

## Kiwi Energy NY LLC Fixed Gas Terms and Conditions

111 East 14<sup>th</sup> Street #105 • New York, NY 10003

1-877-208-7636 • [www.kiwienergy.us](http://www.kiwienergy.us)



**1. Agreement to Sell and Purchase Energy.** This is an agreement between Kiwi Energy NY LLC (“Kiwi Energy”) and the undersigned customer (“Customer”) under which Customer shall initiate natural gas service and begin enrollment with Kiwi Energy (the “Agreement”). Subject to the terms and conditions of this Agreement, Kiwi Energy agrees to sell and deliver, and Customer agrees to purchase and accept the quantity of natural gas, as estimated by Kiwi Energy, necessary to meet Customer’s requirements based upon consumption data obtained by Kiwi Energy or the delivery schedule of the Local Distribution Utility (the “LDC”). Kiwi Energy is not affiliated with and does not represent the LDC. The amount of natural gas supplied under this Agreement is subject to change based upon data reflecting Customer’s consumption obtained by Kiwi Energy or the LDC’s delivery schedule. The LDC will continue to deliver the natural gas supplied by Kiwi Energy.

**2. Term.** For new customers this Agreement shall commence as of the date Customer’s notice regarding the change of Customer’s provider to Kiwi Energy is deemed effective by the LDC, and for existing customers shall commence when the rate change is accepted by the utility; thereafter the Term shall continue for the number of months set forth on the Customer Disclosure Statement (the “Initial Term”). Unless otherwise agreed to in writing, upon completion of the Initial Term, this Agreement will renew on a month-to-month basis with a monthly variable rate methodology with no change to the remaining terms (the “Renewal Term”). At least 30 days and no more than 60 days prior to the renewal date, Kiwi Energy will notify Customer in writing of the terms of renewal of this Agreement and of the Customer’s right to renew, reject or renegotiate this Agreement. Customer shall have 3 business days from receipt of the first billing statement of the Renewal Term to reject renewal terms and cancel the renewal agreement. While receiving service on a month-to-month basis, such notification will be provided only for the first renewal occurring at the end of the Initial Term, and Customer or Kiwi Energy may cancel or terminate this Agreement by providing 30 days’ advance written notice of termination to the other party.

**3. Pricing, Billing, and Termination.** Unless otherwise agreed to in writing, the price for all natural gas sold under this Agreement shall be the fixed price set forth on the Customer Disclosure Statement plus all applicable taxes. Kiwi Energy’s current and historical prices are not an indicator of Kiwi Energy’s future prices. Unless otherwise agreed to in writing, Kiwi Energy’s prices may be higher or lower than the LDC’s supply rate. For fixed price service if usage in any month exceeds the level of usage in the same month in the previous year (“Base Load”) by ten percent or more, the Customer may be charged a variable price for all usage in excess of the Base Load and the fixed price for usage up to the Base Load. If the usage in any month falls by ten percent or more below the Base Load, the Customer may be charged the fixed price for all usage and shall be charged for hedging, cash out costs, settlement or balancing costs related to the positive difference between the Base Load and actual consumption. If there is a material adverse change in the business or financial condition of customer (as determined by Kiwi Energy at its discretion), or if Customer fails to meet its obligations under this Agreement or pay or post any required security deposit, or if customer provides fraudulent information or misrepresents the information used to secure this Agreement, then, in addition to any other remedies that it may have, Kiwi Energy may terminate this Agreement upon 15 days’ written notice to Customer. If Customer terminates this Agreement prior to the end of the Initial or Renewal Term or if Kiwi Energy terminates this Agreement due to Customer’s breach, the Customer shall pay Kiwi Energy, in addition to any other applicable charges, an early termination cost recovery fee. Such fee will be ten dollars (\$10.00) per month for each month remaining on the Agreement, but will not exceed; one hundred dollars (\$100.00) for any Agreement with a remaining term of less than 12 months; or two hundred dollars (\$200.00) for any Agreement with a remaining term of 12 months or more.

Kiwi Energy will invoice Customer monthly for natural gas supplied under this Agreement, as measured by the LDC, and Customer will pay each invoice in full within 20 days of the invoice date or be subject to an LDC late payment charge of

1.5% per month. Customer may receive a single bill for both commodity and delivery costs from either Kiwi Energy or the LDC, or each of the LDC and Kiwi Energy may invoice Customer separately. Customer payments remitted in response to a consolidated bill shall be pro-rated (when so required) in accordance with procedures adopted by the New York State Department of Public Service (the "DPS"). Kiwi Energy may assign and sell Customer accounts receivable to LDC. Customer shall be liable for all costs of collection including the late payment interest rate set forth in this Agreement, reasonable attorneys' fees (if suit is filed) and reasonable collection agency fees. In the event of failure to remit payment when due, Kiwi Energy may terminate commodity service and seek suspension of distribution service in conformance with the Home Energy Fair Practices Act ("HEFPA"). A \$30 fee will be charged for all returned payments.

