

KOHLER INDUSTRIES, INC.
Term and Conditions of Sale, Including Limited Warranty

1. **Scope.** This Agreement applies to all orders of goods placed by Buyer and accepted by Seller for the purchase and sale of new goods (“New Products”), used goods that have been reconditioned or remanufactured by Seller (“Reconditioned Products”), and used goods that have not been reconditioned or remanufactured by Seller (“AS-IS Products”) (collectively, the “Products”), together with Seller’s final quotation, the agreed scope(s) of work, and Seller’s order acknowledgment (collectively, the “Contract”). In the event of any conflict between the various documents, the terms and conditions contained in this Agreement shall control and supersede any other inconsistent terms and conditions that may apply to the sale.

Any terms and conditions submitted by Buyer, in any form (including without limitation those contained in Buyer’s purchase order, posted on its website or otherwise delivered to Seller, directly or indirectly), shall not apply or be considered an amendment of this Agreement unless such terms and conditions are set forth in a written agreement that is signed by authorized representatives of both Seller and Buyer and which identifies the specific Purchase Order and the specific provisions of this Agreement which are intended to be amended.

2. **Offer and Acceptance.** Buyer may offer to buy Products by submitting a written purchase order to Seller describing the product, quantity, unit price, and delivery requirements. Seller may accept or reject any purchase order at Seller’s sole discretion. If and when accepted, these Terms and Conditions shall be included as material terms and conditions of the purchase order.
3. **Payment Terms.** Buyer shall pay Seller for the Products by paying all invoiced amounts in U.S. dollars, without set-off for any payment from Seller not due under this Contract, within thirty (30) days from the date of each invoice. Seller shall issue an invoice for fifty percent (50%) of the Contract price upon issuance of Seller’s order acknowledgement, and a subsequent invoice for forty percent (40%) of the Contract price thirty (30) days prior to the scheduled date for Product shipment (“Progress Payments”). Seller shall issue a final invoice for the remaining portion of the Contract price, plus any prepaid costs of shipping, upon shipment of the Products. For each calendar month, or fraction thereof, that payment is late Buyer shall pay a late payment charge computed at the rate of one and one-third percent (1.333%) per month on the overdue balance, or the maximum rate permitted by law, whichever is less. Seller is not required to commence or continue performance unless and until all applicable Progress Payments have been received. For each day of delay in receiving Progress Payments, Seller shall be entitled, in its sole discretion, to a matching extension of the delivery schedule. If at any time Seller reasonably determines that Buyer’s financial condition or payment history does not justify continuation of Seller’s performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request a form of payment security, suspend its performance, or terminate the Contract.
4. **Security Interest.** Seller retains a purchase money security interest in the Products until such time as the invoice for such Products has been paid in full. Seller may file a financing statement under the Uniform Commercial Code to secure its interest in the Products for which payment has not been received.
5. **Taxes.** Buyer is responsible for all sales, use, excise and similar taxes owed by Buyer with regard to the purchase of the Products, whether or not separately set forth on a proposal or invoice. Buyer will pay to Seller any sales, use, excise or similar tax owed by Buyer which the law requires Seller to collect from Buyer and remit.

