

## Terms and Conditions of Sale

All sales of KEMPER SYSTEM CANADA, Inc. and KEMPER SYSTEM AMERICA, INC. ("KEMPER SYSTEM"), products are made on the following terms and conditions. The product or products being sold by KEMPER SYSTEM are referred to below as "goods."

**1. Agreement.** If Buyer has not otherwise agreed to these Terms of Sale, then Buyer's acceptance of delivery of, or payment for, the goods shall constitute Buyer's agreement to them. KEMPER SYSTEM objects to and will not agree to any terms that are additional to or different from these Terms of Sale. Terms that are printed on or contained in a purchase order or other form prepared by Buyer which are additional to, in conflict with or inconsistent with these Terms of Sale shall be considered to be inapplicable and shall have no force or effect. If Buyer objects to any of the provisions of these Terms of Sale, Buyer must bring such objection to the attention of KEMPER SYSTEM in a writing separate from any purchase order or other printed form of Buyer, which shall be deemed to be proposals for different terms and conditions that may be accepted only in writing signed by two authorized representatives of KEMPER SYSTEM (one of whom must be an officer). All orders are subject to the approval of KEMPER SYSTEM's credit department.

**2. Prices; Payment Terms.** Additional freight charges are applicable. Prices are subject to change, without notice, at any time before delivery. Unless otherwise specified on the reverse side or in another writing signed by two authorized representatives of KEMPER SYSTEM (one of whom must be an officer), payment in full of the price is due 30 days after shipment, with a 2% discount if paid in full within 10 days, except that if at any time KEMPER SYSTEM determines that Buyer's financial condition or credit rating does not justify a sale on credit or if Buyer shall at any time be in default in any indebtedness or obligation owing to KEMPER SYSTEM, then KEMPER SYSTEM may require advance payment. Any payment not made when due shall accrue a late charge of 1-1/2% per month. Payment must be made at KEMPER SYSTEM's headquarters Mississauga, Ontario.

**3. Delivery and Risk of Loss.** Delivery shall be F.O.B. KEMPER SYSTEM's plant or other point of origin, but risk of loss of the goods shall pass to Buyer upon identification of the goods to the contract between Buyer and KEMPER SYSTEM. Delivery dates are estimates only, and time is not of the essence. KEMPER SYSTEM reserves the right to discontinue shipments hereunder of any goods the manufacture, sale and/or use of which, in the opinion of KEMPER SYSTEM, would infringe any United States or Canadian Letters Patent now or hereafter issued and under which KEMPER SYSTEM is not licensed.

**4. Taxes.** KEMPER SYSTEM's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all such taxes, whether or not invoiced by KEMPER SYSTEM.

**5. Unavoidable Delay.** If KEMPER SYSTEM is unable to finish and deliver the goods to Buyer in a reasonable time because of anything KEMPER SYSTEM cannot control (including, but not limited to, casualty, labor trouble, fire, flood, governmental act or regulation, riot, terrorist act, inability to obtain supplies or materials, equipment or power failure,

unscheduled maintenance, accident or act of God), then the estimated delivery date(s) shall be extended accordingly, and KEMPER SYSTEM shall not be liable to Buyer for any damages caused by the delay. Under such circumstances, KEMPER SYSTEM may allocate its available supply of any goods among its existing or prospective purchasers and/or its own departments, divisions and subsidiaries in such a manner as KEMPER SYSTEM deems proper, without incurring liability for failure to perform this contract.

**6. Defects; Remedies.** Buyer agrees to inspect the goods immediately upon receipt. KEMPER SYSTEM warrants to Buyer that the goods shall be free from defects in content and composition at the time they are delivered to Buyer. This warranty shall not apply to any alleged defect that results from any external causes or conditions encountered by the Buyer after delivery, including, but not limited to, animals, natural disasters, vandalism, negligence, traffic, storage of materials, defects or moisture in the substrate, overburden materials, or contact with chemicals or materials not approved by KEMPER SYSTEM. If any goods that have not been altered, abused, or misused are determined by KEMPER SYSTEM to have been defective when delivered to Buyer, and if Buyer provides notice of such defect to KEMPER SYSTEM before the goods are resold or the project into which the goods are installed is completed (but in no event later than 10 days after delivery to Buyer), then as Buyer's sole and exclusive remedy for any damage or loss in any way connected with the goods, KEMPER SYSTEM shall repair or replace, at KEMPER SYSTEM's option and at KEMPER SYSTEM's sole expense, the defective goods. If KEMPER SYSTEM fails to repair or replace any defective goods within a reasonable time, then KEMPER SYSTEM shall be liable to Buyer for the lesser of (i) the reasonable costs of repair or replacement by a third party, or (ii) that part of the purchase price of the defective goods that shall have been paid by Buyer. KEMPER SYSTEM EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE GOODS. KEMPER SYSTEM SHALL HAVE NO LIABILITY TO BUYER OR ANY OTHER PERSON FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES ARISING FROM ANY DEFECT, DELAY, NONDELIVERY, RECALL, OR OTHER BREACH BY KEMPER SYSTEM, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, DEATH, PROPERTY DAMAGE, LOST PROFITS OR OTHER ECONOMIC INJURY. KEMPER SYSTEM shall not be liable to Buyer or any other person in tort for any negligent design or manufacture of the goods, or for the omission of any warning with respect thereto. Neither Buyer nor any other person may modify or expand this warranty, waive any of the limitations, or make any different or additional warranties with respect to the goods. Any statements to the contrary are hereby rendered null and void unless made in a writing signed by an authorized officer of Seller.

