**Supply Agreement**

This Supply Agreement (the "Agreement"), dated as of [DATE] (the "Effective Date"), is entered into by and between [SELLER NAME], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] having [its principal place of business/an address] at [BUSINESS ADDRESS] ("Seller"), and KäRCHER NORTH AMERICA INC., a Delaware corporation with a principal place of business at 6398 North Karcher Way, Aurora, CO 80019 ("Buyer", and together with Seller, the "Parties", and each, a "Party"), to establish a uniform and mutual agreement in achieving a long term relationship. Seller and Buyer may be individually referred to as a “party” and collectively as the “parties.”

As of the date of this agreement, the agreement is valid for all Karcher North America’s locations which include: Englewood, CO, Camas, WA, Fayetteville, AR, Blackwood, NJ and Monterrey Mexico. Karcher North America’s brands include: Karcher, Hotsy, Landa, Watermaze, Windsor, Shark, Graco and Spraymart.

**1.0 Term; Termination:**

1. This agreement shall become effective as of the Effective Date and continue for a period of XX years.
2. Buyer may terminate all or any part of this Agreement by providing written notice to Seller:
	1. If Seller repudiates or threatens to repudiate, any of its obligations under this agreement;
	2. if Seller fails to, or threatens not to, timely deliver Goods conforming to the requirements of, and otherwise in accordance with, the terms and conditions of this Agreement;
	3. if Seller is in breach of, or threatens to breach, any representation, warranty or covenant of Seller under this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Seller within a commercially reasonable period of time under the circumstances, in no case exceeding 30 days following Seller's receipt of written Notice of such breach;
	4. Upon the occurrence of any other event constituting grounds for termination set forth in any other sections of this Agreement;
	5. If Seller becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors

**2.0 Included in this agreement:**

1. This agreement includes the following list of XXXX to be supplied to Buyer at the agreed upon price as seen in Appendix A attached.
2. This agreement includes Additional Shipping Instructions, Packaging Requirements, and Quality Management Guide Appendix.
3. The order of precedence will be this Agreement, the parties MNDA as referenced below, and any Appendix hereto.

**3.0 Price Terms:**

1. Baseline pricing for products are agreed upon at the time of this agreement. See Appendix A for baseline pricing. After that, any price adjustments will be made based on mutual agreement.

**4.0 Ordering policy:**

1. Purchase orders will be placed to ship within a mutually agreed upon lead time as seen in Appendix A.
2. Purchase order confirmation is required within 5 business days to review possible pricing or delivery issues. If confirmation is not received by Buyer within 5-days of placing the order, the purchase order is deemed to be accepted on the date it was placed.

**5.0 Forecast agreement:**

1. Buyer will make commercially reasonable efforts to provide an accurate forecast for 6 month periods. A forecast will be provided by Buyer to Seller at least every other month or any other interval agreed upon by Buyer and Seller. Forecast schedule shall be solely for planning purposes and shall not be a guaranteed purchase commitment or otherwise represent a binding obligation of the Buyer.
2. No substitute components are allowed, unless agreed upon in writing by Buyer personnel.

**6.0 Terms of Payment:**

1. Payment Terms. Seller shall issue an invoice to Buyer within 30 days after the completion of delivery of the Goods. Buyer shall pay all properly invoiced amounts due to Seller within 60 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars and made by [METHOD OF PAYMENT]. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than 14 days prior to the date payment is due on the disputed invoice listing all disputed items. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute
2. Setoff. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller [under this Agreement].

**7.0 Terms of Delivery:**

1. Delivery shall be made FOB 2021 INCOTERMS/in accordance with the terms set forth in Appendix A. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, [air waybill/bill of lading] and any other documents necessary to release the Goods to Buyer within [NUMBER] business day[s] after Seller delivers the Goods to the transportation carrier. The Contract Reference Number must appear on all shipping documents, shipping labels, air waybill/bill of lading, invoices, correspondence, and any other documents pertaining to this Agreement..