**4. Supply Rewards.** Customer may select one of two reward options, EITHER: (1) "7% Ecogold Rewards OR (2) a "5% Cash Back." Rewards will be calculated based on Customer's natural gas commodity supply charges for active accounts following the commencement of natural gas commodity service under this Agreement. Active accounts are defined as those (i) that are billing more than \$0 and (ii) for which Kiwi Energy has not received a request on behalf of the customer to discontinue service.

- (i) The 7% Ecogold Rewards will be 7% of the ESCO natural gas commodity supply charges billed by the LDC on behalf of Kiwi Energy under the consolidated bill, exclusive of sales taxes and LDC delivery, transportation, and transmission charges. The Ecogold Rewards will initially be awarded once the reward is equal to \$25. All subsequent rewards will be awarded once the reward balance is equal to \$50.
- (ii) The 5% Cash Back will be 5% of the 12 month consecutive ESCO natural gas commodity supply charges billed by the LDC on behalf of Kiwi Energy under the consolidated bill, exclusive of sales taxes and LDC delivery, transportation, and transmission charges. Customer must remain with Kiwi Energy for 12 consecutive billing cycles to receive any Cash Back. The Cash Back must be mailed to the customer within 60 days following each 12 month billing cycle that Customer takes service from Kiwi Energy.

**5. Carbon Credits.** Kiwi Energy's Ecogold plan Zero Gas ensures that Kiwi Energy offsets the carbon impact of natural gas you consume by purchasing carbon credits. The carbon credits come from projects such as forestry, landfill gas capture and conversion. Kiwi Energy may take up to 12 months after the end of each calendar year under which this Agreement is in effect to address any deficiency that may arise in the carbon offset content of gas sold under this Agreement in the previous calendar year. Kiwi Energy does not guarantee that this product will be offered in the future or on a continuing basis and will notify customers 3 months in advance via the Kiwi Energy website if Kiwi Energy is no longer able to purchase carbon credits.

**6. Assignment.** Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of Kiwi Energy. Kiwi Energy may sell, transfer, pledge, or assign the accounts receivable, revenues, or proceeds hereof, in connection with any financing agreement, purchase of accounts receivables program or billing services agreement, and may assign this Agreement and the rights and obligations there under, to another energy supplier, energy services company or other entity as authorized by the DPS.

**7. Information Release Authorization.** Customer authorizes Kiwi Energy to obtain and review information regarding Customer's credit history from credit reporting agencies and the following information from the LDC: consumption history; billing determinants; utility account number; credit information; public assistance status; existence of medical emergencies, status as to whether Customer has a medical emergency, is human needs, elderly, blind or disabled and data applicable to cold weather periods under PSL § 32 (3); and information pertaining to PSL § 33, tax status and eligibility for economic development or other incentives. This information may be used by Kiwi Energy to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to Kiwi Energy. This authorization will remain in effect during the Initial Term and any

**Renewal Term.** Customer may rescind this authorization at any time by providing written notice thereof to Kiwi Energy or by calling Kiwi Energy at 1-877-208-7636. Kiwi Energy reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

**8. Consumer Protections.** The services provided by Kiwi Energy to Customer are governed by the terms and conditions of this Agreement and HEFPA. Kiwi Energy will provide at least 15 days' notice prior to the cancellation of service to Customer. In the event of non-payment of any charges owed to Kiwi Energy, Customer may be subject to termination of commodity service and the suspension of distribution service under procedures approved by the DPS. Customer may obtain additional information by contacting Kiwi Energy at 1-877-208-7636 or the DPS at 1-800-342-3377, or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.ny.gov>. You may also contact the Department for inquiries regarding the competitive retail energy market at 1-888-697-7728.

**9. Cancellation.** Customer may rescind this Agreement within 3 business days after the signing or receipt of this Agreement, whichever comes first, by contacting Kiwi Energy at 1-877-208-7636 or in writing. Customer is liable for all Kiwi Energy charges until Customer returns to the LDC or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill, which will be trued-up subsequent to the final meter reading.

**10. Agency (Gas):** Customer hereby designates Kiwi Energy as agent to; (a) arrange and administer contracts and service agreements between Customer and Kiwi Energy and between the interstate pipeline transporters of Customer natural gas supplies; (b) nominate and schedule with the interstate pipeline the transportation of Customer's natural gas supplies to the Delivery Points, and with the LDC for the transportation of the Customer's natural gas supplies from the Delivery Points to the Customer's end-use premises; and (c) aggregate Customer's natural gas supplies with such supplies of other customers served by Kiwi Energy to maintain qualification for LDC transportation service and resolve imbalances that may arise during the term of this Agreement. Kiwi Energy as agent for the Customer will schedule the delivery of adequate supplies of natural gas that meet the Customer's city gate requirements as established by the LDC and in response to information provided by the LDC. Kiwi Energy agrees to arrange for the transportation of the natural gas supplied under this Agreement from the Delivery Points to the Customer's end-use premises. These services are provided on an arm's length basis and market-based compensation is included in the price noted above.

