

## BACKYARD ACCENTS, LLC TERMS OF SALE

### IMPORTANT INFORMATION ABOUT THESE TERMS AND CONDITIONS OF SALE

Terms and Agreement of Sale for Backyard Accents, LLC, (hereinafter "We", "Us", "Our") thank You for Your purchase of Our products and services. Upon signing by customer signature line on reverse side of this document, You hereby agree to the terms and conditions of this contracts Terms of Sale (hereinafter "Agreement") which, along with the consideration of the mutual promises You and We make to each other, then becomes a binding contract between You and Us.

**POLICIES:** The Terms and Conditions (Agreement) apply to the purchase of any and all products sold by, and/or manufactured by Backyard Accents, LLC. This includes showroom, home and garden shows, trade expos, marketplace, events, telephone and internet orders. By ordering the product/s, you accept and are bound to the terms and conditions of this agreement.

Our goal at Backyard Accents, LLC is to make Your purchasing experience easy and efficient. If You have any questions about Our purchase policies, please contact Us at sales@kokomogrills.com.

**DOCUMENTS:** This agreement may not be altered, supplemented or amended by the use of any other documents, unless agreed upon in writing and signed by both Backyard Accents, LLC and the customer on a separate agreement, which will result in additional cost and are subject to the fee paid by you (the customer).

**PAYMENT TERMS, ORDERS & QUOTES:** Payment terms are within Backyard Accents, LLC, sole discretion, and unless otherwise agreed upon by Backyard Accents, LLC, payment must be made at the time of purchase. Payment for Products may be made by Visa, MasterCard, Discover or American Express. Final payments may be made by either credit card or cashier's checks only. All orders will be required to place a 50% non-refundable deposit payment to start the production process. Backyard Accents, LLC is not responsible for pricing, typographical or other errors, in any offer, and Backyard Accents, LLC reserves the right to cancel any orders resulting from such errors. All sales and orders must be paid in full reflecting \$0 balance prior to shipping, delivery and/or installation. Any unpaid balance for order will result in delay of scheduling, shipping, delivery and/or installation of purchase.

**CREDIT CARDS:** We accept the following credit cards: Visa, MasterCard, Discover and American Express. There is not a surcharge for using your credit card to make purchases. Please be sure to provide your exact billing address and telephone number. Incorrect information may cause a delay in processing your order. Your credit card will be charged for 50% of the order total upon date of purchase. The final, remaining order balance will be charged prior to scheduling for shipment, delivery and/or installation date.

**SHIPPING, DELIVERY INSTALLATION TERMS:** Shipping and handling and/or delivery fees are an additional charge unless otherwise specifically noted at the time of the sale. All shipping and delivery fee charges are non-refundable. Backyard Accents, LLC offers three types of "SHIPPING" options; (1) Will Call at one of our shipping terminals, hub stations (which is the most cost-effective way to accept delivery). (2) A Commercial business address. All of our carriers are set up for business deliveries, providing you have either a loading dock or fork lift to remove the shipment from the truck. Our shipping companies will not unload your product for you. (3) Residential/Lift-Gate delivery to your home address is also an option. The shipping companies will deliver your shipment to your driveway only; they will not bring it into your home or move it to your desired location. This is the most expensive due to the fact that the carrier must arrange for a specific delivery date and time. We do not guarantee any shipping times; although we will do our best to get the product to you as quickly as possible, sometimes factors occur beyond our control and may affect shipping times. If for any reason you cannot accept delivery of your shipment, after the order has shipped or has been scheduled for delivery and/or installation, any and all re-delivery, installations, re-consignment and/or storage fees will be the consumer's responsibility. These fees can be costly, so please be sure you can accept delivery. All final payments must be made on your order prior to scheduling; if order is not paid in full, it will delay the delivery and/or installation. Orders are not processed or shipped on Saturday, Sunday or Holidays. We cannot guarantee an exact time frame of when an order will arrive or installed. Consider any shipping or installation time frame offered to you by Backyard Accents, LLC or other parties only as an estimate.

**FREE SHIPPING, DELIVERY INSTALLATION:** Free delivery installation or shipping only applies to orders confirmed by a Backyard Accents, LLC sales representative at the time of purchase. This offer is only valid on purchases that are specified as the above stated (option 1) shipping method that will be shipped to the local shipping terminal, hub station for customer pick-up. This offer is not valid on orders from Alaska, Hawaii or outside the U.S.