**8.0 Inventory Commitment:**

1. Inventory levels at Seller will be established by agreed upon forecasts provided by Buyer. Inventory levels at Seller shall not exceed 60 days usage amount, unless otherwise agreed upon by Buyer.
2. Inventory levels should be reviewed every 3 months to verify that product is being used in a timely manner.
3. In the event of obsolescence, or design change by Buyer, any and all affected items in inventory at Seller will be purchased by Buyer within 60 days.
4. Specialty items that may require a special production run should be first approved by Buyer and should be accompanied by a Purchase Order, before Seller procures the materials.

**9.0 Quality Audit Procedures:**

1. Seller shall meet or exceed Buyer's quality standards for the Goods as adopted by Buyer from time to time, and which are provided by Buyer to Seller in writing. At Buyer's request, Seller shall furnish to Buyer test samples of Goods as reasonably required by Buyer to determine if their manufacture is in accordance with the specifications furnished by Buyer and Buyer's quality standards. Seller shall perform quality inspections of Goods before delivery and shall certify inspection results in the manner requested by Buyer. If the Goods are found by Buyer, in Buyer's reasonable discretion, to be in compliance with Buyer's quality standards for such Goods, subject to audit by Buyer, Buyer will promptly reimburse Seller for Seller's reasonable, out-of-pocket costs incurred in complying with this Section 9.0(A).
2. Seller shall provide reasonable support as requested by Buyer to address and correct quality concerns. In addition to its other rights and remedies, Buyer may hold Seller responsible for costs associated with quality-issue investigation and containment to the extent caused by Seller's acts or omissions.
3. Seller shall, on a continuous basis, identify ways to improve the quality, service, performance standards and technology for the Goods, including through participation in Buyer's quality improvement initiatives.
4. If a substitute product is being offered due to inventory issues or un-foreseen products, Seller will supply a product of equal quality as the one being provided. The substitute product must be communicated to and approved by Buyer. Seller will provide any relevant documentation of the substitute product to Buyer. If there are incremental costs incurred due to the incorrect forecasting of Buyer those incremental costs will be paid by Buyer, if not then the incremental costs area covered by Seller.

**10.0 Delivery and Freight**

1. Unless otherwise agreed upon by the parties, the standard lead time for products in this agreement is (5) business days. The delivery for special items not in this agreement will be quoted as part of the price quote.
2. All shipments should be shipped via: XPO Logistics Brokerage, or according to the Shipping Instructions as seen in Appendix XX Additional Shipping Instructions or Purchase Orders. Buyer shall be solely responsible for inspecting each delivery of products to confirm that all products ordered are in included within such delivery. Buyer must notify Seller in writing within (7) days of any short or other defective delivery. All products will be deemed accepted by Buyer upon delivery to the common carrier or when otherwise placed in transit. Acceptance of any products shall not limit Seller's warranty obligations under the Limited Warranty section below.
3. Seller shall select Products for shipment on a first in, first out ("FIFO") bases. Products must be packaged in accordance with Appendix XX Packaging Requirements.
4. All Shipments must be in conformance with the packaging and labeling requirements set forth on Appendix XX Quality Management Guide. Seller shall ensure that quantities weights and identification as stated on packing lists are correct.
5. Inspection and Rejection of Nonconforming Goods. Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; or (b) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, [promptly/within [NUMBER] days] replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under this Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

**11.0 Confidentiality:**

The Mutual Nondisclosure Agreement dated XXXX XX, 202X entered into by Buyer and Seller (“MNDA”) is incorporated by reference in its entirety to this Agreement and will govern all confidentiality obligations by the Parties. The term of the MNDA will continue for the Term of this Agreement