6. **Manufacturing Inspection.** Seller will apply its normal quality control procedures in manufacturing Products. Seller shall attempt to accommodate requests by Buyer to observe manufacturing and/or testing of Products, subject to appropriate access restrictions, if such observation can be arranged without delaying the work.
7. **Shipment**
 - 7.1. **Packing; Delivery.** Packaging and packing shall be in accordance with good commercial practice. Seller shall deliver Products F.O.B. Seller's dock in Lincoln, Nebraska. Partial deliveries are permitted. Seller may deliver Products up to ten (10) days in advance of scheduled delivery dates. In the event Seller is unable to meet scheduled delivery dates, Seller will advise Buyer of Seller's estimate of when delivery can be made. In the event that delivery is not made, or Seller estimates that it will not be made, within forty-five (45) days of the originally scheduled delivery date, Buyer may cancel that portion of the order that is or will be more than forty-five (45) days late by giving written notice to Seller no later than five (5) days after receipt by Buyer of written notice from Seller of the extension of the delivery beyond forty-five (45) days after initially scheduled delivery date. Upon such cancellation, Buyer shall have no further obligation to Seller with respect to the cancelled portion of the order, and such cancellation shall constitute Buyer's sole remedy for delay in delivery.
 - 7.2. **Inspection Upon Receipt.** Buyer shall inspect the Products promptly upon receipt (but in no event later than ten days after receipt at Buyer's facility) for damage, shortage, or defects. Claims of damage, shortage or defects must be provided in writing by Buyer to Seller within fifteen (15) days of its receipt of the Products.
 - 7.3. **Returns.** No Products will be returned to Seller by Buyer without Seller's prior written agreement, and then only under the terms of any such agreement. Seller is not obligated to accept returns. Buyer shall permit Seller, or its designated representative, to inspect any goods that Buyer has rejected as nonconforming or which Buyer has identified as defective or damaged at Buyer's facility during normal business hours within thirty (30) days of the date of Buyer's written notice of nonconformance or defect.
 - 7.4. **Storage.** If any Products to be delivered under this Contract cannot be delivered to or received by Buyer when ready due to any cause attributable to Buyer, Seller may ship the Products to a storage facility. If Seller places Products into storage (i) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (ii) all expenses and charges incurred by Seller related to the storage shall be payable by Buyer upon submission of Seller's invoices; and (iii) when conditions permit and upon payment of all amounts due, Seller shall make Products available to Buyer for delivery.
8. **Title; Risk of Loss.** Title to the Products and risk of loss shall pass to Buyer at the point and time of delivery as set forth in Section 7.1 (Packaging; Delivery).
9. **Limited Warranty.**
 - 9.1. **General Provisions.** Seller warrants to Buyer that New Products will be free from defects in material and workmanship for a period of one (1) year from the date of shipment of the new Products to Buyer, and that Reconditioned Products will be free from defects in material and workmanship for a period of six (6) months from the date of shipment of the Reconditioned Products to Buyer. During the applicable limited warranty period, Seller will repair or replace, at its option, any covered part which is found by Seller to be defective in material or workmanship during the applicable limited warranty term. The Buyer will be responsible for

shipping, and all cost of labor to remove defective parts or products and install the replacement part(s) or products. The warranty described herein is nontransferable.

- 9.2. **Exclusions.** This warranty does not apply to (1) any damage to New Products or Reconditioned Products caused by normal wear, lack of reasonable and proper maintenance, failure to follow operating instructions, misuse, neglect, lack of proper protection during storage, or accident; (2) the cost of normal maintenance parts and service, including wear parts, lubrication, and cleaning; (3) any New Product or Used Product that has been altered or modified in any way not approved by Seller in writing in advance; (4) any component parts that are not manufactured by Seller, such as electrical motors and controls, although such parts may be covered by separate limited warranty of the part manufacturer to the extent assignable; (5) any AS-IS Products, which are sold AS-IS and without any warranty.
- 9.3. **Securing Warranty Service.** To secure warranty service, Buyer must (1) report in writing the defect to Seller within the warranty term; (2) make the defective part of the New Product or Reconditioned Product available to Seller for repair or replacement within a reasonable period of time.
- 9.4. **Disclaimer of Other Warranties.** THIS LIMITED WARRANTY CONTAINS THE ENTIRE AND COMPLETE TERMS OF KOHLER'S LIMITED WARRANTY OF THE PRODUCTS AND THE LIMITED WARRANTY SUPERSEDES AND EXCLUDES ALL PRIOR ORAL OR WRITTEN REPRESENTATIONS OR WARRANTIES. SELLER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. **Limitations and Damages Disclaimer.** THE TOTAL LIABILITY OF SELLER FOR ALL CLAIMS OF ANY KIND ARISING FROM OR RELATED TO THE FORMATION, PERFORMANCE OR BREACH OF THIS CONTRACT, OR ANY PRODUCTS, SHALL NOT EXCEED THE (I) CONTRACT PRICE, OR (II) IF BUYER PLACES MULTIPLE ORDERS UNDER THE CONTRACT, THE PRICE OF EACH PARTICULAR ORDER FOR ALL CLAIMS ARISING FROM OR RELATED TO THAT ORDER, AND FIVE THOUSAND DOLLARS (\$5,000.00) FOR ALL CLAIMS NOT PART OF ANY PARTICULAR ORDER. SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, OR CLAIMS OF BUYER OR BUYER'S CUSTOMERS FOR ANY OF THE FOREGOING TYPES OF DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR REVENUES, LOSS OF USE OF EQUIPMENT OR SYSTEMS, INTERRUPTION OF BUSINESS, COST OF REPLACEMENT POWER, COST OF CAPITAL, DOWNTIME COSTS, INCREASED OPERATING COSTS, AND FOOD SPOILAGE. ALL SELLER LIABILITY SHALL END UPON EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, PROVIDED THAT BUYER MAY CONTINUE TO ENFORCE A CLAIM FOR WHICH IT HAS GIVEN NOTICE PRIOR TO THAT DATE BY COMMENCING AN ACTION UNDER THIS CONTRACT BEFORE EXPIRATION OF ANY STATUTE OF LIMITATIONS OR OTHER LEGAL TIME LIMITATION BUT IN NO EVENT LATER THAN ONE YEAR AFTER EXPIRATION OF SUCH WARRANTY PERIOD. SELLER SHALL NOT BE LIABLE FOR ADVICE OR ASSISTANCE THAT IS NOT REQUIRED FOR THE WORK SCOPE UNDER THIS CONTRACT.

