is delayed for reasons other than due to Energo, Customer shall not withhold or delay any payments required hereunder.

11. **Standard Applicable to Services.** Energo shall perform the Services (a) in accordance with prevailing professional standards and ethics in its industry, (b) in compliance with applicable laws, rules and regulations, and (c) in a manner consistent with that level of care and skill ordinarily exercised by members of the energy services and mechanical contracting profession in the same locale acting under similar circumstances and conditions. If Energo believes that compliance with Customer's directions could violate applicable professional standards or ethics or applicable laws, rules or regulations, then Energo shall so advise Customer. The Services shall be performed on behalf of and solely for the exclusive use of Customer and for no other third parties.

12. **Customer Obligations.** Customer shall provide Energo with all information known or readily accessible to Customer that may be reasonable and/or necessary for Energo to perform the Services. Customer shall provide Energo with all relevant data and information in its possession relating to the premises and project site including, without limitation, environmental, hydrological, geological, and geotechnical conditions of the site and surrounding area. Customer shall correctly show, on plans that Customer shall provide to Energo prior to the performance of the Services, the locations of all subsurface structures such as lines, pipes, tanks, cables, and utilities related in any way to the provision of the Services. Customers shall provide Energo, in writing, with all criteria, design and construction standards and all other information relating to Customer's requirements for the Services at the site. Prior to the commencement of the Services or at any time thereafter, if new information becomes available to Customer that relates to or impacts the Services, Customer shall provide prompt and full disclosure to Energo of such new information including, without limitation, all known or potentially hazardous conditions or risks to the health or safety of Energo's employees, technicians, agents and subcontractors at the project site or in connection with the performance of the Services. If hazardous substances or conditions are discovered by Energo during the performance of the Services that had not been disclosed to Energo prior to commencement of the Services, then Customer and Energo shall negotiate to determine the equitable increase to the cost of the Services. Customer represents and warrants that, as of the date hereof, Customer has not observed or received notice from any source (formal or informal) of the presence of hazardous substances or mold, either airborne or on or within the walls, floors, ceilings, HVAC systems, plumbing systems, structure or any other aspect of the premises or project site, that, to Customer's knowledge, could cause or promote accumulation on, concentration, growth or dispersion of, hazardous substances or mold on or within such locations.

In the event of a change of grade of fuel oil provided hereunder, and Customer's tank requires cleaning or repair to accommodate such change, Energo may be required to clean Customer's tank, which may dislodge sludge that may act as a seal on a breach of the tank or cause a leak. In such event, Energo shall not be responsible for any such result or any Losses in connection therewith, and any repairs or modifications required in connection therewith shall be at an additional cost to Customer.

13. **Modifications to Services.** Any changes to the scope of the Services provided by Energo or to any work order shall be mutually agreed upon by Energo and Customer and set forth in a written document (a "Change Order") signed by both Energo and Customer. Notwithstanding the foregoing, if Customer approves a Change Order that is not signed by Customer, and Energo proceeds to perform Services under such approval, Customer shall be invoiced at Energo's then-current rates.

14. **Project Delays.** If Energo is delayed at any time in performance of the Services (including under any work order or change order) as a result of (a) an act, failure to act, or negligence of Customer or Customer's employees or agents or any other party; (b) changes in the scope of Services; (c) delay authorized by Customer and agreed to by Energo, then the time for completion shall be extended and an equitable adjustment made to the compensation if delays caused by any of the above events result in additional costs to Energo (including demobilization and remobilization).

15. **Billing/Payment.** Customer shall pay each invoice in full promptly upon receipt. If any invoice is not paid within 30 days of receipt, Customer shall pay (a) 1.5% monthly interest (or the maximum rate allowable by law, if lower) on any past due amount and (b) all costs incurred by Energo to collect any such past due amounts including, without limitation, reasonable attorneys' fees and collection agency fees and expenses. Energo may delay in enforcing its rights and/or accept late or partial payments without losing any of its rights under these terms and conditions or applicable law. If Customer fails to timely remit payment, Energo reserves the right to cease providing Services immediately and reserves the right to pursue and collect all damages from Customer.

16. **Credit Card and/or Bank Accounts.** Customer agrees that any credit or debit card and/or bank account information provided will be automatically charged and/or debited by Energo on or before the invoice due date, unless notified in writing by Customer. However, by Customer doing so, Energo reserves the right to terminate this agreement, and cease Fuel deliveries and Services to the Customer. Customer further agrees to pay an additional credit card service charge of up to 4% of the transaction amount should Energo elects to charge it.

