

## PREAMBLE

The Seller is defined below as SAS SOREEL (trade name: KOHLER), with registered office at 18 Rue de la Gâtine, ZAC du Cormier – BP 50 426 – 49 304 CHOLET - France. - European VAT number: FR 89317993897 – registered with the Trade and Companies Register (RCS) of Angers: 317 993 897 00030 (SIRET no.). Tel.: 02 41 64 52 00 – email: soreel@kohler.com

In accordance with current law, these Seller's general terms and conditions apply to all orders placed with the latter for its Products, Spare Parts and Services. They may be adapted, in the form of particular terms of sale, when the specific requirements of the transaction justify it. The placement of an order with the Seller automatically entails acceptance by the Buyer of these terms and conditions of sale and waiver of its own terms and conditions of purchase.

These terms and conditions of sale may be adapted, in the form of particular terms of sale, when the specific requirements of the transaction justify it. In the event of any discrepancy or contradiction between the particular terms of sale and the general terms and conditions of sale, the former will prevail.

## I. QUOTATIONS AND ORDERS

Prices and information provided in sales brochures and on the website are provided for guidance only. The Seller reserves the right to make any changes in the layout, shape, dimensions or material of its Products and parts of Products, and in its Spare Parts, including prints, photos and descriptions.

At the Buyer's request, the Seller may provide a quotation, which will constitute a firm commitment within an option period being specified in the quotation. The scope of supply of the Product, Spare Parts and Services includes only the Product, Spare Parts and Services specified in the quotation.

The Seller's Acknowledgment of the Buyer's Order will constitute a firm and final commitment on all the elements stipulated in the quotation.

The contract of sale is only complete when the Seller has expressly accepted the Buyer's Order, which must be within one month of receiving said Order. If, by this deadline, the Seller has not informed the Buyer, in writing, of the rejection of this Order or of any reservations it has concerning it, the Order will be deemed to have been accepted. The Seller will not take account of any clause to the contrary and/or any additional clause that was not expressly accepted by the Seller in the acceptance of the Order.

In the case of a duly agreed specific study, the Product, the Spare Parts and the Services will be defined on the basis of the information provided to the Seller by the Buyer. In this respect,

the Buyer undertakes to cooperate to the best of its ability in the definition of the project, by providing all the necessary information, in particular as far as the geographical location, the environmental and neighbourhood constraints and the regulations generally and/or specifically applicable to the site are concerned. The Product and/or Spare Parts supplied are intended, unless specifically and expressly agreed otherwise by the Parties, to operate in "standard" conditions of service and use.

For the Products, Services or the Spare Parts that are not included in the seller's quotation, the new prices and delivery times, as well as any substantial elements, will be negotiated and accepted by the Buyer and the Seller, before any order is fulfilled.

The Buyer must specify in its Spare Parts Orders how urgently they are required:

- Urgent: delivery "Ex Works (Named Place)" or making available at the factory within seventy-two hours (3 working days)
- Priority: delivery "Ex Works (Named Place)" or making available at the factory within ten working days
- Stock: delivery "Ex Works (Named Place)" or making available within five weeks in calendar days,

and the method of delivery according to Incoterms© 2020.

Once the Spare Parts Order has been recorded by the Seller and the acknowledgment of receipt sent to the Buyer, the degree of urgency may no longer be changed except with the Seller's express agreement. If the Order is changed by the Buyer, the Seller may bill the Buyer for costs corresponding to additional logistics and administrative services.

## II. CANCELLATION OR SUSPENSION/INTERRUPTION OF THE ORDER

If the Buyer suspends, interrupts or cancels its order, any payments already made, including down payments in particular, will be retained by the Seller as of the date of suspension, interruption or cancellation to cover the expenses and costs relating to the cancellation of the Order. Furthermore, if no down payment has been paid by the Buyer to the Seller, the compensation payment will be equal to 25% (twenty-five per cent) of the value of the Order. Deliveries already made but not yet billed must be paid for by the Buyer in accordance with the terms of payment set out herein.

If the Buyer cancels and/or suspends the Order for reasons not attributable to the Seller, it must compensate the Seller for any costs reasonably incurred as a result of this suspension.

