

TERMS AND CONDITIONS OF SALES AND SERVICE
KOCH AIR, LLC AND KOCH APPLIED SOLUTIONS, LLC (“KOCH”) – rev 6/21/2024

- **Koch’s Terms Control.** Koch’s Terms and Conditions of Sales and Service (“Terms”) shall control and prevail over any contrary terms in customer’s (“Buyer”) purchase order, unless otherwise agreed to in a writing signed by an authorized representative of Koch. Additional terms proposed by Buyer shall be deemed to have been rejected unless specifically agreed to in writing signed by an authorized representative of Koch. Koch is not liable for any flow-down requirements from owner or higher tier contractor unless specifically agreed to in writing by Koch in advance of Buyer’s acceptance of Koch’s Proposal (“Proposal”).
- **Accuracy.** Buyer takes responsibility for accuracy and quantities listed in the Proposal.
- **Shipment, Delivery, and Risk of Loss.** Unless otherwise specifically agreed to in writing, Koch does not guarantee a particular date for shipment or delivery of goods quoted and therefore will not be held responsible for additional costs that may be incurred due to missed lead times or delivery dates. All Proposals are based on equipment standard lead times and availability. Lead times or shipment dates are estimates of approximate dates. Delivery means F.O.B. Koch’s facility, or F.O.B other shipping points designated by Koch. For all equipment, title and risk of loss or damage to equipment will pass to Buyer upon tender of delivery of such to carrier at Vendor’s manufacturing facility or warehouse. Any delay in shipment or customer pickup caused by the Buyer’s actions will be subject to price increases equal to the percentage increase in list prices during that period of delay. In addition, the Buyer will be assessed with incurred storage fees of not less than 1% per month of the contract. Upon receipt of shipment, it shall be the responsibility of Buyer or the consignee receiving shipment to check materials and secure written acknowledgment on the carrier’s bill of lading for any shortages, loss or damage.
- **Additional Transportation Charges.** Koch shall not be responsible for spotting, switching, demurrage, rerouting, storage, or other transportation charges unless agreed to in writing, and Buyer shall be solely responsible for the same.
- **Code Compliance.** Compliance with local codes is neither guaranteed nor implied. Koch and its vendor partners are not responsible for code compliance of any kind. Please check the local, state, and federal requirements before acceptance of Proposal items.
- **Force Majeure.** Koch shall not be responsible for delays in deliveries due to fire, flood, tornado, earthquake, war, riot, insurrection, strike, lockout, slowdown, epidemic, quarantine restriction, delay in transportation, car shortage, labor shortage, materials shortage, manufacturing facility shortage, accident at Koch’s facility, boycott, embargo or any act or regulation of government or government authority (including, without limitation, preference, allocation or priority systems for government), force majeure and other contingencies beyond Koch’s control resulting in impossibility of performance of Koch’s duties and obligations hereunder.
- **Prices/Payment.** Buyer shall purchase Products in accordance with prices, as determined by Koch that are prevailing at the time of shipment. **Buyer shall pay Koch in full for all products on Net 30 Day Terms.** Only those goods and products specified herein are a part of this quotation. Additional items will be provided only upon receipt of written acknowledgment and paid for as an extra. All orders are subject to approval of credit by Koch and may be cancelled by Koch at any time upon a change in the creditworthiness of the Buyer, as determined solely by Koch. Interest at one percent (1%) per month will be added on past due accounts. Koch reserves the right to file a mechanic’s lien or bond claim on applicable projects per governing laws for the state in which the project is located.
- **Back Charges or Set Off.** Deductions or set offs from invoiced amounts or back charges for added work or materials will not be accepted without prior written approval from Koch.
- **Taxes.** Any price(s) quoted shall be increased in an amount equal to any excise, sales, use, occupation, value added or similar tax(es) attributable to the goods and products supplied hereunder and/or assessed to Koch by the United States government or any state or local government. Such increased amount shall be payable to Koch at or before the time when the tax is payable to the taxing authority.
- **Cancellation and Returns.** Buyer may cancel orders only with the consent of Koch and upon payment of applicable cancellation charges. Such charges shall take into account any costs and expenses, including manufacturer’s cancellation charges, purchases or contract commitments made by Koch and all other losses due to such cancellations including a reasonable profit. All claims for wrong shipment must be made within five (5) days from date of delivery. No goods will be accepted for return unless written authority is first obtained from Koch. All goods accepted by Koch for return may be subject to restocking fees, in such amounts as determined by Koch.
- **Manufacturer’s Warranty.** Koch shall pass through to, and hereby assigns, such warranties as are provided to Koch for such product for each product purchased by Buyer pursuant to these Terms. For clarification, Carrier/Bryant residential products included in this Proposal that are installed in a commercial application will be considered under the Carrier ‘OTHER APPLICATIONS’ warranty designation. The ‘OTHER APPLICATIONS’ warranty is non-transferrable and there are no extended parts or labor warranties available. Please see your Koch salesperson or the product warranty certificate for complete warranty information.