17. **Guaranty.** In consideration of the extensions and maintenance of credit from time to time by Energo, Customer (a) warrants that the representations made herein are true and accurate and agrees to promptly notify Energo in writing of any change in financial condition that would adversely affect Customer's obligations hereunder and (b) personally, individually, jointly and severally, guarantees payment to Energo, its successors and assigns, of all existing and future indebtedness of Customer, including service charges together with accrued interest thereon, collections costs and attorneys' fees. This guaranty shall be effective without first requiring Energo to proceed against any other party, and the undersigned hereby waive(s) notice of acceptance of this guaranty, default and non-payment and consent(s) to waiver, extension or modification of credit terms. This shall be an open and continuing guaranty that may only be revoked upon written notice to Energo by certified mail, return receipt requested, which revocation shall be effective

10 days of Energo's receipt of such notice and shall only release Customer from liability for indebtedness incurred after the effective date of such revocation.

18. **Assignment.** Customer may not assign its interests in or delegate its obligations under these terms and conditions without the express written consent of Energo. Energo may assign, transfer, delegate, or subcontract any of its rights or obligations hereunder in its sole discretion. Energo may sell, transfer, pledge, or assign the accounts receivable, revenues, or any proceeds from performance of the Services, in connection with any financing agreement, purchase of accounts receivables program or billing services agreement, in its sole discretion. These terms and conditions shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns, including, without limitation, any subsequent owner as a whole or in part of the real property of Customer and/or the premises where the Services are performed.

19. **Customer Representations.** Customer's representations and warranties made herein are true and accurate and Customer has all necessary authority to enter into the agreement for Services and these terms and conditions. Customer shall promptly notify Energo in writing of any change in or to (a) any financial condition of Customer that would adversely affect payment(s) owed by Customer to Energo; and/or (b) the information provided to Energo by Customer, including with respect to the banking, delivery terms and owner(s), partner(s), principal shareholder(s) or managing member(s) of Customer or the premises where the Services are provided.

20. **Limited Equipment Warranty.** The goods sold hereunder are sold with all faults and "as is." Energo warrants any new burner or boiler installed by Energo and its labor in connection therewith for one (1) year from the first date that the newly installed equipment fires (gas or oil), subject in all respects to any applicable manufacturer's warranty. Customers shall notify Energo of any defects in installation within this warranty period. Energo's sole responsibility under this limited warranty is to repair or replace the defective equipment (or part thereof). No party other than Energo shall make any alterations or modifications to the equipment or parts installed by Energo without the express prior written consent of Energo. Any such alteration or modification done without Energo's prior written consent, and any damage to new equipment caused by faulty building equipment or any other cause not due to Energo or its technicians or agents, shall void this limited warranty. EXCEPT AS SET FORTH HEREIN, ENERGO MAKES NO OTHER REPRESENTATION, GUARANTEE, OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WHETHER OF MERCHANTABILITY, USAGE OF TRADE AND FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE.

21. **Credit Policy, Authorization for Credit Report and Security Lien.** Customer hereby authorizes Energo to obtain information regarding Customer's credit history from credit and consumer reporting agencies. Customers may rescind this authorization by providing written notice thereof to Energo or by calling Energo at 1.718.435.2200. Energo reserves the right to cancel the Services if this authorization is rescinded. Energo may, at its sole discretion, file a UCC-1 lien or Mechanic's lien on any property on which Services are performed in the event that Energo deems it necessary. In accordance with any such lien filing, Customer agrees that any new mortgage or lien be subordinated to the lien placed on the real property by Energo. Customer further stipulates that at no time will Customer or its agents or assigns attempt to remove or disgorge said filing without the prior written consent of Energo.

22. **Force Majeure.** Energo shall not be liable, nor shall any credit or other remedy be extended, for any delay or failure to perform the Services or any of its other obligations to Customer due to events beyond Energo's reasonable control, including but not limited to: acts of God, pandemic, epidemic, flood, storms or extreme weather, fire or other natural event, terrorist attack, any law, order, regulation or action of any governmental authority (including the withdrawal of any government authorization, license or permit applicable to the Services or Customer's premises) or civil or military authority, power or utility failures, utility requirements or regulations, transportation delays, supply chain or fuel shortages, cable cuts, pipe failures, equipment failures, unavailability of rights-of-way, national emergencies, riots, wars, strikes, lock-outs, work stoppages or other labor difficulties, import or export restrictions, embargos, quarantine, boycotts, or sanctions however incurred, explosions, or failure of or interference with Energo's supply sources.

