

KOSCO CUSTOMER AGREEMENT
AKA PURCHASE AND SERVICE AGREEMENT

THANK YOU FOR YOUR BUSINESS. OUR RELATIONSHIP IS BASED ON THE FOLLOWING UNDERSTANDINGS:

I. General terms

The provisions of this section apply to all KOSCO customers, including those with Price Plans.

a. **Defined words.** The words *we, us, our, ours, KOSCO* and *Seller* refer to Kingston Oil Supply Corp. The words *you, your, yours* and *Buyer* refer to the person listed as Applicant on the Credit Application and Delivery Agreement or on the KOSCO customer account. The word *premises* refer to the Delivery Address you indicated on your Credit Application, Delivery Agreement or in our records. The word *Plans* refers to one or more of the Price Plan, Service Plan and/or Basic Labor Plan, as applicable. The word *agreement* refers collectively to this Customer Agreement, the Credit Application and Delivery Agreement and, if applicable, the terms of Plans.

b. **Automatic Delivery.** We will automatically deliver your fuel to your premises based on degree day projections. Only automatic delivery customers are eligible to participate in Plans. Termination of automatic delivery may result in termination of any current Plans and possible early termination fees (see II.g below). To enhance degree-day projection accuracy, you agree that KOSCO will be the sole supplier of heating fuel to the premises. While we will make every effort to keep you supplied with fuel, we will not be liable for any damage or loss if your actual usage exceeds reasonable estimates based on your prior history or information you provided to us. To the extent you use alternative heat sources, such as wood, pellets, electricity etc., we cannot be responsible if you run out of our fuel as a result of changes in your use of alternative heat sources. We will not honor top-off requests.

c. **Will Call Delivery.** We will deliver your fuel only when you request if you so indicated in your Credit Application and Delivery Agreement or if you notify us in writing to discontinue your automatic delivery. Will Call customers are not eligible to participate in Plans. If you cancel automatic delivery, any current Plans will be terminated, which may subject you to early termination fees (see section II.g below). We generally need at least 48 hours notice for will call deliveries. Minimum delivery requirements may apply. We will not honor top-off requests.

i. **Emergency Deliveries.** We will accommodate emergency will call deliveries, subject to availability of product, equipment and manpower. Emergency delivery fees may apply.

d. **Disclaimer of liability for equipment and environmental damages.** KOSCO is not responsible for (a) the condition, maintenance, repair or replacement of your fuel tank, fuel lines or piping, (b) installation, removal, cleanup, remediation or other costs of compliance with any applicable environmental or other law, rule or regulation. **KOSCO WILL NOT BE LIABLE FOR ANY BODILY INJURY, PROPERTY DAMAGE OR DECREASE IN PROPERTY VALUE ARISING OUT OF THE DISPOSAL, DISCHARGE, DISPERSAL, RELEASE OR ESCAPE OF ANY PETROLEUM SUBSTANCES OR DERIVATIVES INTO OR UPON YOUR PREMISES, ANY SURROUNDING PROPERTY, THE ATMOSPHERE OR ANY WATER COURSE OR BODY OF WATER UNLESS IN EACH CASE CAUSED BY OUR GROSS NEGLIGENCE.**

- e. Conditions of delivery.** You agree to provide us with safe access to your fuel tank and heating system at all times. We will not be liable for any damage or loss if we cannot deliver your fuel because (a) there is no one at your premises, (b) a dangerous or unsanitary condition exists in or around the premises, which may include a wild or unruly or menacing domestic animal, or (c) we are prevented by circumstances beyond our control, such as for example, act of terrorism, war, riot, blockade, embargo, strike, lockout, fire, explosion, flood, extreme adverse weather, accident, shortage of fuel, labor, transport or electricity, act of any governmental authority, the inability of our hedging counterparty under our hedging instruments to fulfill its obligations pursuant to the instrument's terms etc.
- f. Service Charges.** If we provide service work for you that is not covered by a Plan, or our warranty to you, you agree to pay us for parts and labor at our current rates.
- g. LP Equipment Rental.** You may incur a monthly rental fee for use of our liquid propane tank, if your usage is less than our annual minimum. The rental fee will be billed to your account. If you terminate your account, we will charge you \$50 fee for removing our empty LP tank. Tank pumpout fee is \$200. These fees are subject to change without notice.
- h. Billing.** We will provide you invoices for products delivered to your premises and you agree to pay our invoices within 30 days of the invoice date. Later payments may result in Late Fees (see section I,j below). Returned checks are subject to \$35 fee. We will send you a Statement for service charges, overdue amounts and additional fees and charges.
- i. Late Fees.** We will charge a late fee of 1.5% per month (an ANNUAL PERCENTAGE RATE OF 18%) or the highest rate allowed by law, whichever is less, on any amount not paid within 60 days of invoice or Statement date. The late fee will be reflected on your next Statement. We will calculate the late fee using the Adjusted Balance Method, taking account of all adjustments to the account during the applicable period.
- j. Collection Costs.** If we hire an attorney or collection agency to collect your outstanding balance, you agree to pay, in addition to your balance, all costs of collection as permitted by law, including without limitation, reasonable attorney and agency fees and court costs. We may accept late payments, partial payments and payments marked "payment in full" without losing any of our rights under the Agreement or at law. We may waive or delay enforcing our rights under the Agreement without losing or impairing any of our rights.
- k. Liability limited.** We will not be responsible for loss or damage due to or resulting from changes in fuel consumption; your failure to schedule maintenance; theft; acts of God, terrorism, war; strikes; riots; material or labor shortages; fire; flood; snow; hurricane; power interruption or loss; accidents; governmental acts; abuse or misuse of equipment; spontaneous part failure; insufficient water; frozen, gelled or leaking fuel lines; or any other conditions beyond our reasonable control, including a vacant, unattended or unoccupied premises. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE WILL HAVE NO LIABILITY FOR THIRD PARTY CLAIMS AGAINST YOU, OR DIRECT OR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, LOSS OF USE, EVEN IF WE ARE INFORMED OF THEIR POSSIBILITY. We cannot be held responsible for delays in providing fuel or service caused by circumstances beyond our control. Any and all suits and actions, whether based in contract, tort or otherwise, whether for personal injury or

