

**Last Updated: April 18, 2022**

## **KOWALSKI HEATING COOLING PLUMBING**

### **TERMS OF USE**

#### **INTRODUCTION AND OVERVIEW**

These Terms of Use (“Terms”) set forth a legally binding agreement between you and Kowalski Heating Company (“the Company”, “we”, “our”, or “us”), and govern your use of any online service location that posts a link to these Terms, including, without limitation [www.KowalskiHCP.com](http://www.KowalskiHCP.com) and all features, content, and other services that we own, control and make available through such online service location, including, without limitation [www.KowalskiHCP.com](http://www.KowalskiHCP.com) (collectively, the “Service”).

In some instances, both these Terms and separate terms elsewhere on the Service will apply to your use of the Service (“Additional Terms”). To the extent there is a conflict between these Terms and any applicable Additional Terms, the Additional Terms will control unless they expressly state otherwise.

By using the Service, you agree to these Terms and consent to our collection, use, and disclosure practices, and other activities as described in our [Privacy Policy](#). If you do not agree and consent, discontinue use of the Service.

#### **SERVICE USE**

##### **A. Content.**

The Service contains (i) materials and other items relating to the Company and its services, and similar services and products from our licensors and other third parties; (ii) trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of Company; and (iii) other forms of intellectual property (all of the foregoing, collectively “**Content**”). All right, title, and interest in and to the Service and the Content is the property of Company or our licensors or certain other third parties and is protected by the U.S. and international copyright, trademark, trade dress, patent, and/or other intellectual property and unfair competition rights and laws to the fullest extent possible.

**Digital Millennium Copyright Act.** If you are a copyright owner or an agent thereof and believe that any content in our Services infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act (“DMCA”) by emailing the following information to [info@KowalskiHCP.com](mailto:info@KowalskiHCP.com) :

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You acknowledge that if you fail to comply with all of the requirements of this section, your DMCA notice may not be valid.

#### **B. Limited License.**

Subject to your strict compliance with these Terms and any applicable Additional Terms, Company grants you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to download, display, view, use, and play the Content on a personal computer, browser, laptop, tablet, mobile phone, or other internet-enabled devices (each, a “**Device**”), in each case for your personal, non-commercial use only. The foregoing limited license (i) does not give you any ownership of, or any other intellectual property interest in, any Content, and (ii) may be suspended or terminated for any reason, in Company’s sole discretion, and without advance notice or liability. Your unauthorized use of the Content may violate copyright, trademark, privacy, publicity, communications, and other laws, and any such use may result in your personal liability, including potential criminal liability.

#### **C. Accounts.**

Certain features of the Service may require you to register an account. When registering an account, you agree to (i) provide true, accurate, current, and complete information; (ii) maintain and update this information to keep it true, accurate, current, and complete; (iii) protect and prevent unauthorized access to your account; (iv) not transfer or share your account with any third party; and (v) immediately notify us of any suspected or actual unauthorized use of your account or breach of security. Please note that you are solely responsible for all activities that occur under your account, whether or not you authorized the activity, and we are not liable for any loss or damage to you or any third party arising from your failure to comply with any of the foregoing obligations.

#### **D. Restrictions.**

You may not (i) harvest any information from the Service or Content; (ii) reverse engineer or modify the Service or Content; (iii) infringe any intellectual property or other rights of any third party; (vii) use the Service or Content in a manner that suggests an unauthorized association or is beyond the scope of the limited license granted to you; or (iv) otherwise violate these Terms or any applicable Additional Terms.

You agree to comply with all local, state, and federal, laws, statutes, ordinances, regulations, treaties, directives, and agreements that apply to your use of the Service and Content.

#### **E. Availability.**

The company may suspend or terminate the availability of the Service and Content, in whole or in part, to any individual user or all users, for any reason, in Company's sole discretion without advance notice or liability. Upon suspension or termination of your access to the Service, or upon notice from Company, all rights granted to you under these Terms, or any applicable Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service and Content.

#### **F. Reservation of Rights.**

All rights not expressly granted to you are reserved by Company and its licensors and other third parties. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. Any unauthorized use of the Content or Service for any purpose is prohibited.

#### **DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

THE SERVICE IS PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS" BASIS. NEITHER COMPANY NOR ANY OF ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, OR AGENTS (COLLECTIVELY, THE "COMPANY PARTIES") MAKE ANY REPRESENTATIONS, WARRANTIES, OR ENDORSEMENTS OF ANY KIND WHATSOEVER AS TO THE CONTENT OR OTHER SERVICES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, INCLUDING THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE BY ACCESSING OR USING THE SERVICE YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE SERVICE.

NOTWITHSTANDING THE FOREGOING, THESE DISCLAIMERS DO NOT EXCLUDE ANY PRODUCT LIABILITY CLAIMS, STATUTORY CONSUMER RIGHTS, DAMAGES

ASSOCIATED WITH PERSONAL INJURY OR RESULTING FROM COMPANY INTENTIONAL MISCONDUCT, RECKLESSNESS, FRAUD, OR GROSS NEGLIGENCE.