23. **Notices and Customer Communications.** Customers expressly consent to be contacted by Energo, its agents, assigns, debt collectors, attorneys or anyone else calling on its behalf, for any and all purposes, at any telephone number, or physical or electronic address provided by Customer or at which Customer may be reached, including any wireless telephone number. Customers agree that Energo, its agents, assigns, debt collectors, attorneys or anyone else calling on its behalf, may contact it in any way, including via calls or text messages delivered by an automatic telephone dialing system or prerecorded or artificial voice messages, or via email. The customer expressly acknowledges that such consent cannot be revoked without prior written agreement and acceptance by Energo. Customer agrees to promptly notify Energo in writing at any time its contact information, including any of its phone number(s), change within fourteen (14) days of any such change. Any notice to be given under these terms and conditions shall be in writing and addressed to the appropriate party at the address provided by such party.

24. **Disputes, Waiver of Jury Trial, and Participation in Class Actions.** ENERGO AND CUSTOMER SHALL NOT BE PERMITTED TO JOIN OR CONSOLIDATE COMPLAINTS, CLAIMS, OR DISPUTES INVOLVING THIRD PARTIES, NOR SHALL ANY COMPLAINTS, CLAIMS, OR DISPUTES BE BROUGHT OR MAINTAINED AS A CLASS ACTION OR IN ANY REPRESENTATIVE CAPACITY. ENERGO AND CUSTOMER UNDERSTAND AND AGREE THAT THEY HEREBY KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVE THE RIGHT TO A TRIAL BY JURY. ENERGO AND CUSTOMER UNDERSTAND AND AGREE THAT THEY HEREBY KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVE THE RIGHT TO PARTICIPATE IN OR BE REPRESENTED IN ANY CLASS ACTION OR CLASS ARBITRATION. Prior to a party initiating any action or proceeding in connection with any dispute, controversy or claim arising out of or relating to these terms and conditions or the Services, the parties hereto shall first seek to resolve such a dispute, controversy or claim through direct discussions between Energo and Customer for at least thirty (30) days. Customer will pay all invoices in full, except for any disputed amount, in accordance with these terms and conditions while any claim or dispute is being resolved.

25. **Governing Law; Jurisdiction.** These terms and conditions shall be construed, enforced and interpreted in accordance with the laws of the State of New York without regard to conflicts of law principles. Each party hereto irrevocably and unconditionally submits to the exclusive jurisdiction of any state or federal court of the State of New York located in New York County, which courts shall be the exclusive forum for any actions, suits, or other proceedings relating to these terms and conditions or the Services, or any other matters whatsoever between the parties hereto. Each party hereto irrevocably and unconditionally agrees not to plead or claim that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum. The parties hereby agree to both subject matter and personal jurisdiction in such a forum.

26. **Asbestos Exclusion.** The Services shall not include the identification, detection, abatement, encapsulation, or removal of asbestos, or products or materials containing asbestos or other hazardous substances or mold. In the event that Energo encounters any such products or materials in the course of performing the Services, Energo shall have the right to discontinue the Services and remove its employees, technicians and agents from the premises until such products, substances or materials, and any hazards connected therewith, are removed or abated by the Customer.

27. **Chimney-Related Exclusions.** Size, condition or legality of existing chimney, is the sole responsibility of Customer. The customers agree that breaching and chimney shall be clean, in good condition, free from obstructions, of legal size and construction, and with no openings other than for the boiler. Energo shall not be responsible for the chimney, or any work related thereto. Prior to commencement of the Services, Energo may, upon Customer's request, arrange for inspection of the chimney by the filing engineer to determine whether the condition of the chimney is satisfactory and whether a liner should be installed. A separate work order between the parties is required for any repair, replacement or upgrade of the chimney, at an additional expense.

28. **Exclusions.** Energo is not responsible, and assumes no liability whatsoever, for any of the following: (a) any sounds caused by normal operation of Customer's equipment and systems, (b) the integrity or code compliance of the existing boiler room/work area/basement in the building, combustion air/fresh air system in the building, the existing near-boiler piping, pipe covering and pipe support in the building, the existing gas piping in the building, the existing heat piping in the building, the existing domestic water piping in the building, the existing electrical wiring in the building, inadequate electrical service in the building or prior or existing violations in the building, (c) the condition or code compliance of the existing oil tank, tank vault/room, oil piping, and similar equipment, (d) the work, timing or performance of any utility or its services or requirements, timing or provision by any utility of sufficient natural gas for the proper operation of Customer's equipment or any security deposit required by any utility, (e) the work, timing or performance of any federal, state or municipal agencies that oversee and/or have jurisdiction over Customer, the Services, the building or the premises, (f) the issuance of any required approvals, permits or permission of any applicable utility or federal, state or municipal agency, (g) any rules, regulations or requirements by the New York Board of Fire Underwriters, Department of Environmental Protection (DEP), the Department of Buildings (DOB), or by Customer's insurance