**11. Title.** All natural gas sold under this Agreement shall be delivered to a location considered the "Point of Delivery", which for all gas shall be the utility city gate and shall constitute the point at which the sale occurs and title passes from Kiwi Energy to the Customer. Customer will be liable for and pay all taxes or surcharges, which are imposed with respect to the sale of natural gas. If customer is exempt from such taxes, Customer is responsible for identifying and requesting any exemption from the collection of the taxes by filing appropriate documentation with Kiwi Energy.

**12. Warranty.** This Agreement, including the Customer Disclosure Statement, enrollment form and applicable attachments, constitutes the entire Agreement between Customer and Kiwi Energy. Kiwi Energy makes no representations or warranties other than those expressly set forth in this Agreement, and Kiwi Energy expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.

**13. Force Majeure.** Kiwi Energy will make commercially reasonable efforts to provide natural gas hereunder but Kiwi Energy does not guarantee a continuous supply of natural gas to Customer. Certain causes and events out of the control of Kiwi Energy ("Force Majeure Events") may result in interruptions in service. Kiwi Energy will not be liable for any such interruptions caused by a Force Majeure Event, and Kiwi Energy is not and shall not be liable for damages caused by Force Majeure Events. Force Majeure Events shall include acts of God, fire, flood, storm, terrorism, war, civil disturbance, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance

work, inability to access the local distribution utility system, non-performance by the LDC (including, but not limited to, a facility outage on its natural gas distribution lines), or any other cause beyond Kiwi Energy's control.

**14. Liability.** The remedy in any claim or suit by Customer against Kiwi Energy will be solely limited to direct actual damages (which will not exceed the amount of Customer's single largest monthly invoice amount in the immediately preceding 12 months). By entering into this Agreement, Customer waives any right to any other remedy in law or equity. In no event will either Kiwi Energy or Customer be liable for consequential, incidental, indirect, special or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.

**15. Contact Information.** Customer may contact Kiwi Energy's Customer Service Center at 1-877-208-7636, Monday through Friday 9:00 AM - 6:00 PM EST (contact center hours subject to change). Customer may write to Kiwi Energy at: Kiwi Energy, 111 East 14<sup>th</sup> Street, New York, NY 10003.

**16. Dispute Resolution.** In the event of a billing dispute or a disagreement involving Kiwi Energy's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact Kiwi Energy by telephone or in writing as provided above. The dispute or complaint relating to a residential customer may be submitted by either party at any time to the DPS pursuant to its Complaint Handling Procedures ("Procedures") or calling the DPS at 1-800-342-3377. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute, and such payment shall be refunded if warranted by the decision of DPS.

**17. Choice of Laws.** Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of New York. This Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles.

**18. Taxes and Laws.** Except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description due and payable with respect to service provided under this Agreement, other than taxes based on Kiwi Energy's net income, shall be paid by Customer, and Customer agrees to indemnify Kiwi Energy and hold Kiwi Energy harmless from and against any and all such taxes. This Agreement is subject to present and future legislation, orders, rules, regulations or decisions of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided hereunder.

**19. Regulatory Changes.** If at some future date there is a change in any law, rule, regulation, tariff, or regulatory structure ("Regulatory Change") which impacts any term, condition or provision of this Agreement including, but not limited to price, Kiwi Energy shall have the right to modify this Agreement to reflect such Regulatory Change by providing 30 days' written notice of such modification to the Customer.

**20. Emergency Service.** The LDC will respond to leaks and emergencies. In the event of a natural gas leak, or other emergency, Customer should immediately call their LDC, then Kiwi Energy:

National Grid Upstate: Gas emergency – 1-800-892-2345

National Grid Metro: Gas emergency – 1-718-643-4050

Con Edison: Gas emergency – 1-800-752-6633

National Fuel: Gas emergency – 1-800-444-3130

Central Hudson: Gas emergency – 1-800-942-8274

RG&E: Gas emergency – 1-800-743-1702

NYSEG: Gas emergency – 1-800-572-1121

Orange & Rockland: Gas emergency – 1-800-533-5325

Kiwi Energy – 1-877-208-7636

**21. Parties Bound.** This Agreement is binding upon the parties hereto and their respective successors and legal assigns. Customer and Kiwi Energy have caused this Agreement to be executed by individuals authorized to bind each party, and Customer has reviewed all of the terms herein.

**22. Refund Policy.** As the commodity supplied under this Agreement is immediately used and consumed by Customer upon delivery, it is not practical to return the product subject to this Agreement, and therefore refunds with respect to commodity are not provided.

**23. Budget Billing.** For customers who are already enrolled in a budget billing program, your LDC should continue to provide you with a budget bill for the delivery portion of your bill. If you would like to participate in budget billing for your natural gas supply service charges, please contact Kiwi Energy and your LDC for assistance and information.

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