**12.0 Warranty:**

1. Warranties. Seller warrants to Buyer that for a period of [36] months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material, and design; (b) conform to applicable specifications[, drawings, designs, samples, and other requirements specified by Buyer]; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests, or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance, or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. [If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, [promptly/within 10 days] replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.]
2. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.
3. If Buyer, any of Buyer's customers or any Governmental Authority determines that any Goods sold to Buyer are Defective and a recall campaign is necessary, Buyer will have the right to implement such recall campaign and return Defective Goods to Seller or destroy such Goods, as determined by Buyer in its reasonable discretion, at Seller's sole cost and risk. If a recall campaign is implemented, at Buyer's option and Seller's sole cost, Seller shall promptly replace any Defective Goods and provide such replacement Goods to Buyer or Buyer's designee. Seller will be liable for all of Buyer's costs associated with any recall campaign if such recall campaign is based upon a reasonable determination that the Goods fail to conform to the warranties set forth in this Agreement. Where applicable, Seller shall pay all reasonable expenses associated with determining whether a recall campaign is necessary

**13.0 Certain Changes:**

1. Seller shall promptly make any changes Buyer directs in writing with respect to the Goods, which may include changes in the design, drawings, specifications, processing, inspection, testing, quality control, methods of packing and shipping or the date or place of delivery. Any changes pursuant to this Section 13.0 will not affect the Price or time for delivery of Goods unless
	1. within 14 days after Buyer's notice to Seller of the change, Buyer receives from Seller written Notice of a claim for adjustment with all sufficient information and documentation regarding Seller's costs and production timing resulting from such changes to allow Buyer to perform an audit and verify such claim, and
	2. after auditing and verifying such claim, the results of such audit indicate that, in order to implement such Buyer-requested changes, Seller's actual out-of-pocket costs increased by a material amount or that implementing such changes reasonably and appropriately caused a delay in the Delivery Date of any affected Goods. Seller may increase the Prices hereunder in a per-unit amount solely to the extent necessary to compensate Seller for such commercially reasonable cost increases (but not to allow for any additional margin). If Buyer's audit and verification results indicate that Seller's costs have or should have actually decreased, the Prices hereunder shall be deemed decreased on a per-unit basis to reflect the amount of any such cost savings. Nothing in this Section 13.0, including any disagreement with Buyer as to any adjustment in price or time for performance, will excuse Seller from proceeding with this Agreement as changed

**14.0 Intellectual Property:**

Seller retains ownership of all intellectual property rights in the products unless products are manufactured using Buyer's designs in which case all intellectual property rights remain the property of the Buyer. Seller grants to Buyer a worldwide, non-exclusive, royalty free license to Seller's Intellectual Property contained in the products to the extent necessary to use, incorporate into other products, and sell the products for their intended purpose. Buyer will not without Seller's prior written consent, use any trademark, trade dress, or trade name of Seller in connection with any products other than with respect to the resale of products which are pre-marked or packaged by or on behalf of Seller

Seller shall, at its expense, defend, indemnify, and hold harmless Buyer and any Indemnified Party against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnified Party's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnified Party's prior written consent.