### III. PACKAGING - METHOD OF DELIVERY & TRANSPORT- DELIVERY TIME

#### I- PACKAGING

Unless a different specification is agreed by the Parties, the Seller will propose a plastic film-type protection for the Products or a cardboard box for Spare Parts. The seller may not be held liable for any method or length of storage or for any other event occurring after delivery.

Nevertheless, the Seller may, if expressly requested by the Buyer, agree to provide a specific type of packaging; this will be considered as an additional service and will require the placement of an Order.

#### II- METHOD OF DELIVERY & TRANSPORT

Unless otherwise stipulated, deliveries take place "Ex-Works (EXW) (Named Place)", according to Incoterms© 2020. The Buyer will bear all the costs and risks inherent in the transport of the Product or Spare Parts from the named place or the Seller's factory to the desired destination.

Depending on the Incoterm used, the cost of transport and the documentation necessary to the delivery may be the subject of a specific quotation issued by the Seller to the Buyer.

When the Seller is in charge of transport and delivery, the Buyer must check the shipments of Products or Spare Parts when they arrive and, if necessary, raise a claim with the carrier. In particular and in the event of missing items or damage suffered by the Product or the Spare Parts on delivery, duly confirmed and recorded, the Buyer must write damage or shortage notations on the delivery receipt and notify the carrier at the time of delivery, to ensure that the parties' rights vis-à-vis the carrier are preserved.

The Seller may take out insurance on the Buyer's behalf and at its express request to cover the Buyer against any damage liable to be caused to the Product or the Spare Parts during transport. In the event of an incident which is covered by this insurance, it is expressly agreed that the Buyer will cover the excess specified in the insurance policy taken out by the Seller.

If the delivery is delayed for any reason beyond the Seller's control, the equipment will be stored and handled, as necessary and as long as the Seller agrees, at the Buyer's expense and risk, the Seller disclaiming all liability. The Seller will provide storage

for free for 2 (two) weeks following the date of making the Product or the Spare Parts available. After this period of 2 (two) weeks and after the Seller notifies the Buyer in writing, the latter may be billed for the storage for an amount corresponding to 1% of the value of the Buyer's Order per month or part of a month, with a minimum storage charge of €100 (one hundred euros).

Furthermore and in the event that the Buyer does not take delivery of the Product or Spare Parts under delivery arrangements other than "Ex-Works (EXW) (Named Place)" according to Incoterms© 2020 within 2 (two) weeks of the date of the Seller's formal notification, the Seller reserves the right to change the delivery terms to "Ex-Works (EXW) (Named Place)" according to Incoterms© 2020.

After 2 (two) weeks have passed, the Seller will be entitled to invoice the order.

Unless expressly requested otherwise by the Buyer, the Seller may organise partial deliveries of Spare Parts Orders, as the Spare Parts ordered become available.

#### III- DELIVERY TIMES

The delivery time is that agreed between the Buyer and the Seller. Failing that, the Seller's Order Acknowledgment will specify a delivery time.

If the Seller becomes aware of a delay, it will inform the Buyer as soon as possible. A delay in the delivery or performance shall not be justification for the cancellation of the Order and will not give rise to any indemnity and/or compensation on any grounds whatsoever.

If contractual penalties for late delivery have expressly been agreed, said penalties will be flat-rate, in full discharge and exclusive of any other sanction and they may not exceed 5% (five per cent) of the amount of the Order excluding VAT. Under no circumstances may they give rise to any compensation. The Seller is automatically released from any commitment as regards delivery or performance times if the Buyer has not fulfilled its own obligations, including payment according to the terms agreed.

#### IV- Exceptional Returns of Spare Parts

Spare Parts may only be returned at the express request of the Buyer, duly accepted by the Seller. A "Returns Acceptance" form, which is available on request, will be sent to the Buyer by the Seller and must be enclosed with the returned Spare Parts.

The Spare Parts must be returned by the Buyer at its own expense within 30 (thirty) calendar days of the date when the Buyer receives the "Returns Acceptance" form duly signed by the Seller. After this deadline, the Spare Parts may no longer be returned and refunded.

The Spare Parts returned must be packed and/or packaged in their original packaging by the Buyer, and they must not have been fitted or suffered any damage.

The Seller undertakes to issue a credit note within 30 (thirty) calendar days of the date of receiving the returned Spare Parts, minus an administration fee corresponding to 30% (thirty per cent) of the amount billed for the Spare Parts returned.