**7. Solvency and Security Interest.** Buyer represents that Buyer is solvent. KEMPER SYSTEM retains and Buyer grants a security interest in the goods to secure payment of the price and all other indebtedness now and in the future owing by Buyer to KEMPER SYSTEM.

**8. Permits and Compliance.** KEMPER SYSTEM is not responsible for obtaining any permit, inspection or license required for installation or operation of the goods. KEMPER SYSTEM makes no promise or representation that the goods will conform to any law, ordinance, regulation, code or standard.

**9. Installation.** Buyer shall install the goods properly and according to KEMPER SYSTEM's written instructions.

**10. Resale.** On any resale of the goods, Buyer shall contractually limit its buyer's rights and remedies against both Buyer and KEMPER SYSTEM to the same extent as Buyer's rights and remedies are limited under these Terms of Sale.

**11. Changes.** Buyer may change in writing an order for goods other than special orders; *provided, however,* that KEMPER SYSTEM shall charge Buyer a change order fee equal to 30% of the invoice price of any goods deleted from the order plus any shipping charges incurred by KEMPER SYSTEM in relation to the change order.

**12. Cancellation.** Buyer may cancel in writing an order for goods other than special orders; *provided, however,* that Buyer shall pay KEMPER SYSTEM (i) all costs and expenses KEMPER SYSTEM incurred in relation to the order before KEMPER SYSTEM received the cancellation request, (ii) a cancellation charge equal to 25% of the invoice price of any goods cancelled from the order, and (iii) any shipping charges incurred by KEMPER SYSTEM in relation to the cancellation.

**13. Returns.** Buyer shall not return any goods to KEMPER SYSTEM without KEMPER SYSTEM's prior written consent. If KEMPER SYSTEM permits a return, (i) the goods must be returned to KEMPER SYSTEM, freight prepaid, no more than 90 days after Buyer received the goods, (ii) the goods will only be exchanged for credit, and (iii) Buyer must pay KEMPER SYSTEM a restocking charge equal to 25% of the invoice price of the goods returned. KEMPER SYSTEM will not accept the return of any used, damaged, defaced, or obsolete goods or goods past their shelf life.

**14. Indemnity.** Buyer shall indemnify and hold harmless KEMPER SYSTEM with respect to all damages, losses, claims and expenses, including attorney fees that KEMPER SYSTEM incurs as a result of any breach by Buyer of any of its obligations under these Terms of Sale.

**15. KEMPER SYSTEM's Rights.** KEMPER SYSTEM has all rights and remedies given to KEMPER SYSTEM by applicable law, and KEMPER SYSTEM's rights and remedies are cumulative and may be exercised from time to time. A waiver by KEMPER SYSTEM of any right on one occasion will not be a waiver of any future exercise of that right.

**16. Time For Bringing Action.** Any action by Buyer against KEMPER SYSTEM for breach of this Agreement or for any other claim arising out of or relating to the goods or their design, manufacture, sale or delivery must be brought within one year after the cause of action accrues.

**17. Applicable Law; Arbitration.** This agreement shall be governed by the internal laws of the State of New York, without regard to choice of law rules. Any controversy or claim arising out of or relating to this agreement shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"). Such arbitration shall take place in the office of the AAA closest to the Buyer's office within the state where the Buyer's office 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.

**18. Complete Agreement; Amendment; Assignment.** The terms on the reverse side and these standard Terms of Sale contain the entire agreement between Buyer and KEMPER SYSTEM. Any change in this agreement must be by a signed writing. This contract between Buyer and KEMPER SYSTEM is not assignable or transferable by either party, except to its successor, or to the transferee of all or substantially all the party's assets to which this contract relates.