EXCLUSION OF INDEPENDENT WARRANTIES:

THE MANUFACTURER’S WARRANTIES PASSED THROUGH AND ASSIGNED BY KOCH SHALL BE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF **MERCHANTABILITY** OR FITNESS FOR A PARTICULAR PURPOSE AND SHALL BE IN LIEU OF ALL OTHER OBLIGATIONS AND LIABILITIES, INCLUDING NEGLIGENCE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SALE OR FURNISHING OF GOODS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION AND OPERATION. THERE ARE NO WARRANTIES, WHICH EXTEND BEYOND THE FACE HEREOF.

- **LIMITATION OF LIABILITY.** BUYER’S SOLE AND EXCLUSIVE REMEDY RELATING TO PRODUCTS PURCHASED PURSUANT TO THESE TERMS SHALL BE THE REMEDY, IF ANY, AFFORDED BY THE MANUFACTURER OF SUCH PRODUCTS TO BUYER AND/OR BUYERS CUSTOMERS AS PROVIDED BY, AND WITHIN THE TIME PERIOD SPECIFIED THEREIN. BUYER’S SOLE REMEDY RELATING TO SERVICES PROVIDED BY KOCH OR ITS CONTRACTORS SHALL BE THE CORRECTION OF DEFECTIVE WORK. NO OTHER REMEDY (INCLUDING, WITHOUT LIMITATION, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR LOST PROFITS, LOST SALES, INJURY TO PERSONS OR PROPERTY OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL LOSS) SHALL BE AVAILABLE TO BUYER OR BUYER’S CUSTOMERS. **IN NO EVENT SHALL KOCH BE LIABLE FOR SUCH DAMAGES AND BUYER WILL INDEMNIFY KOCH AGAINST ALL CLAIMS BY BUYER’S CUSTOMERS.**
- **Dispute Resolution.** This transaction shall be governed by and interpreted in accordance with the laws of the State of Indiana. The parties hereto shall attempt in good faith to resolve any dispute arising out of or relating to these Terms or sales made pursuant hereto. In the event that such attempts are unsuccessful, the Buyer agrees that in the event legal action becomes necessary, jurisdiction and preferred venue shall be in Vanderburgh County, Indiana, or any other court of competent jurisdiction as determined in the sole discretion of Koch. The Buyer also agrees to waive any right to trial by jury. In the event that legal action becomes required, Buyer will be responsible for all collection cost, court costs, and attorney fees for all parties including Koch.
- **Assignment.** Buyer may not assign any rights hereunder without the prior written consent of Koch.
- **Severability.** In the event of a judicial determination that any provision within these Terms is unenforceable, such determination shall have no effect on the enforceability of the balance of the provisions herein.
- **Errors.** Any and all typographical errors or other clerical errors made by Koch herein are subject to correction by Koch.
- **Sales Tax.** Koch is not registered to collect sales tax in all states. The Buyer shall be responsible for direct payment of sales tax in non-registered states or where required taxes are not specifically included in the Proposal. Contact Koch for a listing of current states where taxes can be collected at time of sale.