**DAMAGED MERCHANDISE:** Backyard Accents, LLC will carefully load and/or package your order, prior to shipping or delivery and although freight damage is rare, it can occasionally happen. Backyard Accents, LLC or its installers are not responsible for any unseen damages. The consumer, upon receiving possession of the Goods, shall have a reasonable opportunity to inspect the Goods to determine that all or a portion of the Goods are non-conforming, and must provide written notification on the contract or delivery installation receipt & must be signed by both parties. It is the consumer's responsibility to make sure that no damage has occurred, prior to signing for your delivery and/or installation. The consumer will have 24 hours from receipt of Goods to notify Backyard Accents, LLC, in writing. Failure to do so will hold Backyard Accents, LLC harmless of any claims. If excessive damage has occurred, the Goods should be refused at time of delivery or shipping attempt. We will send any parts required for documented freight damage. It is the consumer's responsibility to return any defective/damaged part(s) to Backyard Accents, LLC. In order to ensure the return of defective/damaged part(s), the consumer will be charged. Once the consumer signs for delivery Installation or shipment, the Goods become your property and any repairs or replacements requested beyond the stated time frame without written notification will be the consumer's responsibility.

**TILE/NATURAL STONE DISCLAIMER & WARRANTY:** Purchaser acknowledges that Natural stones vary in color, pattern and texture. The actual stone applied to the countertop delivered may differ from the sample shown. The purchaser acknowledges that additional stone order at a later date can be more costly and cannot be guaranteed to match the original stone. All countertops will be seamed or jointed as the tile allows. Backyard Accents, LLC is solely responsible for seam placement in countertops and back splashes. Fewer seams may require more material and expense. Some materials are porous in nature and while highly resistant to staining and scratching can be subject to both. Backyard Accents, LLC makes no warranties implied or expressed as to the stain resistance or imperviousness of the products to scratching or chipping. It is the purchaser's responsibility that all outdoor tiled countertops should be sealed. Normal wear and tear for the purposes intended will not cause scratches or staining. NOTE: Industrial environments are not considered "intended" applications, and because of the natural composition of stone as well as issues such as settling, we do not guarantee that the stone will not crack on the countertop. Purchaser acknowledges and releases Backyard Accents, LLC and installers from all liability of cracking or damage of material due to settling of the subsurface. Minor chipping of the material can occur during installation but is repairable on site. In the event chipping occurs, the extent of chipping and re-fabricating of any one piece is the sole discretion of Backyard Accents, LLC and must be done at the time of delivery & installation. Any warranty or repairs after product has been delivered must be agreed upon and require a service agreement signed by both, Backyard Accents, LLC and the Customer. Warranty and service agreements are subject to and will result in a service fee paid by the customer to Backyard Accents, LLC determined by upon location, type of service and labor involved required for the repair. The warranty and condition of sale is limited to normal wear and tear and does not cover damages resulting from misuse, abuse, prolonged exposure to liquid or oil, neglect, mishandling, unauthorized modification, structural failure, or damage that is considered an Act of God.

**PRODUCT SELECTION:** Backyard Accents, LLC reserves the right to add, change, or delete product selection at any time. All pricing is subject to change at any time, once an order has been processed, no price adjustments will be made. Backyard Accents, LLC is authorized by all its distributors to convert the fuel type of any product and Backyard Accents, LLC may substitute a specific model and convert the fuel type in order to fulfill the order, based on inventory needs.

While we take every precaution to insure all products and pricing are competitive. Prices and the availability of products and Our services are subject to change without notice. We reserve the right to revoke any offer and/or correct any error at any time. This includes after an order has been submitted and may include occurring after Your method of payment has been charged. Any disputes related to pricing will be resolved at Our sole and complete discretion.