The value of the credit notes accumulated over a given calendar year may not exceed 10% (ten per cent) of the value of the Spare Parts Orders billed by the Seller to the Buyer during the previous calendar year.

Spare Parts with an expiry date, obsolete parts, parts delivered to the Buyer more than two years ago, parts that were the subject of a one-off special Order to meet a specific Buyer need, may not be returned.

The Seller reserves the right to refuse any return of Spare Parts; such a refusal will be duly justified.

#### *IV-1 Return of Spare Parts due to an error by the Seller*

In this specific context, the Spare Parts must be returned by the Buyer within 45 (forty-five) calendar days of the date when the Buyer receives the "Returns Acceptance" form duly signed by the Seller. After this deadline, the Spare Parts may no longer be returned and refunded. The Seller will issue a credit note for the Spare Parts duly returned corresponding to the amount billed for the Spare Parts returned, plus the transport costs incurred by the Buyer, duly justified.

#### IV. ON-SITE SERVICES

By agreement between the Parties, the Seller may undertake all or part of the installation, testing and industrial commissioning operations for the Product, on site, with the exception of any asbestos removal operations, which always remain the exclusive responsibility of the owner of the existing premises in line with current regulations.

The performance of one or other of these services shall not under any circumstances be deemed to constitute approval the Seller, in whole or in part, of the intrinsic qualities of items and/or services that are not part of the supply of the Product and/or more generally of the environment in which the

Product is to be integrated.

In particular, the on-site testing or commissioning operations performed by the Seller shall not under any circumstances be construed as knowledge and approval by the Seller of the conditions of installation of the Product and Spare Parts by the Buyer or a third party company.

The fact that the Seller has been entrusted with the supply of the Product, Spare Parts and/or the provision of ancillary Services in no way releases the Buyer from its obligations under the laws and regulations in force.

The Seller may not be held in any way liable for any material and/or financial consequences of the total or partial non-performance, late performance or inadequate performance of any services entrusted to a third party. On the contrary, the Seller will be entitled to bill the Buyer for any additional costs incurred.

The fact that the Seller takes charge of managing the installation operations on site in no way releases the Buyer from its duty to supervise the worksite during non-working hours.

#### V. TESTS AND ACCEPTANCE

When an acceptance procedure is planned at the Seller's factory and/or on site, the Product and its accessories will be subjected to acceptance tests in the presence of the Buyer.

The Seller will inform the Buyer, within a reasonable period of time, of the date when the acceptance tests will be carried out. If the Buyer is unable to attend the acceptance tests and in order to avoid interfering with the overall process of fulfilling the Order, the Seller may ask a competent third party company to attend the acceptance tests, in the Buyer's place and at its expense and risks.

The Buyer may not refuse acceptance for minor defects which do not affect the functioning of the Product.

Acceptance, with or without reservations, will be evidenced by the signing of an Acceptance Report by the Buyer and the Seller, or a duly mandated third party. If acceptance is delayed for reasons not attributable to the Seller:

- Acceptance is deemed to have taken place two (2) weeks after the date of notification by the Seller of the date when the acceptance procedure was planned.

- The Seller reserves the right to pass on to the Buyer the costs associated with such a postponement, such as in particular the handling and storage, as well as any financial charges.

The Seller will have a maximum of three (3) months as of the effective date of the acceptance to resolve any issues that gave rise to reservations during the acceptance procedure.

The Seller will inform the Buyer, by registered letter with acknowledgment of receipt, of the completion of the work to resolve the issues concerned by the reservations. The Seller and the Buyer will then conduct a joint inspection to confirm the lifting of the reservations.

The Buyer may not use any part of the Product as long as it has not been officially accepted. If the Buyer uses the Product at its own risk before its acceptance, the Product will then be considered as having been accepted on the date of its first use, and the warranty conditions set out in Article - X - will apply from then on.

## VI. PRICES AND TERMS OF PAYMENT

Prices are quoted exclusive of all duties and taxes.

The prices provided by the Seller take account of the exchange rates as well as the current economic conditions and may be subject to change, by agreement between the Seller and the Buyer, in particular in the event of changes in lead time(s) and/or any other changes in circumstances.

Prices may also be revised by applying adjustment or revision formulas mentioned in the offer.