company, (h) any presence of mold or moisture, or indoor air quality, (i) the temperature, humidity and ventilations settings used by Customer, (j) the ability of Customer's system to supply the heat or hot water required by Customer, (k) excavation (other than ordinary soil or gravel), digging, restoration, removal or rock, boulders, reinforced concrete, concrete in excess of 6", shifting sand, pipes of any nature, or similar services, (l) if any agency or entity having jurisdiction, mandates or requests any additional repairs, changes or modifications (including to Customer's oil tank, tank room, or anything related thereto), (m) abatement of asbestos, mold or lead paint, or (n) running new cables or conduits in the building in connection with any new electrical installation.

29. **Requirements Contract.** If Customer has entered into a fixed price fuel supply agreement, Customer agrees to purchase all of its product requirements at the specified premises or building from Energo.

30. **Delivery Schedule.** If Customer has entered into a fixed price fuel supply agreement, Customer agrees to automatic delivery and shall not at any time remove Customer's account from such delivery schedule. Following the expiration of the term, Energo shall continue to make automatic deliveries to Customer at Energo's then-prevailing daily rate until such time as the Customer signs a new agreement or purchase order or provides a termination notice Energo. There shall be no Customer discretionary deliveries. Deliveries shall only be made based on Energo's automated degree-day system. Customer requests for tank top-offs shall not be permitted. Delivery shall be made pursuant to the location service list labeled "Location of Delivery and Service" on purchase order. Energo reserves the right to distribute fuel on a ratable basis at any time.

31. **Deliveries.** If on a "will-call" delivery schedule, Energo will take reasonable steps to deliver the product by the date specified in the order request, or if none specified, within a reasonable amount of time. However, all delivery dates are estimates and Energo does not guarantee that the product will be delivered on or by any particular date or time. Customers are aware that Energo is subject to seasonal fluctuations in demand, and Energo experiences, especially in the winter months, increased demand as well as poor driving conditions. Accordingly, Customer shall take such conditions into consideration when placing orders. Time shall not be of the essence in relation to deliveries. Energo's regular delivery hours, if on a "will-call" delivery schedule, are Monday thru Saturday, 8am to 4pm delivery during winter, and Monday thru Friday 8am to 4pm during every other season. Any delivery requests outside regular delivery hours are subject to higher pricing and/or overtime charges. Pricing for small deliveries and/or dual fuel (interruptible gas) accounts, are subject to higher pricing.

32. **Limited Warranty: Fuel.** Energo represents and warrants that (i) it has good title to all fuel delivered to Customer, (ii) it has the right to sell and deliver the fuel to Customer, and (iii) the fuel delivered to Customer will be free from all liens and encumbrances.

33. **Risk of Loss.** Risk of loss, and unless otherwise specified, title to the product shall remain with Energo until the product passes through Energo's equipment and enters the Customer fill line or receiving equipment, at which time title and risk of loss shall pass to Customer.

34. **Waiver of Claims/Measurements.** Quantities set forth on Customer delivery tickets shall be deemed conclusive with respect to the quantity of products delivered to and received by Customer. Energo does not accept responsibility whatsoever for discrepancies in the Customer's tank(s), dip rod(s), or other measuring device(s). The quantity shown by the delivery truck's meter ticket shall be accepted as the quantity of products delivered. Customer or its representative may be at the delivery of the product to verify the measurements. Customer is responsible for checking the product upon or immediately following delivery. In the event Customer has a complaint relating to the quantity or quality of the product delivered, Customer shall notify Energo in writing within 12 hours following delivery of product, after which time any and all claims or issued in respect thereof shall lapse and be waived by Customer. Customers agree to provide Energo with access to any applicable location to remove any Energo-owned tank monitor equipment or other Energo-owned equipment at least 48 hours prior notice by Energo. If Customer fails to provide Energo access to remove its monitor or other equipment, Customer shall pay to Energo \$300.00 plus a \$10.00 monthly fee for every month that the monitor is not returned. Customers shall pay Energo's hourly labor rates of \$225.00 per hour for burner service and \$300.00 per hour for all plumbing work.

