

Company Name: \_\_\_\_\_ Fed Id #: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Years in Business: \_\_\_\_\_

Ownership:  Sole Proprietorship  Partnership  LLC  Corporation

**Owner(s) or Principal Shareholder(s):**

Name: \_\_\_\_\_ SS#: \_\_\_\_\_

Home Address: \_\_\_\_\_

Name: \_\_\_\_\_ SS#: \_\_\_\_\_

Home Address: \_\_\_\_\_

Name: \_\_\_\_\_ SS#: \_\_\_\_\_

Home Address: \_\_\_\_\_

Accounts Payable Contact: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Invoices should be:  Mailed  Emailed  Both Email invoice to: \_\_\_\_\_

Bank Name: \_\_\_\_\_ Address: \_\_\_\_\_

Bank Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Bank Acct #: \_\_\_\_\_

**Credit References:**

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**Credit Terms of Ray Energy Corp ("Seller") are net 10 days.** The applying firm ("Buyer") agrees to all terms and provisions of the Terms and Conditions on page 2 of this Application. In consideration of Seller extending credit, the undersigned who is financially interested in the Buyer, hereby executes this Account Application on behalf of the Buyer and individually guarantees all obligations of the Buyer to Seller. The undersigned warrants to the Seller that the representation made are true and accurate. The undersigned is executing this Authorization for Credit Report individually for the purpose of authorizing Ray Energy Corp to obtain a consumer credit report on the undersigned individual through credit and consumer reporting agencies or other sources in order to further evaluate the credit worthiness of such individual in connection with the credit evaluation process and the proposed extension of business credit to the applicant. The undersigned, as an individual, hereby knowingly consents to the use of such credit report in accordance with the federal Fair Credit Reporting Act as contained in 15 U.S.C. 1681 ET SEQ.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*Individually and as an officer of the Buyer*

Print Name

Title

## RAY ENERGY CORP – TERMS OF SALE

THESE TERMS OF SALE ("Terms of Sale") are made in conjunction with your application to Ray Energy Corp., a New York Corporation ("Seller") for the extension of credit (the "CAA") to purchase Product (as defined below).

### 1. Scope; Specifications.

Buyer and Seller have entered the CAA for Buyer to obtain supplies of fuel/propane from Seller. Buyer shall place orders for fuel/propane ("Product") with Seller by phone, email, or fax. All Product orders are subject to the CAA and Terms of Sale. For purposes of these Terms of Sale, the "Agreement" means the CAA, these Terms of Sale and the orders placed by Buyer with Seller.

### 2. Term.

These Terms of Sale shall apply to all of Buyer's purchases of Product from Seller.

### 3. Title, Risk of Loss.

Delivery of the Product ("Delivery" or "Delivered") shall be deemed to occur when title to and risk of loss of the Product pass to Buyer. Title to Product, as well as sole risk of any loss of or damage thereto, shall pass to Buyer when the Product passes the flange at the origin terminal to the transport vehicle of Seller, Seller's agent, Buyer or Buyer's agent.

### 4. Terms.

Payment shall be net 10 days from date of invoice. Past due payment shall incur a two percent (2%) per month finance charge. A \$150 surcharge may be applied by Seller for any checks or electronic fund transfers returned for insufficient funds. Buyer shall not make purchases of Product in excess of Buyer's then current credit line with Seller. Unless otherwise directed by Seller, all payments by Buyer under this Agreement will be made in accordance with invoice instructions. Upon notice to Buyer, Seller may terminate Buyer's credit line or change credit terms. Seller reserves the right, among other remedies, to limit or cancel the credit of Buyer, suspend further deliveries or performance, or terminate this Agreement if Buyer fails to pay any invoices when due or if Seller believes that Buyer is financially insecure. If Buyer is in default under the Agreement (for payment or otherwise), Seller may discontinue its performance under the Agreement, or any other agreements with Buyer. Further, the Buyer shall pay all collection expenses and attorney's fees incurred in connection with the enforcement of payment terms or the collection of any amounts owing by the Buyer to Seller. Seller's failure to exercise or delay or partially exercise any right, power or privilege hereunder shall not constitute waiver of or preclude any further exercise of such rights, powers or privileges. Seller shall have the right of set off and may apply any funds held by Seller and owing to Buyer toward the amounts owed. This right of offset shall be in addition to any other rights and remedies of Seller.

### 5. Product Lifting.

Buyer shall clear all Product lifting in advance with Seller and shall not lift Product until authorization is given by Seller. In the event the Buyer fails to purchase or lift all or any part of the designated periodic quantity of any under-lifted monthly volumes remaining on or after the last day of the applicable month shall be subject to a storage fee, payable by Buyer, based on market conditions as determined by Seller.