According to the provisions of Article L.441-6 of the Commercial Code, any invoice sent by the Seller to the Buyer must be paid within a maximum of 45 (forty-five) days, end of month, counting from the invoice issue date.

In order of priority, the terms of conditions are payments are set out in:

- the Order Acknowledgment issued by the Seller
- the Order issued by the Buyer

Payments are made at the Seller's address, net and without any discount. Amounts not paid cash will be covered by accepted bills.

No amounts may be deducted from or set off against the amount owed by the Buyer without the prior written agreement of the Seller.

According to the provisions of Article L.441-6 of the Commercial Code, any late payment by the Buyer will automatically give rise to a late payment penalty payable on the day after the due date specified in the invoice if the amounts owed are paid after that date, as well as a fixed sum to cover recovery costs, set by

decree at 40 euros.

The rate of this late payment penalty is equal to the interest rate applied by the European Central Bank to its most recent refinancing operation plus ten percentage points, without this penalty affecting the payability of the debt itself. Late payment penalties are due without there being any need for a formal reminder.

The Buyer is released from its obligation of payment as soon as the amounts due are actually received. Payment is deemed to have been made on the date when the funds are made available by the Buyer to the beneficiary or its subrogee.

In the event of the Buyer's sale, assignment, pledging or contribution to a company of its business or equipment, or if one of the payments or the acceptance of one of the bills is not made on the due date, the amounts owing at once become due and payable, regardless of the terms previously agreed.

## VII. FORCE MAJEURE

Delays or non-performance resulting from any cause beyond the reasonable control of one of the parties, including, but not limited to cases of force majeure, riot or civil unrest, sabotage, terrorism, war, earthquake, strikes, lock-outs, accidents, fires, floods, explosions, epidemics, pandemics or the absence of normal means communication or transport ("force majeure event"), will extend the performance time accordingly, but under no circumstances for a period longer than thirty (30) days following the start of a force majeure event ("force majeure period"). Neither party is responsible for losses, damage, detentions or delays resulting from one of the above-mentioned causes or from any other condition or event beyond the reasonable control of said party. The Seller will be entitled to terminate this agreement in the event of a force majeure event continuing beyond the force majeure period. The occurrence of a force majeure event does not suspend the performance of a payment obligation of one party towards the other hereunder.

## VIII. HARDSHIP CLAUSE

Should an event of an economic or commercial nature occur after the Order is placed which renders its fulfilment prejudicial for one of the parties, the parties shall meet to examine the situation and attempt to restore the initial balance. If the parties fail to agree, the new terms of fulfilment of the Order will be set out in an amendment.

If they fail to agree within one (1) month of their first meeting, the parties will agree to rescind the Order.

## IX. RETENTION OF TITLE CLAUSE AND TRANSFER OF RISK

The Seller retains ownership of the Product or Spare Parts sold until full payment is made of the entire price, including the principal and any ancillary costs. Failure to make any one of the payments on the due date will lead to the Product or Spare Parts being claimed back.

If the Buyer has partially paid the price, this portion of the price will be retained by the Seller, notwithstanding the return of the Product or Spare Parts, by virtue of the retention of title clause, by way of compensation for the loss suffered by the Seller due to the Buyer's breach of the Order.

The transfer of risks occurs at the time of the delivery EX WORKS, as provided for in Article - III-II - above. Accordingly, as of delivery the Buyer assumes the risks of loss or damage to the Product or Spare Parts, as well as the liability for any damage that the Product or the Spare Parts could cause.

## X. WARRANTY

### I- Commercial Warranty

#### X.1.1 Duration of Seller's warranty

Unless expressly agreed otherwise by the Buyer and the Seller, the length of the warranty on the Product is 12 months from the date of delivery.

Replacement parts or parts replaced are guaranteed for the remainder of the warranty period specified in this article, without affecting the length of the warranty on the other parts or components in the Product.

Spare Parts are guaranteed for 12 months from the day of their delivery.

#### XI. 2 Conditions of application and coverage of the warranty

The Seller undertakes to correct any fault in the operating of the Product or Spare Parts due to a defect in the design, materials or manufacturing (including installation, if carried out by the Seller) within the limits of the provisions below.

The Seller's obligation will not apply to materials provided by the Buyer or in the case of a design imposed by the latter.