**DELIVERY, INSTALLATION/OUT OF STOCK ITEMS:** We will ship/deliver your product as it has been built and as components become available. We will make every effort at delivering, installing and/or shipping your product within our normal 6-10 week production time frame. However, there may be times when the components you have ordered are out of stock or a special order item, which will delay in fulfilling your delivery. We will keep you informed of any products that you have ordered that are out of stock and unavailable for our normal shipment or delivery installation schedule. Order must be paid in full prior to scheduling of shipment, delivery and/or installation date

**ORDER ACCEPTANCE POLICY:** Your receipt of an electronic or other form of order confirmation does not signify our acceptance of your order, nor does it constitute confirmation of our offer to sell. Backyard Accents, LLC reserves the right at any time after receipt of your order to accept or decline your order for any reason or to supply less than the quantity you ordered of any item.

**CUSTOMER ACKNOWLEDGMENT:** These terms and conditions may be used by dealers who are owned and operated by third parties. All measurements, dimensions and orders must be provided to Backyard Accents, LLC before any manufacturing can begin. Any incorrect measurements or any delays cannot be overlooked, thus Backyard Accents, LLC will not be responsible or liable. Dealers/Customer acknowledges that we're not responsible for the operation of or content located on or through the authorized dealer

**TAXES:** Our store shall automatically charge and withhold applicable sales tax for orders to be delivered to addresses within the state of Arizona. Sales tax calculations are an estimate only. Your actual sales tax, if applicable, will be calculated and presented to You at the time of payment prior to product delivery.

For orders shipped to other states, you are solely responsible for all sales taxes or other taxes

**RETURN POLICY:** If you are unsatisfied with the components within your purchase and they are not considered a "special order", you may return the item(s) in original resalable condition, in the original unopened packaging, for a refund within 30 days of the original purchase date. You will be credited (less 30% re-stocking fee and all shipping charges incurred) upon arrival, and inspection of the item(s) at our warehouse. The shipping charges to return the item(s) to us will be the purchaser's responsibility. Please contact us for a return authorization prior to the return. Any "manufactured" orders, "floor models" and/or "Dent and Scratch" items are exempt from our Return policies as these are all final sales and items and are not returnable. All items authorized for return must be in salable condition. Merchandise must be in its original box. Merchandise must be unused. All merchandise not meeting the above criteria will be refused or returned to the consumer at the consumer's expense.

**CANCELLATIONS:** Once your order had been processed and sent to our production department for manufacturing, we are unable to accept any cancellations. If your order is a special order and has not been placed through a third party vendor, you may contact us at 1-877-882-2723 and "request" cancellation. Restrictions may apply for special order items.

**TYPOGRAPHICAL/THIRD PARTY ERRORS:** In the event a product is listed at an incorrect price due to written error, typographical error or error in pricing information received from our sales representatives, dealers and/or suppliers, Backyard Accents, LLC shall have the right to change, refuse or cancel any orders placed for product listed at the incorrect price. Backyard Accents, LLC shall have the right to refuse or cancel any such orders whether or not the order has been confirmed and your credit card charged. If your credit card has already been charged for the purchase and your order has been cancelled, Backyard Accents, LLC shall immediately issue a credit to your credit card account in the amount of the incorrect price.

**WARRANTY:** Backyard Accents, LLC shall in no event be liable for any incidental, special or consequential damages of any nature, even if the consumers had been advised of the possibility of such damages. All repairs of manufactured item(s) will result and is subject to a labor and service fee which shall be determined by Backyard Accents, LLC and paid for at the customers expense. Service repairs must be agreed upon in writing and signed by both Backyard Accents, LLC and the customer prior to the services performed. Backyard Accents, LLC is not a manufacturer of component Products installed in the outdoor kitchens, fireplaces, pits, tables sold or distributed by Backyard Accents, LLC and shall be limited to those expressly provided by the manufacturer of those Products. To the extent permitted by applicable law, Backyard Accents, LLC expressly disclaims any and all other warranties expressed or implied, and whether arising by operation of law, course of dealing to merchantability or fitness for particular purpose or non-infringement.

