



**KEMPER SYSTEM AMERICA, INC.
10 - YEAR LIMITED MATERIAL ONLY WARRANTY**

KEMPER SYSTEM AMERICA, INC. ("KSA") warrants to the original purchaser ("**Purchaser**") of the Kemperol® materials ("**Materials**") that the Materials shall be free from defects in content and composition ("**Material defects**") for a period of **10 years** from the original purchase date. This warranty is subject to the conditions, limitations, and exclusions set forth below. This warranty does not in any way warrant the installation of the Materials, and KSA does not make any representation or warranty regarding the performance of any applicator firm even if KSA recommended the applicator firm to Purchaser.

KSA shall provide to Purchaser replacement Materials for any Materials that are determined by KSA, in its sole discretion, to be defective during the warranty period. Removal of defective Materials and installation of the replacement Materials are not included in this warranty and shall be at Purchaser's sole expense. KSA's maximum monetary liability over the life of this warranty shall be an amount equal to the original cost of the Materials to Purchaser. To qualify for warranty coverage, Purchaser must (i) notify KSA in writing of the claimed defect within 30 days of its discovery and during the warranty period, and (ii) provide Kemper with written dated proof-of-purchase for the Materials. Failure to give timely notice of a claimed Materials defect shall constitute absolute waiver of any claim and KSA shall have no liability, under this warranty or otherwise, with respect to such Material defect. Purchaser shall, at its sole expense, furnish KSA and its agents free access to the structure for inspection and testing, and provide all required scaffolding, staging, and rigging. Purchaser shall bear the cost of labor required to remove and/or reinstall the Materials and the cost of materials and labor required to remove or replace any overburden to afford access to the defective area or to repair the structure, if necessary. KSA shall not provide or pay for any labor under this Warranty, whether or not defective Materials necessitated the labor. If after inspection it is determined that the Materials are not defective or that coverage under this warranty is for any reason excluded, then Purchaser shall reimburse KSA for all costs incurred in investigating the claimed defect. Failure by Purchaser to furnish free access to the structure or pay for the removal/replacement of overburden shall constitute an absolute waiver of any claim.

EXCLUSIONS AND LIMITATIONS FROM WARRANTY COVERAGE. The Materials shall not be considered defective, and this warranty shall not apply, where the claimed defect is attributable to any cause other than a defect in the content or composition of the Materials. In addition, this warranty shall not apply to or cover:

- Labor expenses associated with removal or repair of defective Materials or installation of replacement Materials;
- Improper installation of the Materials or installation of the Materials in other than in a workmanlike manner or other than in accordance with the written specifications or instructions of KSA;
- Repair of any leaks or seepage through the Materials, or repair of any damages caused by such leaks or seepage;
- Defects or irregularities caused by any adulteration, alteration, dilution, modification, misuse or improper storage of the Materials after the Materials are delivered by KSA;
- Other materials that are not supplied by KSA, regardless of whether KSA approves their use with the Materials;
- The performance, composition or content of optional KSA and non-KSA surfacing materials, which Purchaser recognizes will require periodic reapplication.

CONDITIONS TO CONTINUING COVERAGE. This warranty shall be voided if:

- Purchaser fails to comply with its obligations under this warranty, including prompt reimbursement to KSA for expenses incurred in the investigation of non-warranted conditions;
- Purchaser fails to remedy conditions affecting the Materials that are excluded from warranty coverage, including maintaining and repairing the structure, the Materials, or any other components;
- The extent of repairs or modifications made without KSA's prior written consent damages the Materials (the performance of emergency repairs will not in and of itself cause this warranty to be voided provided that permanent repairs are made promptly in a KSA-approved manner).

THIS EXPRESS WARRANTY IS GIVEN BY KSA IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR USE. Purchaser's sole and exclusive remedy against KSA in connection with the purchase, installation, use, and/or performance of the Materials is replacement of the defective Materials as expressed in this warranty. KSA shall not be liable for damage to other components not provided by KSA, the substrate, the structure itself, or to the contents of the structure, whether or not caused by a defect covered by this warranty. **KSA SHALL NOT BE LIABLE TO PURCHASER OR TO ANYONE ELSE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT, OR PUNITIVE DAMAGES ARISING FROM ANY DEFECT, DELAY, NONDELIVERY, NONPERFORMANCE, RECALL OR OTHER BREACH BY KSA, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, DEATH, PROPERTY DAMAGE, LOST PROFITS, OR OTHER ECONOMIC INJURY.** All claims of negligence, strict liability in tort, failure of essential purpose and any other action at law or in equity are waived and excluded. KSA shall not be liable to Purchaser or anyone else in tort for any negligent design, manufacture or application of the System, or for the omission of any warning with respect thereto. This warranty is not transferable unless KSA otherwise agrees in writing. Neither the parties to this warranty nor any other person (including applicator firm) may modify or expand this warranty, waive any of the limitations, or make any different or additional warranties with respect to the System. Any statements to the contrary are null and void unless made in a writing signed by an authorized representative of KSA

This warranty is subject to and shall be interpreted according to New York law without regard to principles of conflicts of laws. Any controversy or claims relating to the System shall be settled exclusively by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("**AAA**"), in the office of the AAA closest to the Structure within the state where the Structure is located, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. No action or claim shall be brought against KSA unless filed within one year after the basis for such claim becomes known, or with the exercise of reasonable diligence should have become known, to Purchaser or its representatives. Any action or claim not timely filed shall be deemed waived. This agreement to arbitrate disputes shall not, however, apply to any lawsuits commenced by third parties wherein KSA brings a claim against the Purchaser. This warranty shall not be effective or valid unless or until purchaser has paid in full all invoices of KSA, applicator firm and any other supplier of the Materials.