## **LIMITATIONS OF OUR LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE COMPANY PARTIES BE LIABLE TO YOU FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, OR DAMAGES FOR SYSTEM FAILURE OR MALFUNCTION OR LOSS OF PROFITS, DATA, USE, BUSINESS, OR GOODWILL, ARISING OUT OF OR IN CONNECTION WITH THE SERVICE, THESE TERMS, OR YOUR MISUSE OF THE SERVICE OR ANY CONTENT AVAILABLE ON OR THROUGH THE SERVICE. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT, INDEMNIFICATION, TORT, STRICT LIABILITY, STATUTE, OR ANY OTHER LEGAL OR EQUITABLE THEORY.

## **INDEMNIFICATION**

You agree to defend, indemnify, and hold harmless the Company Parties from and against any and all claims, liabilities, damages, losses, costs, and expenses (including, reasonable attorneys' fees and costs) arising out of or in connection with any of the following: (i) your breach or alleged breach of these Terms; (ii) your Submissions; (iii) your misuse of the Service; (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities; (v) your violation of the rights of any third party, including any intellectual property right, publicity, confidentiality, property, or privacy right; (vi) your use of a Third Party Service; or (vii) any misrepresentation made by you. The Company reserves the right to assume, at your expense, the exclusive defense and control of any matter subject to indemnification by you. You agree to cooperate with the Company's defense of any claim. You will not, in any event, settle any claim without the prior written consent of the Company.

This provision does not require you to indemnify us for any unconscionable commercial practice by us or for our fraud, deception, false promise, misrepresentation, concealment, suppression, or omission of any material fact in connection with the Service.

## **SUBMISSIONS**

When you submit any unsolicited ideas, feedback, communications, opinions, techniques, images, sounds, videos, or other content to us through or relating to the Service ("**Submissions**"), you grant us a non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, transferable, and cost-free right and license to host, store, use,

display, reproduce, modify, adapt, edit, combine with other materials, publish, distribute, create derivative works from, promote, exhibit, broadcast, syndicate, sublicense (including, without limitation, to third party media channels, platforms, and distributors), publicly display, and otherwise use and exploit in any manner whatsoever, or grant third parties the right to do any of the foregoing, all or any portion of your Submissions, for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. You further irrevocably grant us the right, but not the obligation, to use your name in connection with your Submissions. You also agree to waive any right of approval for our use of the rights granted herein and agree to waive any moral rights that you may have in any Submissions, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights in a manner that interferes with any exercise of the granted rights.

You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section. Our receipt of your Submissions is not an admission of their novelty, priority, or originality, and it does not impair our right to existing or future intellectual property rights relating to your Submissions. You waive any and all rights and claims in connection with our consideration, use, or development of any product, content, or other materials similar or identical to your Submission now or in the future.

You represent and warrant that you own or have the necessary rights, licenses, consents, and permissions to grant us the rights granted in this Section. You alone, though, retain whatever legally cognizable right, title, and interest that you have in your Submission and remain responsible for them.

## **PRODUCTS**

We do our best to describe every product or service offered on our Service as accurately as possible. However, we are human, and therefore we do not warrant that product specifications, pricing, or other content on the Service is complete, accurate, reliable, current, or error-free. In the event of any errors relating to the pricing or specifications, Company shall have the right to refuse or cancel any orders at its sole discretion. If we charged your credit card or other accounts prior to our cancellation, we will issue a credit to your account in the amount of the charge.

Additional Terms may apply. If a product or service you purchased from Company is not as described, your sole remedy is to cancel the purchase and receive a credit for the purchase price.

All physical products purchased from the Service are made pursuant to a shipment contract. This means that the risk of loss and title for such items pass to you upon delivery to the carrier.

## **CUSTOMER SUPPORT**

If you have any questions or comments, please send an e-mail to us at [info@KowalskiHCP.com](mailto:info@KowalskiHCP.com). You acknowledge that the provision of support is at Company's sole discretion and that we have no obligation to provide you with customer support of any kind. All legal notices to us must be mailed to 111 Clubside Dr., McMurray, Pennsylvania, 15317. When you communicate with us electronically, you consent to receive communications from us electronically. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

## **THIRD-PARTY SERVICES**

Our Service contains content from and hyperlinks to websites, locations, platforms, and services operated and owned by third parties (“**Third Party Services**”). We may also integrate third-party technologies into our Service and host our content on Third-Party Services. These Third-Party Services are not owned, controlled, or operated by us, and you acknowledge and agree that we are not responsible or liable for the information, content, products, technologies, or services on or available from such Third Party Services, or for the results to be obtained from using them. If you choose to access, transact with, or otherwise interact with any such Third Party Services, you do so at your own risk.

For more information on Third Party Services, see our [Privacy Policy](#).

