

APPROVED APPLICATOR AGREEMENT

Customer #: _____

Applicator Name: _____ Date: _____

Applicator Address: _____

Applicator Phone #: _____ Fax #: _____

KEMPER SYSTEM manufactures and sells roofing and waterproofing materials (the "Products") that are described in KEMPER SYSTEM'S Technical Manual, standard details, and other written information furnished by KEMPER SYSTEM's technical department from time to time (collectively, the "Technical Documents"). KEMPER SYSTEM and the Applicator named above agree as follows:

1. **Appointment; Purchase and Sale of Products.** KEMPER SYSTEM appoints Applicator as a nonexclusive applicator of the Products, and Applicator agrees to use its best efforts to promote, sell and install the Products. KEMPER SYSTEM's current Terms and Conditions of Sale ("Appendix A") will apply to all sales of Products. Applicator is solely responsible for determining the quantity of Products needed for a particular project (each, a "Project"). Applicator will only purchase Products from KEMPER SYSTEM or an authorized KEMPER SYSTEM distributor and only sell Products to the owner of a Project for which the Products will be installed ("Owner").

2. **Product Installation.** Applicator will install the Products, and remove and reinstall any overburden to allow site review by KEMPER SYSTEM technical personnel, in a timely, professional, and workmanlike manner according to KEMPER SYSTEM's current Policy and Procedures for Applications ("Appendix B") and Technical Documents. Applicator will not install the Products unless Applicator has determined, in its sole discretion that the substrate upon which the Products will be applied is clean, smooth and dry and complies with all of the conditions set forth in the Technical Documents. There must be no openings to the substrate that would allow moisture to enter. Only Applicator's employees who have been trained and approved by KEMPER SYSTEM according to KEMPER SYSTEM's current Training and Approval Procedures ("Appendix C") may install the Products. Even if KEMPER SYSTEM reviews the documents and forms submitted by Applicator and Owner (the "Project Submittals") or reviews the Project, Applicator is ultimately responsible for proper installation of the Products. Applicator will notify KEMPER SYSTEM of any problems with the Products or any customer.

3. **Technical Support.** Applicator understands that KEMPER SYSTEM is not an architectural, engineering, or design firm, and that any suggestions or recommendations made by KEMPER SYSTEM personnel regarding a specific application are primarily intended to ensure that the installation of KEMPER SYSTEM's materials will meet the requirements for issuance of a KEMPER SYSTEM warranty. KEMPER SYSTEM and its employees and independent representatives are not qualified to render professional opinions regarding any aspect of a structure's condition, applicable governmental code requirements, or other technical or design issue.

4. **Field Site Visits and Training.** Applicator acknowledges that technical site visits of Projects and training of Applicator personnel in Product application are integral to the proper use of the Products, and that KEMPER SYSTEM is solely responsible for determining the installation quality required for all Projects. This includes all stages of application, including but not limited to substrate preparation, priming, membrane and flashing application, and surfacing. Applicator agrees that KEMPER SYSTEM technical personnel may, at their sole discretion, require the removal and reapplication of all or part of a Project in order to ensure that the required installation quality is achieved, with all associated costs to be borne by the Applicator. Applicator also agrees that KEMPER SYSTEM technical personnel may, at their sole discretion, require that Applicator's employees undergo additional training in order to ensure that the required installation quality is achieved, and that a fee will be charged for this additional training in accordance with KEMPER SYSTEM's current Training and Approval Procedures.

5. **Warranty to Owner.** The following warranties KEMPER SYSTEM offers to Owners are described in more detail in KEMPER SYSTEM's current Warranty Availability and Fee Schedule ("Appendix D"). Applicator will not make any other representation or warranty about the Products.

(a) A "Workmanship and Materials Warranty/Service Agreement" covers defects in the Products and their installation. KEMPER SYSTEM will only issue a Labor and Materials Warranty if (i) the Owner requests the warranty; (ii) Applicator describes the warranty in the Project Registration Statement delivered to KEMPER SYSTEM before installation began; (iii) KEMPER SYSTEM approves the Project Submittals in writing before installation began; (iv) Applicator complies with the terms of the Agreement on the Project; and (v) all conditions set forth in the Warranty are satisfied.

(b) A **“Labor and Materials Warranty”** covers defects in the Products but not their installation. KEMPER SYSTEM will only issue a Labor and Materials Warranty if (i) the Owner requests the warranty; (ii) Applicator describes the warranty in the Project Registration Statement delivered to KEMPER SYSTEM before installation began; (iii) KEMPER SYSTEM approves the Project Submittals in writing before installation began; (iv) Applicator complies with the terms of the Agreement on the Project; and (v) all conditions set forth in the Warranty are satisfied.

(c) A **“Materials Only Warranty”** only covers defects in the composition of the Products. KEMPER SYSTEM will issue a Materials Only Warranty if the Project does not qualify for either a Workmanship and Materials Warranty or a Labor and Materials Warranty, or if the Owner does not wish to purchase a Workmanship and Materials Warranty or a Labor and Materials Warranty.

6. **Allocation of Warranty Liability.** KEMPER SYSTEM and Applicator agree to allocate their warranty liability as follows:

(a) A **“KEMPER SYSTEM Defect”** is a defect in the content or manufacture of the Products that is not an Applicator Defect. KEMPER SYSTEM will repair any KEMPER SYSTEM Defect at its own expense.