The Seller's liability under the warranty also excludes incidents

due to fortuitous or force majeure events, as well as replacements or repairs resulting in particular from normal wear on the Product or Spare Parts, damage or accidents caused by negligence, lack of supervision or maintenance and faulty use of this Product or these Spare Parts.

The benefit of the warranty is only granted after expert assessment of the defective parts and their return to the Seller's workshops or those of its approved agents.

Once the Seller is informed of a defect covered by this warranty, it must remedy the defect at its own expense and with all due diligence. The Seller reserves the right to modify the Product or Spare Parts where necessary to meet its obligations.

On no account does the Seller guarantee or cover any consequential damage whatsoever, including in particular the costs relating to the installation of a replacement Product or Spare Part during the warranty period, the warranty being limited to the scope of coverage detailed in this article.

The parts replaced under the Warranty become the Seller's property.

To be able to make a claim under the warranty, the Buyer must:

- Have paid the invoice(s) relating to the Product or Spare Parts in full
- Immediately inform the Seller, in writing, of the alleged defects in the Product or Spare Parts and provide all the necessary proof thereof. It must give the Seller every opportunity to ascertain the nature of these defects and to remedy them. Except with the Seller's express agreement, it must refrain from carrying out the repair himself or having it carried out by a third party.

Buyer's obligations:

To be able to claim the benefit of these provisions, the Buyer must :

- Inform the Seller, without delay and in writing, of the alleged defects in the equipment and provide all the necessary proof thereof,
- Give the Seller every opportunity to ascertaining the nature of these defects and remedy them.
- Except with the Seller's express agreement, it must refrain from carrying out the repair itself or having it carried out by a third party, and from modifying any element in said equipment or having it modified by a third party.

The Seller thus informed of the defect, must then remedy it with all due diligence. The Company reserves the right to modify the supplies if necessary.

## XI. LIMITATION OF LIABILITY

**The Seller may not be held liable for the incorrect functioning or start-up of the Product or the Spare Parts due to a failing on the part of the Buyer and/or a third party. The Seller is liable only for proven faults, errors or omissions committed by its own staff and disclaims all liability for any incident that may arise in particular from any installation, implementation, operation, maintenance or servicing of a Product or Spare Parts by a third party.**

**The Buyer waives its right to claim for financial and/or consequential losses, such as business interruption.**

**The Seller's liability is limited to a capped lump sum corresponding to the value of the order exclusive of VAT, but which may not exceed 1 (one) million euros per event per year.**

**The Buyer thus waives the right to make any claims above and beyond the above-mentioned exclusions and limits and guarantees that any recourse against the Seller and/or its insurer will also be waived by its insurer and/or any third party.**

**These limits do not apply in the event of gross negligence and/or personal injury.**

**All penalties and/or indemnities that may be expressly agreed by the Seller and the Buyer will be considered as fixed damages in full discharge and exclusive of any other sanctions or compensation.**

**The Buyer and the Seller undertake, in the event of the occurrence of an insured event, to limit the consequences of said event as far as possible.**

**When performances are expected by the Buyer concerning the obtaining of industrial or economic results, these performances must be expressly mentioned in the Order and accepted by the Seller.**

**In any case, the Seller is exempt from any liability in cases of force majeure or fortuitous events, such as in particular strikes, lock-outs, parts being out of stock, acts of terrorism, war, epidemics, requisition, fire, floods, tooling accidents, transport interruption or delays, etc. If the impediment is permanent, the contract will be rescinded as of right.**

## XII. INDUSTRIAL AND INTELLECTUAL PROPERTY

The Buyer acknowledges that the intellectual property rights, whatever their nature, as well as the know-how used in the design and manufacturing of Product, or incorporated therein, will remain the sole property of the Seller, and that on no account may the transfer of ownership of the Product be considered as a transfer of any intellectual and industrial property rights. This stipulation shall not prevent the use of the Product for the Buyer's needs within the limits expressly provided for by the parties.