11. **No Public Announcements.** Neither Buyer nor Seller shall make any public announcement about the Contract without prior written approval of the other party. This section does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

12. **Indemnification.** Each of Buyer and Seller (as an "Indemnifying Party") shall indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by

joint or concurrent negligence of Buyer and Seller, the loss or expense shall be borne by each party in proportion to its degree of negligence.

13. **Insurance.** During the term of the Contract, Seller shall maintain Commercial General Liability or Public Liability insurance (including products liability) for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000.00).
14. **Excusable Events.** Seller shall not be liable or considered in breach of its obligations under this Contract to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbances, or acts or omissions of any governmental authority or of the Buyer or Buyer's contractors or suppliers. If an excusable event occurs, Seller shall provide written notice to Buyer, and the schedule for Seller's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event.
15. **Termination and Suspension**
 - 15.1. **Termination for Cause by Buyer.** Buyer may terminate the Contract (or the portion affected) for cause if Seller (i) becomes insolvent/bankrupt, or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Seller shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach. If the Contract (or any portion thereof) is terminated by Buyer pursuant to this section, Buyer shall pay Seller for all Products completed before the effective date of termination.
 - 15.2. **Termination for Cause by Seller.** Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (i) becomes insolvent/bankrupt, or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Seller shall first provide Buyer with detailed written notice of the breach and of Seller's intention to terminate the Contract, and (b) Buyer shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach. If the Contract (or any portion thereof) is terminated by Seller pursuant to this section, Buyer shall pay Seller for all Products completed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. In addition, Buyer shall pay Seller a cancellation charge equal to 80% of the Contract Price applicable to uncompleted made-to-order Products and 15% of the Contract Price applicable to all other uncompleted Products.
 - 15.3. **Termination for Excusable Event.** Either Buyer or Seller may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is an excusable event lasting longer than one hundred and twenty (120) days. In such case, Buyer shall pay to Seller amounts payable under Section 15.2, excluding the cancellation charge for uncompleted Products.
16. **Governing Law; Jurisdiction.** This Contract shall be governed by and construed in accordance with the laws of the State of Nebraska without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction and the parties consent to exclusive jurisdiction and venue in the state and federal courts in Lancaster County, Nebraska.
17. **Assignment.** Seller may assign its rights and obligations under the Contract, in whole or in part. Buyer may not assign its rights or obligations under the Contract, in whole or in part, without Seller's prior written consent (which consent shall not be unreasonably withheld).

18. **Severability.** If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.
19. **Entire Agreement.** The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract shall be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to Products sold under this Contract are limited to the rights, remedies and obligations stated in this Contract. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing.
20. **Third Party Beneficiaries.** This Contract is only for the benefit of the parties, and no third party shall have a right to enforce any provision of this Contract.

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