OUR PRODUCTS/SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOU EXPRESSLY AGREE THAT USE OF ANY PRODUCT/SERVICE OFFERED BY US IS AT YOUR SOLE RISK. WE DO NOT MAKE ANY WARRANTY THAT OUR PRODUCT/SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT ANY PRODUCT/SERVICE OFFERED BY US WILL BE UNINTERRUPTED TIMELY, SECURE, OR ERROR FREE, OR THAT DEFECTS, IF ANY, WILL BE CORRECTED; NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF ANY PRODUCT/SERVICE OFFERED BY US OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH ANY PRODUCT/SERVICE OFFERED BY US. YOU UNDERSTAND AND AGREE THAT ANY MATERIAL AND/OR COMPONENT OR OTHERWISE OBTAINED THROUGH THE USE OF ANY PRODUCT/SERVICE OFFERED BY US IS AT YOUR OWN DISCRETION AND RISK, AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR OUTDOOR KITCHEN OR OUTDOOR KITCHEN COMPONENTS THAT RESULTS FROM THE PURCHASE OF SUCH MATERIAL AND/COMPONENTS. WE DO NOT MAKE ANY WARRANTY REGARDING ANY GOODS OR PRODUCTS/SERVICES PURCHASED OR OBTAINED THROUGH US OR FROM ANY PRODUCT/SERVICE OFFERED BY US OR ANY TRANSACTIONS ENTERED INTO BY USE OF OR THROUGH ANY PRODUCT/SERVICE OFFERED BY US. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US, OR THROUGH ANY PRODUCT/SERVICE OFFERED BY US, SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. PRODUCT INFORMATION AND DESCRIPTIONS - WE ATTEMPT TO BE AS ACCURATE AS POSSIBLE. WE DO NOT WARRANT THAT PRODUCT DESCRIPTIONS, SPECIFICATIONS OR OTHER CONTENT OF THIS CONTRACT ERROR FREE, ACCURATE, COMPLETE, RELIABLE, OR CURRENT. IF A PRODUCT OFFERED OR SOLD BY US IS NOT AS DESCRIBED, YOUR SOLE REMEDY IS TO RETURN IT IN UNUSED CONDITION IN ACCORDANCE WITH OUR RETURN POLICY.

**LIMITATION OF LIABILITY:** Backyard Accents, LLC does not and shall not assume any liability whatsoever for use of, or defects which may be claimed in, any products sold or distributed by Backyard Accents, LLC. With regard to communication with Backyard Accents, LLC's staff, it is agreed and acknowledged that Backyard Accents, LLC staff does not and shall not assume any responsibility or liability whatsoever relating to the installation or use of any Products. The customer is advised to seek the assistance of a qualified licensed contractor or installer to ensure the proper selection and installation of any of the Products and compliance with local codes and ordinances. Backyard Accents, LLC expressly disclaims and shall not be liable for any claims or damage, injury, cost or expense suffered or incurred as a result of or otherwise caused by the installation or use of any of the Products.

LIMITATION OF LIABILITY UNDER NO CIRCUMSTANCES, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, SHALL WE OR OUR PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING BY THE INSTALLATION OR USE OR THE INABILITY TO USE ANY PRODUCT/SERVICE OFFERED BY US, OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND PRODUCTS/SERVICES, OR RESULTING FROM ANY GOODS OR PRODUCTS/SERVICES PURCHASED OR OBTAINED, OR MESSAGES RECEIVED, OR TRANSACTIONS ENTERED INTO BY MEANS OF OR THROUGH ANY PRODUCT/SERVICE OFFERED BY US, OR RESULTING FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR OUTDOOR KITCHEN, OUTDOOR KITCHEN COMPONENTS OR OTHER INFORMATION THAT IS SENT OR RECEIVED OR NOT SENT OR RECEIVED, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA, OR OTHER INTANGIBLES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ALSO AGREE THAT WE SHALL NOT BE RESPONSIBLE OR LIABLE TO YOU, OR TO ANYONE, FOR THE STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON OR ARISING FROM USE OF ANY PRODUCT/SERVICE OFFERED BY US. IF YOU ARE DISSATISFIED WITH ANY PRODUCT/SERVICE OFFERED BY US YOUR EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE PRODUCT/SERVICE WITHOUT REFUND OF ANY KIND WHATSOEVER.

**DISPUTE RESOLUTION/ARBITRATION:** The parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against Backyard Accents, LLC, it agents, employees, successors, assigns or affiliates arising out of or relating to this Agreement, Backyard Accents, LLC, Advertising, or any related purchase (a "Dispute") through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time after written notice from one party to the other that a Dispute exists, the Dispute will be settled by binding arbitration in accordance with the then current CPR Rules for Non-Administration. The arbitration hearing shall take place in Phoenix, Arizona and will be governed by the United States Federal Arbitration Act to the exclusion of any inconsistent state laws. Each party will bear its own cost of any legal representation, discovery, or research required to complete arbitration. The arbitrators shall render their award in writing and will include the findings of fact and conclusion of law upon which their award was based. Judgment upon the arbitration award may be entered in a court of competent jurisdiction. The existence or result of any negotiation, mediation or arbitration will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the under lying dispute will be resolved in accordance with this paragraph.