|  |  |
| --- | --- |
| [GENERAL INDEMNIFICATION]General Indemnification. Seller shall indemnify, defend and hold harmless Buyer [and its [officers,] [directors,] employees, agents, affiliates, successors and permitted assigns] (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including [reasonable] attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, [incurred by Indemnified Party/awarded against Indemnified Party [in a final [non-appealable] judgment]] (collectively, "Losses"), [relating to/arising out of or resulting from] any claim of a third party [or Buyer] arising out of or occurring in connection with the products purchased from Seller or Seller's negligence, willful misconduct, or breach of this Agreement. Seller shall not enter into any settlement without Buyer's or Indemnified Party's prior written consent.**15.0 Limitation of Liability:**NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGESEXCEPT FOR LIABILITY FOR INDEMNIFICATION, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL BUYER OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT [BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.[INSURANCE]Without limiting its liability under this Agreement, Seller agrees to maintain, during the Term and for five (5) years after the Term, commercial general liability, and insurance coverage underwritten by an AM Best A- or higher rated insurance carrier. Such insurance shall be written on an occurrence basis, have policy limits of no less than one million dollars ($1,000,000) per occurrence for death or personal injury and two million dollars ($2,000,000) aggregate for real and personal property damage. Such policy shall name Buyer as an additional Insured and loss payee, provide a waiver of subrogation clause in favor of the additionally insured. All coverage provided by the Seller shall be primary. Seller shall endeavor to provide Buyer with at least 30-days’ notice of any cancelation or material changes in such policy. In addition, Seller shall maintain Workers’ Compensation insurance in the amounts required by law. Within ten (10) days following the Effective Date of this Agreement and upon any subsequent request by the Buyer, Seller will deliver to the Buyer a Certificate of Insurance verifying the foregoing insurance coverage.**16.0 Dispute Resolution:**The parties shall exercise their best efforts to resolve by good faith negotiation any and all disputes, controversies or differences arising out of or relating to this agreement. Except for breach of confidentiality, all disputes, controversies or differences between the parties that are not settled by good faith negotiation shall be decided in accordance with the Commercial Rules of American Arbitration Association and the judgment will be entered on the award. The arbitrator will be bound by the express terms of this Agreement, the site of arbitration will be in Denver, Colorado and the arbitrator(s) will be bound by the applicable law of the State of Colorado.**17.0 Compliance with Law:**Both parties shall comply with all applicable federal, state and local laws and regulations applicable to its service, rights and obligations under this agreement. Any fines or penalties from the breach of such law or regulation will be breaching parties sole responsibility.**18.0 Assignment:**Seller may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Buyer. Buyer may assign any of its rights or delegate any of its obligations to any Person. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement**19.0 Notices:**Any notice to be given under this Agreement must be in writing and delivered either in person, by any method of mail (postage prepaid) requiring return receipt, or by overnight courier to the party to be notified at its address(es) set forth in the first paragraph of this Agreement, or at any address such party has previously designated by prior written notice to the other. Copies of any notices to Seller shall be sent to: XXXX. Copies of any notices to Buyer shall be sent to: 6398 North Karcher Way, Aurora, CO 80019. Notice shall be presumptively deemed to be sufficiently given for all purposes upon the earlier of; (a) the date of actual receipt; (b) if mailed three (3) calendar days after the date of postmark; or (c) if delivered by overnight courier, the next business day the overnight courier regularly makes deliveries.**20.0 Miscellaneous:**Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.Neither Party shall be liable to the other Party for any default or delay in delivery from any cause beyond the Party's control and without its fault or negligence, including, but not limited to fire, explosion, flood, earthquake, war, riots, insurrection, civil disturbance, freight embargoes, transportation, public disorders, riots or unusually severe weather, accident, storm, interruption or delay in transportation, shortages or strikes due to labor disputes, acts of government or any act of God or any other cause of like kind which are beyond the control of a Party ("Force Majeure"). In the event of such delay, the delivery date shall be extended for a period equal to the length of the delay. A Force Majeure event does not excuse either party from making payments due under this Agreement.Force Majeure. Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, or acts of terrorism) (each, a "Force Majeure Event"). Seller's financial inability to perform, changes in cost or availability of materials, components or services, market conditions or supplier actions or contract disputes will not excuse performance by Seller under this Section. Seller shall give Buyer prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Seller shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement.Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction[; provided, however, that if any fundamental term or provision of this Agreement (including [FUNDAMENTAL TERMS]), is invalid, illegal, or unenforceable, the remainder of this Agreement shall be unenforceable]. [Upon a determination that any term or provision is invalid, illegal, or unenforceable, [the Parties shall negotiate in good faith to/the court may] modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible].Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.Choice of Law. This Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Colorado, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Colorado.**21.0 Entire Agreement:**This agreement constitutes the entire agreement between the parties and there are no verbal or collateral understandings, agreements, representations other than as expressly set for therein. |  |

|  |  |
| --- | --- |
|  |  |

**Signature: Signature:**

 \_\_\_\_\_ \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Karcher North America Seller**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date: Date:**

**APPENDIX A - Pricing and Lead Time**