### 6. Force Majeure.

Seller shall not be liable for its failure to perform hereunder due to any occurrence beyond its reasonable control, including but not limited to Seller's failure to produce, provide, transport, receive, store or Deliver Product due to any event of force majeure. Events of force majeure shall include acts of God, fires, floods, wars, health pandemics, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid (including but not limited to priorities, requisitions, allocations and price adjustment restrictions), inability to obtain material, equipment or transportation, unavailability of feedstocks, and any other similar or different occurrences beyond the control of Seller. The delivery period for Product shall not be extended due to any event of force majeure. If Seller is unable to make any delivery or deliveries at the time or times required under this Agreement due to force majeure, Seller shall have the right to allocate its available supply of the Product among its customers as Seller deems appropriate. In no event shall Seller, be obligated to purchase Product from others in order to enable it to provide the Product to Buyer hereunder due to any event of force majeure. Seller shall not be liable for any loss or damage of any kind or for any consequences thereof resulting from delay or inability to provide the Product because of an event of force majeure. Additionally, notwithstanding the foregoing, if Seller is unable to obtain Product for delivery under the Agreement for any reason, Seller may reduce the volume of Products provided to the Buyer or to completely terminate such supply of Products to the Buyer.

### 7. Indemnification.

From and after the time of Delivery of Product by Seller to Buyer, Buyer shall be solely liable and responsible for the Product such that Buyer releases Seller and shall defend, indemnify, and hold Seller, its affiliates, and their officers and employees harmless from and against all loss of Product and for all costs (including attorney's fees and costs of defense), losses, demands, liabilities, claims, and causes of action for or relating to loss, damages, personal injuries, including death, and property damage caused by possession, transport, consumption, or use of any Product delivered under this Agreement. Buyer agrees at all times during the term of this Agreement to carry such insurance as Seller shall request from time to time. Seller's shall be entitled to attorney's fees and its costs and expenses incurred in the defense of any claims under this Agreement, and in the enforcement of its indemnification rights against Buyer. This Section 7 shall survive the termination of this Agreement.

### 8. Quantity on Delivery.

The quantity of the Product being Delivered to Buyer shall be measured by means of slip tube, outage gauge, weighing, meter or other method chosen by the Seller which is consistent with the industry practice. Buyer shall be invoiced for actual number of US gallons of the Product Delivered, and when the Product is Delivered to Buyer by Seller or its agent, such amount invoiced shall be subject to a variance of up to two percent (2%) of the total Delivered volume recorded on the bill of lading. All Product Delivered to Buyer by Seller or its agent shall comply with GPA 2140-HD specifications as published by the Natural Gas Processors Association and in effect on the date that the Product is so delivered (the "Specifications"). The ethane content of the Product shall be less than 2%. Acceptance by the Buyer of the Product received under this Agreement shall constitute a waiver of any claim against the Seller based on the failure of the Product to meet such Specifications. Buyer shall notify Seller immediately by telephone and give Seller an opportunity to investigate if Buyer has any objections to the quantity or quality of Products arriving at Buyer's delivery point. Failure to notify Seller of the objections within 24 hours from the time of delivery shall be a waiver of any defects by Buyer.

### 9. Taxes.

Unless otherwise included in the price paid by Buyer, Buyer shall have the sole liability for and shall pay to Seller all present or future governmental tax, fee or duty on the production, sale, use, receipt or Delivery of the Products.

### 10. Governing Law.

All of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement, including without limitation all disputes arising out of or in connection with this Agreement, shall be governed, construed and enforced in accordance with the laws of the State of New York without giving effect to any choice of law or conflict of laws rules, and shall be subject to the exclusive jurisdiction of the courts of the State of New York located in Rensselaer County.

### 11. Breach

In the event of a breach under this Agreement, the non-breaching party may give written notice of such breach to the other party. If the breach has not been cured by the non-breaching party within 5 days after the receipt of such notice, the non-breaching party may terminate this Agreement. Termination by the non-breaching party shall in no way waive any other remedies which the non-breaching party may have against the breaching party.

### 12. Notices.

Notices and invoices shall be given to Buyer at Buyer's address in the CAA. All notices to Seller shall be sent to: Ray Energy Corp., Attn: Credit Department, 2794 Seventh Ave, Troy, NY 12180. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

### 13. Security Interest.

Pursuant to the terms of this Agreement, Buyer grants Seller a security interest in Products and any other goods sold to Buyer by Seller. The security interest shall secure all payments owed by Buyer to Seller. Seller shall have the right to file all documents required to perfect the security interest granted pursuant to this Agreement, including a UCC-1 financing statement.

