

PURCHASE AND SERVICE AGREEMENT
General Terms and Conditions

In these Terms and Conditions the words we, us, our, Seller and ours mean Kingston Oil Supply Corp. (KOSCO). The words you, your and yours mean each and every Buyer. The word premises means the address identified by you as the location for us to deliver fuel you purchase.

1. **Price Plan:** We agree to sell and deliver home heating fuel to your premises during the pricing period on the basis of the price plan that we and you agree ("**Price Plan**"). The word Agreement means collectively the Price Plan, these terms and conditions and any agreed renewal terms. You agree to the use of electronic communications, including the Internet or telephonic recordings (or similar technology) to enter into contracts, place orders and create other records with us.
2. **Deliveries:** Fuel deliveries will be made to you at your premises on an automatic degree-day basis or will call, subject to these terms and conditions. For automatic delivery basis, you agree that we will be the sole supplier of fuel to the premises and that you will provide us safe access to your fuel tank and heating system at all times. We do not honor top-off requests from automatic delivery customers.
3. **Non Delivery Conditions:** We shall not be in breach of the Agreement to the extent that we are prevented from or delayed or hindered in performing what would otherwise be our obligations by any circumstance which is beyond our control or which we could not reasonably be expected to control, including but not limited to: act of terrorism, war, riot, blockage, embargo, strike, lockout, fire, explosion, flood, extreme adverse weather, accident, shortage of fuel, labor, transport or electricity, act of any type by any governmental authority, the inability of our hedging counterparty under our hedging instruments to fulfill its obligations pursuant to the instrument's terms, or if your demand for fuel exceeds all reasonable estimates of what you will consume based on your past usage (if an existing customer) or on our estimates (if a new customer). We will not be responsible for damages for failure to deliver fuel to vacant or unattended premises (in these terms and conditions, the term "vacant or unattended premises" shall mean premises at which no adult occupant is present for at least twenty-four (24) consecutive hours). In each and every case above, we have the right either to cancel or to postpone any delivery without any liability whatsoever.
4. **Fuel Tank, Piping and Environmental Liability Disclaimer:** Under no circumstances are we obligated to repair or replace a tank, fuel lines or piping because we are providing fuel to you. You are responsible for the condition and maintenance of the fuel tank, fuel lines and piping at your premises and we assume no liability for same. The Agreement does not in any way protect you against tank or fuel line leakage or any damages to persons or property resulting from tank or line leakage. The Agreement does not cover installation, cleanup, removal, remedial or other costs of compliance with any environmental or other laws, rules or regulations. **WE WILL NOT BE RESPONSIBLE 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.**
5. **Billing:** You agree to pay within 30 days of invoice date the full amount of each invoice we send you for product and services we provide you. If you do not pay an invoice in full when due, we will send you a statement ("Statement") showing overdue amounts for deliveries, service charges and any other amounts. We will charge you a \$35.00 fee for all returned checks.
6. **Service Charges:** If we perform service work for you that is not covered by any written service contract, warranty or guarantee between you and us, we will mail you an invoice for the cost of parts and labor, and you agree to pay it as above.

7. **When a Late Fee will be Added:** If we do not receive full payment of any invoice by the 60th day from the invoice date, you must pay us a late fee. The late fee will appear on your next Statement. We compute the late fee based on a periodic rate of 1.5% per month, which is an ANNUAL PERCENTAGE RATE OF 18%, or the highest rate allowed by applicable law, whichever is less. We will calculate the late fee using the Adjusted Balance Method.

8. **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. We may waive or delay enforcing our rights under the Agreement without losing or impairing any of our rights.

9. **Waiver of Subrogation:** Both Buyer and Seller do hereby 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 the 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.

10. **Limits of Liability:** We will not be responsible for loss or damage due to or resulting from: changes in fuel consumption; your failure to schedule maintenance; acts of God; terrorism; war; strikes; riots; material or labor shortages; fire; flood; hurricane; power interruption or loss; accidents; governmental acts; abuse or misuse of equipment; spontaneous part failure; insufficient water; frozen or jelled 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 direct or indirect, special or consequential damages of any kind. We are not responsible for secondary damages as a result of a delay in rendering any service. Any and all actions, whether based in contract, tort or otherwise, whether for personal injury or property damage, arising out of or in any way related to the Agreement must be commenced within one year of the cause of action or shall be barred as a matter of law. IN NO EVENT SHALL OUR AGGREGATE LIABILITY TO YOU OR OTHERS UNDER THE AGREEMENT OR OTHERWISE EXCEED \$1,000.00.

11. **Assignment:** You are not allowed to assign the Agreement or any rights hereunder without our prior written consent. Any attempted assignment of the Agreement by you will be void from the beginning.

12. **Termination:** You can terminate your account by notifying us in writing which will be effective on the next business day after we receive it at our office. You will remain responsible for payment of all deliveries made and services rendered to you prior to the effective termination date. Depending on your plan, you may incur an early termination fee (see Section 13). If you fail to make a payment on time or violate other terms of the Agreement, we may suspend deliveries and services or terminate the Agreement at our sole and absolute discretion, without notice or further responsibility. These terms and conditions remain in effect until we issue new terms and conditions. The Price Plan remains in effect until its expiration date, unless terminated earlier as provided in these terms and conditions.

13. **Early Termination Fee:** If you are on a *protected price plan* and your account is terminated by you or by us pursuant to Section 12 (Termination) or for any other 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 or possess the premises. The early termination fee will be calculated by multiplying 50 cents by the difference between your annual estimated gallons and gallons delivered since you started on the price protection plan. 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 Agreement, 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.

14. **Severability:** If a court or regulatory agency of competent jurisdiction holds any provision of the Agreement to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

15. **Governing Law; Entire Agreement:** These terms and conditions and the Price Plan and any agreed renewal terms together constitute the entire agreement between us. Any statements not contained in these terms and conditions, the Price Plan or any agreed renewal terms are not part of the Agreement.

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