The Seller thus retains ownership of the intellectual and industrial property rights, the technology and know-how, whether patented or not, in the studies, drawings, designs and all the documents or information issued or transmitted by the Seller to the Buyer or of which the Buyer has become aware in the course of the fulfilment of the Order. These documents and information may only be used by the Buyer and exclusively for the needs of the fulfilment of the Order. They are confidential and may not be disclosed, published or generally released to third parties without the express prior authorisation of the Seller, to which they must be returned when requested or in the event of the ending of the contractual relationship. The Buyer must take all necessary measures to ensure that its employees and/or subcontractors and/or its customers also treat the information thus disclosed as confidential.

## XIII. ANTI-CORRUPTION CLAUSE

The Buyer certifies that it complies and will continue to comply with the American, European, French and local anti-corruption legislation. The Buyer is prohibited from making illegal payments or offers (and from accepting such payments or offers), and from engaging in corrupt practices, either directly or indirectly, in relation to any natural or legal person, including but not limited to, any government, government official, employee of a private or State-owned company, representative of a political party or political candidate in order to obtain or retain a commercial advantage.

The Seller reserves the right to cancel any Order or terminate any contract, at its sole discretion, if it determines that the Buyer has not properly complied or cannot comply with the provisions of this clause.

## XIV. PERSONAL DATA

Where the Parties have access to personal data in the course of the fulfilment of the Order, they are respectively bound to comply with personal data protection law and, in particular, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

The Seller is particularly committed to the protection of and respect for privacy. The Buyer can consult the Seller's privacy policy by clicking on: [https://www.kohler.com/corporate/privacy\\_fr.html](https://www.kohler.com/corporate/privacy_fr.html).

The Seller collects the Buyer's personal data for the purpose of handling its order (transport and collection of Products, application of the warranty, after sales service) and monitoring its business relationships. The Buyer's personal data may therefore be disclosed to the Seller's partners exclusively for the fulfilment of the order, in accordance with these General Terms and Conditions of Sale.

The Seller's privacy policy informs the Buyer of its practices concerning the collection and use of **personal data** and the data retention period as well as the security measures implemented. The Buyer has rights of access, erasure, objection and rectification of its personal data. The Buyer can exercise these rights by clicking on [https://www.kohler.com/corporate/privacy\\_fr.html](https://www.kohler.com/corporate/privacy_fr.html).

## XV. COMPLIANCE WITH EXPORT CONTROL REGULATIONS

The Buyer Agrees to comply with all the export regulations and laws of the United States, Europe, France and any other relevant country ("Export Laws") in order to ensure that the Product and/or the Spare Parts, and/or any part thereof, are not exported, directly or indirectly, in breach of the Export Laws or used for purposes prohibited by the Export Laws.

The Products and Spare Parts, as well as all the related services and technologies (the "Deliverable Products"), are subject to the laws and regulations of the United States and/or Europe on export controls and economic sanctions.

The Buyer may not, directly or indirectly, export, re-export, transport, transfer, re-transfer or allow the use of the Deliverable Products in, by or for sanctioned, embargoed or prohibited countries, persons or end uses, except with government permission.

If the Buyer sells the Product or Spare Parts delivered by the Seller to a third party, the Buyer must do so in compliance with the Export Laws.

Before any sale and/or (re)-export of a Product or Spare Parts to

a third party, the Buyer must in particular check and ensure that:

- they do not contravene the embargo rules imposed by the UN, the European Union, the United States and/or France.
- they do not contravene the rules imposed by the UN, the European Union, the United States and/or France relating to international sanctions targeting certain countries, groups, individuals or entities.
- any particular Product or Spare Parts are not intended for use in direct or indirect connection with an activity or end use linked to, but not limited to the proliferation of nuclear weapons, nuclear marine propulsion, missiles, rocket systems, unmanned aerial vehicles or chemical or biological weapons.

The Buyer will indemnify, defend and hold the Seller harmless from and against any claim, demand and/or damage suffered by the Seller resulting from a breach of the obligations set out in this article. The Buyer reserves the right to cancel the order immediately if these provisions are breached, without the Buyer being able to claim any financial or other compensation.

## XVI. APPLICABLE LAW AND JURISDICTION

French law is applicable to the exclusion of any other law.

In the event of a dispute, the Buyer and the Seller shall strive to reach an amicable settlement. If they fail to do so within 30 (thirty) days of the date of the first notification, any legal action must be brought before the Commercial Court of Paris (France), which will have sole jurisdiction even in the case of interlocutory applications, multiple defendants and the introduction of third parties.