property damage, arising out of or in any way related to this agreement must be commenced within one year of the cause of action or shall be barred. **IN NO EVENT SHALL OUR AGGREGATE LIABILITY TO YOU OR OTHERS UNDER THIS AGREEMENT OR OTHERWISE EXCEED \$1,000.00 OR THE COST OF REPLACEMENT OR REPAIR OF SERVICES OR PRODUCT, WHICHEVER IS LESS.**

l. Subrogation waived. Both Buyer and Seller mutually waive any and all rights of subrogation and recovery, against each other, including against our officers, directors, shareholders, agents, servants, contractors, and employees, arising out of or in any way related to this agreement, the delivery of heating fuel or any service or repair at your premises to the extent such loss or damage is covered by proceeds received from casualty, homeowner's or other insurance carried by the other party. The party sustaining such loss shall have no right of recovery against the other party, or that party's officers, directors, shareholders, agents, servants, contractors, and employees, as the case may be, to the extent of such coverage. No third party including but not limited to any insurance carrier, shall have any right of recovery (whether based in tort, contract or otherwise) by way of subrogation, assignment or otherwise under the agreement.

m. Termination. You can terminate your account and this agreement by a written notice to us which will be effective on the next business day after we receive it at our office. You will remain responsible for paying your account balance and for any products or services provided to you prior to the effective termination date. If you have certain active Plans, you may incur an early termination fee for terminating this agreement (see section II.g below). If your account is not current, we may suspend product and service deliveries or terminate this agreement and any active Plans at our sole and absolute discretion, without notice or further responsibility to you.

n. Assignment. You may not assign this agreement or any rights or duties hereunder without our prior written consent. Your attempt to assign this agreement will be void from the beginning.

o. Amendments. Effect. This agreement cannot be changed orally. Any changes to this agreement will be made by us issuing a new version of this agreement, which may be accessed on our website at www.koscocomfort.com.

p. Severability. If a court or regulatory agency of competent jurisdiction holds any provision of the agreement to be invalid, void or unenforceable in a particular circumstance, the remaining provisions will continue in full force and effect and the severed provision will remain in effect in other circumstances.

II. Terms of Price Plans

The provisions of this section apply if you purchased a Fixed Prepay Plan, a CAP PLUS Downside Prepay Plan or a CAP PLUS Downside Budget Plan (collectively referred to as Price Plans).

KOSCO Customers who are not on a Price Plan will be charged KOSCO's Daily Posted Retail Price in effect on the date of fuel delivery.

a. Eligibility. Only automatic delivery customers are eligible to participate in Price Plans. If you cancel automatic delivery during the Plan Period, any current Price Plans will be terminated, which may subject you to early termination fees (see section II.g below).

- b. Plan Period; Plan Gallons.** The Plan Period and Plan Gallons are specified at the time you purchase your Price Plan.
- c. Automatic Delivery after Plan Expires, is Exhausted or Terminated.** Once the Plan Period expires or your Plan Gallons are delivered or if your Price Plan is terminated, whichever is earlier, we will continue to make automatic deliveries to your premises at our KOSCO Daily Posted Retail Price, unless you request otherwise in writing.
- d. Unused Plan Balance.** Balance remaining in your account at the Plan Period end will convert to a credit to your account. Substantial underusage may subject unused gallons to penalties equal the early termination fee provided in section II.g below. The credit may be used for any other charges against your account or you may request a refund in writing. We will send you a refund check within thirty (30) days of receiving your refund request.
- e. Budget Payment Plan Payments.** You must remain current with your Budget Plan at all times. If your account is overdue, your Price Plan is subject to termination, early termination and other fees and charges.
- f. Services Not Included.** Service Plans are sold separately from Price Plans. Services covered by the Service Plan and the Basic Labor Plan are not included in your Price Plans, unless expressly specified in our offer of the Price Plan.
- g. Early Termination Fee.** If your account with us or your Price Plan is terminated for any reason prior to the end of the Plan Period, you agree to pay us an early termination fee unless you can show that you no longer own, rent, possess or reside at the premises. The early termination fee will be calculated by multiplying 75 cents by the difference between your Price Plan estimated gallons and gallons delivered to you since the start of the Plan Period. You and we expressly acknowledge and agree that it would be extremely difficult to determine our actual damages as a result of your early termination of the Price Plan, and that the early termination fee as liquidated damages is a fair and reasonable estimate of actual damages in light of the magnitude of the actual or anticipated harm to us that would result.