(b) An **“Applicator Defect”** is a defect caused by any adulteration or improper storage of the Products after they are delivered to Applicator or any improper installation of the Products. Applicator will repair any Applicator Defect at its own expense, utilizing KEMPER SYSTEM Products in accordance with current Technical Documents. If KEMPER SYSTEM repairs an Applicator Defect under the terms of the Warranty issued to the Owner, Applicator will reimburse KEMPER SYSTEM for the cost of making the repairs.

(c) A **“Shared Defect”** is a defect that is in part a KEMPER SYSTEM Defect and in part an Applicator Defect. Applicator and KEMPER SYSTEM will share responsibility and costs associated with repairs and indemnify the other party for any liability or loss arising from such defects in proportion to the relative causation by each party.

(d) **Primary Responder.** For the first five years of coverage under any Workmanship and Materials or Labor and Materials Warranty, Applicator has the responsibility of providing customer service to any Owner who requires warranty assistance. However, Applicator will not settle any warranty claim without KEMPER SYSTEM's written approval, and will notify KEMPER SYSTEM of any request for warranty assistance. After the first five years, KEMPER SYSTEM will assume responsibility for providing customer service for the balance of the warranty period.

7. **Insurance.** During the term of this Agreement and as long as any Warranty remains in effect, Applicator will maintain general liability and product liability insurance in amounts reasonably required by KEMPER SYSTEM, currently established at a minimum of \$2,000,000.00.

8. **Proprietary Information.** Applicator has no rights in or to Kemper System's trade names, including “Kemper” “Kemper System,” and “Kemperol, Kempertec, Kemperdur, and Kemperdek.” Any improvements to the Products or new methods of installing the Products developed by the Applicator during this Agreement must be disclosed to, approved by, and will become the property of, KEMPER SYSTEM.

9. **Confidentiality.** Applicator will not disclose KEMPER SYSTEM's secret or confidential information relating to the Products or business of KEMPER SYSTEM, such as customer lists, business records, formulas, or know-how. Applicator will return such information to KEMPER SYSTEM upon termination of this Agreement.

10. **Indemnification.** Applicator will indemnify and hold KEMPER SYSTEM and KEMPER SYSTEM's affiliates, directors, officers, employees, shareholders, agents, successors, and assigns, harmless from and against any loss or claim of any kind (including attorney fees) relating to (a) the negligence or malfeasance of Applicator or its employees, (b) the breach of any of Applicator's obligations in this Agreement, and (c) any Applicator Defect. Applicator shall instruct and inform all persons using or exposed to the KEMPER SYSTEM Products and procedures as to their hazardous potential, if known hazards exist, and shall take all actions necessary or advisable to insure these Products are safely used and recommended procedures are carefully followed.

11. **Compliance with Laws.** Applicator shall comply with all federal, state, local, and foreign laws, rules, regulations, and orders that relate to or in any way affect Applicator's performance under this Agreement, including, but not limited to, building code requirements, environmental laws, employment laws, and laws relating to the health and safety of employees and the public.

12. **Term of Agreement and Termination.**

(a) Either party may terminate this Agreement (i) without cause within 30 days written notice or (ii) without notice if the other party breaches any material term of this Agreement or if either party is financially unable to perform its duties under this Agreement. Termination shall be in addition to all other remedies available to a party in the event of a breach. Upon termination of this Agreement, Applicator will (i) no longer

Kemper System America, Inc.
1200 North America Dr. West Seneca, NY 14224 (716)-558-2971 Fax (716) 716-558-2967

hold itself out as an Applicator or distributor of the Products, (ii) pay all amounts owed to KEMPER SYSTEM, whether or not due, and (iii) give KEMPER SYSTEM a list of all pending Projects and outstanding bids.

(b) If KEMPER SYSTEM terminates this Agreement without cause, then KEMPER SYSTEM will fill orders that it accepted before the effective date of termination. If KEMPER SYSTEM terminates this Agreement for cause, then it may complete any unfinished Project at Applicator's expense.

13. **Miscellaneous Provisions.**

(a) This Agreement sets forth the entire agreement between the parties with respect to the subject matter of this Agreement and it may be amended only in writing and signed by an officer of each party. A waiver in one instance should not be construed to be a waiver in any subsequent instance. Although KEMPER SYSTEM may assign this agreement, Applicator may not assign the Agreement without KEMPER SYSTEM's prior written consent. There is no relationship of employment, joint venture, partnership, or agency between the parties. Applicator's obligations under paragraphs 6, 7, 9 and 10 will survive termination of this Agreement.

(b) New York law governs this Agreement. Any controversy or claim relating to this Agreement shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall take place in the office of the AAA closest to the Project within the state where the project is located. Judgment upon the award rendered by the arbitrator or arbitrators shall be conclusive, final, and binding, and may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, if any suit is initiated by a third party (a "Third Party Action") against a party to this Agreement, such party shall have the right to join the other in the Third Party Action.

The parties have signed this Applicator Agreement as of the date set forth at the beginning of this document.

KEMPER SYSTEM AMERICA INC.

APPLICATOR

By (signature): _____

By (signature): _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

KEMPER SYSTEM SPONSORING SALES REPRESENTATIVE

By (signature): _____

- Appendix A - QSF 459 Terms and Conditions of Sale
- Appendix B - QSF 457 Policy and Procedures for Applications
- Appendix C - QSF 460 Training and Approval Procedures
- Appendix D - QSF 409 Warranty Availability and Fee Schedule

Printed Name _____

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