## **COMMUNICATIONS**

### **A. E-mails.**

You can opt-out of receiving certain promotional e-mails from us at any time by following the instructions as provided in e-mails to click on the unsubscribe link or contacting us at [info@KowalskiHCP.com](mailto:info@KowalskiHCP.com) with the word UNSUBSCRIBE in the subject field of the e-mail. Your opt-out will not affect non-promotional e-mails, such as those about your account, transactions, servicing, or Company's ongoing business relations.

### **B. Push Notifications**

You can opt out of receiving push notifications from us at any time by adjusting the permissions in your Device or uninstalling our app.

### **C. Text Messages and Calls.**

We may send you reoccurring text messages and calls (including prerecorded and/or by autodialer) to the phone number you provide for transactional and direct marketing purposes. You understand that your consent is not required as a condition of purchase, and that you can opt-out of receiving text messages or calls from us at any time by: (i) for text messages, texting

“STOP” in response to any text message you receive from us or contacting us at [info@KowalskiHCP.com](mailto:info@KowalskiHCP.com) and specifying you want to opt-out of text messages; and (ii) for calls, requesting opt-out during any call you receive from us or contacting us at [info@KowalskiHCP.com](mailto:info@KowalskiHCP.com) and specifying you want to opt-out of calls. For text messages, you can also text “HELP” at any time for more information. You understand that you may receive a text message confirming any opt-out by you.

Standard message, data, and other fees may be charged by your carrier, and carriers may deduct charges from pre-paid amounts or data allowances, for which you are responsible. Not all phones and/or carriers are supported. Contact your carrier for further details.

Please note that any opt-out by you is limited to the e-mail address, device, or phone number used and will not affect subsequent subscriptions.

## **CHOICE OF LAW**

### **A. Disputes.**

Any dispute relating in any way to your use of the Services or to your relationship to us shall be submitted to confidential arbitration in Washington County, Pennsylvania. You hereby consent to and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts in Washington County, Pennsylvania. Arbitration under these Terms will be conducted pursuant to the Commercial Arbitration Rules then prevailing at the American Arbitration Association. The arbitrator’s award will be final and binding and may be entered into as a judgment in any court of competent jurisdiction. To the fullest extent permitted by applicable law, no arbitration under these Terms will be joined to an arbitration involving any other party subject to this Terms, whether through class action proceedings or otherwise. **YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF, RELATED TO, OR CONNECTED WITH THE USE OF THE SERVICES MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OF ACTION AROSE OR BE FOREVER BANNED.**

### **C. Choice of Law/Forum Selection.**

These Terms are governed in accordance with the laws of the Commonwealth of Pennsylvania, excluding its conflict of law rules. You further expressly consent and agree to submit to the exclusive jurisdiction and venue of a court of competent jurisdiction located in McMurray, Pennsylvania.

## **WAIVER OF INJUNCTIVE OR OTHER EQUITABLE RELIEF**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE THAT YOU WILL NOT BE PERMITTED TO OBTAIN AN INJUNCTION OR OTHER EQUITABLE RELIEF OF ANY KIND, SUCH AS ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, SUBMISSIONS, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY COMPANY OR A LICENSOR OF COMPANY.

## **UPDATES TO TERMS**

We reserve the right, at any time in our sole discretion, to modify or replace any part of these Terms and any applicable Additional Terms, without prior notice. You agree that we may notify you of any updated Terms and any applicable Additional Terms by posting them on the Service so that they are accessible via a link from the home page, and/or to send you an e-mail to the last e-mail address you provided to us. All such changes are effective immediately when we post them, or such later date as may be specified in the notice of updated Terms and any applicable Additional Terms. If you object to any such changes, your sole recourse is to cease using the Service.

## **GENERAL PROVISIONS**

### **A. Consent or Approval.**

No Company consent or approval may be deemed to have been granted by Company without being in writing and signed by an officer of Company.

### **B. Survival.**

The provisions of these Terms and any applicable Additional Terms, which by their nature should survive termination of your use of the Service, including sections on Service Use (except for the limited license), Submissions, Copyright Infringement, Products, Customer Support, Third Party Services, Service Features, Disputes and Choice of Law, Disclaimer of Representations and Warranties, Limitations of Our Liability, Indemnification, Waiver of Injunctive or Other Equitable Relief, Updates to Terms, and General Provisions, will survive.

### **C. Severability; Interpretation; Assignment.**

If any provision of these Terms, or any applicable Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the Additional Terms. You hereby waive any applicable statutory and common law that may permit a contract to be construed against its drafter. The summaries of provisions and section headings are provided for



convenience only and shall not limit the full Terms. The Company may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of the Company.

**D. Complete Agreement; No Waiver.**

These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances, or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or Company in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

**E. California Consumer Rights and Notices.**

Residents of California are entitled to the following specific consumer rights information: you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs by mail at: 1625 North Market Blvd., Suite N 112, Sacramento, California 95834, or by telephone at (916) 445-1254. Their website is located at [www.dca.ca.gov](http://www.dca.ca.gov).