In the event of a dispute, You agree to attempt to resolve the dispute by contacting Us at customerservice@backyardaccents.net prior to taking any other action. Failure to contact Us to attempt a dispute resolution prior to taking any other action will result in a breach of this Agreement by You. Any resolution to Your dispute will be considered by Us in good faith and You agree to abide by Our decision. Should You seek a remedy in a court of law, it will be Your responsibility to pay Our legal fees. In addition, You hereby waive any right to a trial by jury in the event of any controversy or claim relating to this Agreement. This Agreement and Your use of Our Products are governed by the laws of the State of Arizona, and the Maricopa County Court of Superior of the State of Arizona will have exclusive jurisdiction over any and all disputes arising out of, relating to, or concerning this Agreement or any other controversy between You and Us. In addition to the foregoing, in the event of any breach or violation of this Agreement, We shall be entitled to enforce all of Our legal remedies for the breach or wrongful activity including, but not limited to, seeking actual damages, the maximum amount of statutory damages under applicable statutes and Acts, profits, treble damages, and attorneys' fees and costs. These remedies and damages are in addition to the monetary payments described above and/or any amounts otherwise due under this Agreement.

**PRIVACY POLICY:** Our Privacy Policy is located on our website and is hereby incorporated into this Agreement by reference. Please review the Privacy Policy to understand Our policies.

**INDEMNIFICATION:** You hereby warrant that You will not use the information provided by Us in violation of any State or Federal law. Further, You agree to indemnify, defend, and hold Us harmless, as well as holding harmless Our parents, subsidiaries, affiliates, officers, directors, employees, agents, and suppliers, and their respective affiliates, officers, directors, employees, and agents, from any claim, action, demand, or damage, including reasonable attorney's fees, made by any third party or governmental agency arising out of or related to Your use of any service offered by Us or Your violation of this Agreement, including without limitation, claims or suits for libel, violation of rights of privacy or publicity, interference with property rights, trespass, violations of Federal or State Law, patent infringement or plagiarism. We may, at Our sole discretion, assume the exclusive defense and control of any matter subject to indemnification by You. The assumption of such defense or control by Us, however, shall not excuse any of Your indemnity obligations.

**FORCE MAJEURE:** Neither party shall be liable for delays or nonperformance of this Agreement caused by strike, fire or accidents, nor shall either party be liable for delay or nonperformance caused by lack of availability of materials, fuel or utilities or for any other cause beyond its control.

**ASSIGNMENT:** You may not assign Your rights or obligations under this Agreement without Our prior written consent.

**INTENDED FOR USERS OVER 18:** Our products/services are available and may only be used by, individuals who are 18 years and older who can form legally binding contracts under applicable law. You represent and warrant that You are at least 18 years old and that all documented ordering information You submit is accurate and truthful.

**SEVERABILITY:** If any provision, or portion thereof, of this Agreement is held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, the parties agree that such invalidity shall not affect the validity of the remaining portions of the Agreement and further agree to substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provisions.

**HEADINGS:** The headings of this Agreement are for convenience only and shall not be used to construe the meaning of this Agreement.

**AGREEMENT UPDATES:** This Agreement is effective as of September 23, 2017. We reserve the right to revise this policy from time to time without prior notice. You will be notified of any material changes in Our Terms of Sale either by email or by a conspicuous posting on Our Web site.

**GOVERNING LAW:** THESE TERMS AND CONDITIONS OF SALE AND ANY FURTHER SALES WILL BE GOVERNED BY THE LAWS OF THE STATE OF ARIZONA, WITHOUT REGARD TO CONFLICTS OF LAWS RULES.

**OTHER CONDITIONS:** These conditions will supersede any terms and/or conditions you include with any contract/purchase order, regardless of whether Backyard Accents, LLC signs them or not. We reserve the right to make changes to this contract and these conditions at any time.