35. **Price.** The price for the volume being delivered hereunder shall be at Energo's daily rate unless Customer has entered into a fixed price agreement. Per gallon price does not include applicable sales or other tax. All prices quoted by Energo are confidential and specific to Customer only. If Customer is not under a fixed price contract with Energo, and buys on a variable price basis, then Energo reserves the right to adjust pricing in between time of product order and product delivery, to reflect market price movements, regardless of any price previously quoted by Energo. Any disclosure by Customer of Energo pricing is a breach of these terms and condition and shall subject Customer's price to an increase.

36. **Termination.** If Customer has entered into a fixed price fuel supply agreement, and Customer terminates Energo's services, without cause, prior to the expiration of the term, Customer shall pay Energo an early termination charge to be determined by Energo at the time of cancellation, but never less than \$350.00. As an early termination charge, Energo reserves the right to charge Customer an amount equal to the Fixed Price on the Agreement multiplied by the remaining Base Load Usage for the remainder of the Term. In the event of early termination, Customer shall immediately pay all invoices outstanding at the time of such termination.

37. **Disruption.** In the event that there is a disruption or shortage of product supply for any reason, and/or Energo experiences any condition that may result in a limitation of product supply to Customer, volumes may be reduced at Energo's sole discretion. Energo shall use reasonable diligent efforts to minimize any supply disruptions.

38. **Short/Excess Liftings.** If Customer has entered into a volume specific fixed price fuel supply agreement, a storage fee of \$0.05 per gallon per month shall be charged to Customer if total contracted gallons are not delivered by the end date of the term. This fee will continue to get charged until all contracted gallons are delivered to Customer. Gallons delivered in excess of the contracted volume shall be billed at Energo's prevailing daily rate until such a time as Customer signs a new service agreement.

39. **Limits of Liability: Delivery.** Energo is not responsible for any Losses as a result of failure to make a delivery, or other conditions that may arise and limit or prevent the operation of Customer's equipment or systems. Energo's maximum liability to Customer hereunder, whether arising from a breach of contract or negligence or otherwise with respect to any claimed Losses shall be limited to the sales price of the fuel delivered by Energo.

40. **Events of Default.** "Event of Default" means (i) the failure of either party (or its guarantor) to make any payment required by the applicable due date and the failure is not remedied within five (5) days of receipt of written demand for cure; (ii) the failure of Customer to provide satisfactory credit assurance within five (5) days of Energo's demand; (iii) the failure to deliver or take delivery of any or all of the fuel supplied hereunder; and (iv) the failure of either party to perform any other obligation hereunder within ten (10) days of receipt of written demand to perform thereof.

41. **Remedies upon Event of Default.** Upon the occurrence and during the continuance of an Event of Default, Energo may: (i) suspend any deliveries required hereunder; (ii) upon written notice at least one (1) day in advance, accelerate any amounts owed between the parties and terminate these terms and conditions and any purchase order or other agreements between the parties and (iii) pursue the remedies set forth in these or other applicable terms and conditions between the parties or at available at law or in equity.

42. **Attorneys' Fees.** If any party hereto commences a Proceeding in connection with these terms and conditions or the performance of the Services, the prevailing party shall be entitled to recover the costs and expenses of such Proceeding including reasonable attorneys' fees and costs incurred in such Proceeding in addition to any other relief to which it may be entitled. If Energo is unsuccessful in collecting outstanding balance(s) and submits invoices to an outside collection agency, Customer shall also be responsible for paying the agency's collections fees amounting to not less than 33.3% of the balance outstanding.

43. **Waiver.** The waiver by any party of any breach hereof shall not operate or be construed as a waiver of any subsequent breach. The failure of either party to insist, in any one or more instances, upon performance of the terms or conditions hereof shall not be construed as a waiver or relinquishment of any right granted hereunder or of the future performance of any such term, covenant or condition.

44. **Modifications to Terms and Conditions.** Upon notice to Customer, Energo reserves the unilateral right to amend these terms and conditions and the terms of its sales or service to Customer. Customer's continued purchase and/or use of Energo's products and/or services, together with Energo's delivery of invoices in connection therewith, shall be deemed consent and agreement by Customer to any such modified term(s) and/or condition(s) of sale.

45. **Entire Agreement.** These terms and conditions, and any other agreement or work order between Energo and Customer relating to the Services, constitute the entire agreement between the parties and supersedes all proposals, prior written or oral agreements and all communications between the parties.