



6653 Main Street  
Williamsville, NY 14221  
Phone: (716) 6321800  
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## Residential Contract Terms and Conditions

**1. Firm Sales:** EnergyMark, "Seller" agrees to sell to Buyer, and Buyer agrees to purchase from Seller (each a "Party" or jointly "Parties"), the full Natural Gas and/or Electric requirements in accordance with the account number(s) provided by Buyer.

**2. Term:** This Contract shall commence as of the date Buyer's notice regarding the change of Buyer's provider to Seller is deemed effective by the Utility, and shall continue for the number of months specified on the face of this Contract (the "Initial Term"). Upon completion of the Initial Term, this Contract will automatically renew on a month-to-month basis at the same terms unless terminated by either party. Seller may terminate this Agreement by providing 30 days' written notice to the Customer. Seller shall have the right to match any bonafide competing offer at the end of the Initial Term or any Renewal Term.

**3. Supply Price:** Under a variable Guaranteed Savings program, during the initial term of the agreement and all renewals the Buyer will receive a variable monthly price that will be below the Utility rate during the annual term. This Guaranteed Savings will include the billed rate combined with any tax savings or eliminated Utility charges realized by the buyer. Currently tax savings include Gross Receipts Tax and Utility Delivery sales tax. During the term of the variable agreement the Buyer is able to convert to a NYMEX fixed price offer from the Seller or upon request. All fixed prices are based on then current market rates and term.

**4. Cancellation Fee:** Customer may rescind this Agreement within 3 business days after the signing or receipt of this Agreement, whichever comes first, by contacting EnergyMark at (716) 632-1800 or in writing. Customer is liable for all EnergyMark 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 tried up subsequent to the final meter reading.

**5. Billings and Payments:** Seller shall arrange with the Utility for the monthly invoice to Buyer. The invoice will include the Utility charges for delivering the gas from the Delivery Point to the Buyer. Buyer agrees to pay the Utility's invoice within normal Utility payment terms. Seller will give Buyer notice at least fifteen (15) days before discontinuation of supply services to allow Buyer the opportunity to pay the overdue bill or obtain services from another provider. Buyer will be entitled to a refund of any substantial overcharges discovered within one (1) year after billing date, if Buyer makes a claim within two (2) months of discovery. Seller will likewise be entitled to bill and be paid for any substantial undercharges discovered within one (1) year after the original billing date if the corrected billing is made within two (2) months of the discovery. By signing and returning this Contract, Buyer agrees to authorize the Utility to release Buyer's consumption and payment information to Seller.

**6. Taxes:** Unless Buyer's price indicates otherwise, the price does not include any federal, Indian, state, or local sales, use, consumption taxes, import taxes, or similar taxes which may now or hereafter be imposed on the transfer of title or possession of the gas to Buyer or on Buyer's subsequent use or disposition thereof. Buyer shall pay any such taxes directly to the taxing authority unless Seller is required by law to collect and remit such taxes, in which case Buyer shall reimburse Seller for all amounts so paid. If Buyer claims exemption from any such taxes, Buyer shall provide Seller a proper exemption certificate.

**7. Force Majeure:** If either Party is unable to perform its obligations under this contract due to force majeure, other than Buyer's obligation to pay for gas delivered hereunder, performance of such obligations shall be suspended until the force majeure is corrected. The Party claiming such inability shall give written notice thereof to the other Party as soon as practicable after the occurrence of the force majeure. Force majeure shall mean acts of God, strikes, lightning, fires, floods, explosions, storms or storm warnings, breakage of machinery or pipelines, freezing of wells or pipelines, sudden failure of gas supply, failure or curtailment of firm transportation, and any other causes not within the control of the Party claiming force majeure. Any suspension of obligations under this paragraph shall not extend the term of this Contract. During any curtailment caused by force majeure, Seller's available supplies at the affected points shall be prorated, based on nominated volumes, among Seller's firm customers receiving gas at those points.

**8. Assignment:** This Contract may be assigned by Seller without the prior written consent of Buyer. This Contract may not be assigned by Buyer without prior written consent of Seller. Change of control or ownership, merger or recapitalization of either Party shall not be considered an assignment.

**9. Title and Indemnification:** Title to the Natural Gas and/ or Electric sold hereunder shall pass to Buyer at the Delivery Point(s). Seller warrants that it shall have the right to sell the Natural Gas and/ or Electric delivered and that such natural gas shall be free from liens and adverse claims of any kind. Seller will save and hold Buyer harmless from all loss, damage and expense due to adverse claims against Buyer for the Natural Gas and/ or Electric delivered as related to Seller's right to sell the Natural Gas and/ or Electric delivered. In any event, Seller will pay or cause to be paid all royalties and other sums due on production and transportation of the Natural Gas and/ or Electric to the Delivery Point(s).

**10. Entire Contract, Modification:** This is the complete Contract between the Parties and can only be amended in writing signed by both Parties. However, Seller may modify any terms that do not adversely affect Buyer's price, payment terms, or the length of this Contract at any time by notifying Buyer of the change. In addition, Seller may modify this contract based on changes to applicable tariffs, rules, regulations, or laws, including changes that adversely effect Seller's ability to economically operate the program. This Contract shall be governed by and construed in accordance with laws of the State of New York. The services provided by the Utility company will continue to be protected by the State's Home Energy Fair Practices Act.

**11. Consumer Contact Information:** Should Buyer have any questions or require additional information regarding this Contract, Buyer can contact Seller at (716) 614-1800 or (888) 885-1955, 300 Corporate Parkway, Suite 140N, Amherst, NY 14226-1295. Buyer may also contact the New York State Department of Public Service ("DPS"), Office of Consumer Services at (800) 342-3377, Three Empire State Plaza, Albany, NY 12223-1350, or at [www.dps.ny.gov](http://www.dps.ny.gov). In addition, the DPS's toll free retail access number for inquiries and information regarding Energy Services Companies and the competitive retail energy market is (888) 697-7728.

**12. Dispute Resolution:** In the event of a billing dispute or a disagreement involving Seller's service hereunder, the parties will use their best efforts to resolve the dispute. Buyer should contact Seller 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") by calling the DPS at (800) 342-3377 or by writing to the DPS at: New York State Department of Public Service ("DPS"), Office of Consumer Services, Three Empire State Plaza, Albany, NY 12223-1350, or at [www.dps.state.ny.us](http://www.dps.state.ny.us). Buyer must pay the bill in full, except for the specified disputed amount, during the pendency of the dispute.

**13. Information Release Authorization:** Customer authorizes EnergyMark 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; account number; credit information; public assistance status; participation in utility low income discount programs; 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 EnergyMark 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 (ESCO). 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 EnergyMark or by calling EnergyMark at (716) 632-1800. EnergyMark reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

**14. Consumer Protections:** The services provided by EnergyMark to Customer are governed by the terms and conditions of this Agreement and HEFPA for residential customers. EnergyMark 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 EnergyMark a residential 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 EnergyMark at (716) 632-1800 or the DPS at 1-800-342-3377 (General Helpline), 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 (ESCO Hotline).