### 14. Miscellaneous.

No modification of, amendment to, addition to, or waiver of any of the terms of this Agreement shall be binding upon either party unless in a writing which specifically references this Agreement and which is signed by an authorized representative of each party. Notwithstanding the foregoing, no modification of, addition to, or waiver of any of the terms of this Agreement shall be affected by the acknowledgement or acceptance of a purchase order or other forms containing additional or different terms or conditions, whether or not signed by an authorized representative of the party. This Agreement shall extend to and be binding upon the successors and assigns of the parties, but neither this Agreement nor any part shall be assigned or transferred by Buyer without the prior written consent of the Seller, and any assignment or transfer made by Buyer without the Seller's written consent need not be recognized by and shall not be binding upon the Seller. No waiver by either party of any breach by the other party of any of the terms of this Agreement shall be construed as a waiver or any subsequent breach, whether of the same or of different term of this Agreement. The rights and remedies of the parties set forth in this Agreement shall not be exclusive except as to the parties' obligation to arbitrate disputes, and are in addition to all other rights and remedies of the parties. This Agreement sets forth the entire Agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior understandings, negotiations, and dealings between the parties with respect to its subject matter. All matters pertaining to this Agreement are considered confidential between both parties.

### 15. Liquefied Petroleum Gas.

Buyer acknowledges that it is informed and is aware of the hazards and risks associated with the handling and use of LPG, specifically, including propane. Buyer shall inform its employees, contractors and customers of such hazards and risks, including the need for odorization as required by law and that odorization may fade. Buyer will comply with applicable law and shall distribute instructions for the safe handling of LPG under pressure to its employees and contractors. Buyer shall immediately inform Seller in writing of any accident in which LPG acquired from Seller is involved. Unless otherwise agreed by the parties, Seller shall provide ethyl mercaptan for the odorization of LPG. Buyer acknowledges and represents that it is knowledgeable in the chemical and physical properties and limitations, storage, use and handling of odorant and propane, whether odorized or non-odorized. Buyer covenants and agrees that it will inspect and test the odorant level in LPG obtained from Seller at the time that Buyer receives such Product, and again if and when Buyer provides and/or delivers Product to a third party. Buyer further covenants and agrees to monitor and maintain the odorant in LPG obtained from Seller and will not commingle such Product with unodorized propane or with other Products containing odorant in concentrations less than those concentrations mandated by law. Buyer acknowledges and agrees that certain conditions may occur which will render properly odorized propane undetectable, including without limitation: (a) odorant may fade over a period of time or if subject to certain metals or conditions of metal; (b) odorant may be absorbed or adsorbed by tanks, piping, soil, masonry or other building materials; (c) stratification of odorized propane may occur, thereby changing the intensity of the odorant at different levels; (d) some individuals lack a sense of smell or possess a diminished sense of smell; and (e) individuals with normal sense of smell may be temporarily prevented from detecting odorant due to certain physical conditions such as allergies, head colds or masking odors. Seller shall have no responsibility to ensure that the Product Delivered under this Agreement remains properly odorized after Delivery to Buyer and Buyer hereby releases Seller and shall, indemnify, defend and hold Seller harmless from and against any and all claims, demands, suits, losses (including without limitation, costs of defense and reasonable attorney's fees, penalties and interest), damages, causes of action and liabilities of every type and character without regard to the amount and without limitation for personal injury, death or property damage caused by, arising out of or resulting from the use of ethyl mercaptan or any other legal substance as an odorant or rising out of Buyer or Buyer's consignee's certification, delivery, receipt, use, transportation, or storage of LPG after title of the Product has passed to Buyer. Buyer's indemnification shall include but shall not be limited to any claim against Seller's described above whether based on Product liability, negligence, breach of warranty of other fault or any other cause of action, whether legal or equitable in nature

### 16. Specifications and Warranties (Propane Only).

Seller warrants that any propane sold by Seller shall conform to the specifications for Commercial Grade Propane of, at Seller's option, either the Gas Processors Association or the American Society for Testing Materials in effect on date of Delivery (the "Warranty"). SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PRODUCT AND HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY PRODUCT'S MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTY. SELLER WILL NOT BE LIABLE FOR ANY BUSINESS INTERRUPTION OR LOSS OF PROFIT, REVENUE, MATERIALS, ANTICIPATED SAVINGS, DATA, CONTRACT, GOODWILL OR THE LIKE (WHETHER DIRECT OR INDIRECT IN NATURE) OR FOR ANY OTHER FORM OF INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES. If Seller breaches the Warranty, Seller shall, at its option, correct the nonconformity, refund the applicable purchase price of the nonconforming propane, or replace the propane. The remedy selected by Seller shall constitute Buyer's exclusive remedy for any breach of Warranty.

I have read and understand the Terms of Sale above.