

## MICHIANA TURF & IRRIGATION, LLC TERMS AND CONDITIONS OF SALE

**1. General Terms and Applicability.** All sales by Michiana Turf & Irrigation, LLC (the “Company”) are governed by and subject to these Terms and Conditions of Sale (these “Terms”), as may be amended from time to time by the Company. These Terms form a binding agreement (the “Agreement”) between the original purchaser (“Customer”) and the Company for the sale of goods and services (the “Services”). This Agreement incorporates all additional terms and conditions stated in quotations, invoices, purchase orders and other documentation furnished by the Company to Customer (“Additional Terms”). These Terms govern in the event of any conflict or inconsistency with any Additional Terms. There are no other terms of agreement. The Company rejects any terms or conditions contained in Customer’s purchase order or other documents that are additional to or in conflict or inconsistent with this Agreement, and any such terms or conditions shall be without force or effect. Customer’s execution of the purchase order issued by Company, or Customer’s full or partial payment for Services, will constitute Customer’s acceptance of these terms and conditions. This Agreement cannot be modified or amended except by a subsequent written instrument executed by the parties which expressly supersedes the provisions of this Agreement.

**2. Orders.** All orders for Services sold by the Company must be in the form of a purchase order. All purchase orders are subject to final acceptance by the Company. Following acceptance by the Company, purchase orders may not be changed or canceled without the prior written approval of the Company. Customer may request changes to or cancellation of a purchase order by submitting a written request to the Company. Customer shall reimburse the Company for all expenses and losses resulting from any change or cancellation. In the event of any suspension of payment or the institution of any proceedings by the Company against Customer, or the initiation of voluntary or involuntary proceedings in bankruptcy or insolvency proceedings, or proceedings under any provisions of the United States Bankruptcy Code in which Customer is a debtor, or for the appointment of a receiver or a trustee or an assignee for the benefit of creditors, the Company shall be entitled to cancel the order or any subsequently entered into agreement forthwith, without liability to Customer for loss of anticipated profits or otherwise.

**3. Prices.** The prices for Services are those as specifically quoted by the Company in the purchase order (the “Price”). Company will deliver Customer an invoice following Company’s performance of Services set forth in the purchase order. Customer agrees to pay all applicable taxes and charges in connection with the provision of Services. Prices may be subject to adjustment in accordance with Section 4 below.

**4. Payment Terms; Discounts.** In the event Customer prepays in full for Services to be provided by Company in a calendar year (as explicitly set forth in the purchase order) (the “Prepaid Services”), the price shall be discounted by ten percent (10 %) of the Price (the “Discount Price”). Customer shall pay the Discount Price within fifteen (15) days of acceptance of the purchase order for the Prepaid Services. In the event Customer elects not to purchase Prepaid Services, full payment for Services to be provided in connection with the purchase order is due within fifteen (15) days of Customer’s receipt of the invoice for Services performed by Company. All payments shall be made in U.S. Dollars. Payments not fully made within fifteen (15) days of acceptance of a purchase order for Prepaid Services, or within fifteen (15) days of receipt of invoice for Services, are deemed overdue, and unpaid balances will accrue interest at the rate of 18% per annum or at the highest rate permitted by law, if lower. The Company will be entitled to suspend performance of any order or obligation to Customer until Customer’s account is current. Customer will reimburse the Company for all expenses, including reasonable attorney and legal fees, incurred to collect any delinquent account, enforce its rights under this Agreement, or pursue any lawsuit, arbitration, or other proceeding related to this Agreement.

**5. Performance of Services.** Customer shall provide Company with all relevant information for the provision of the Services, including without limitation, a map of the real property (including the total area of the real property in square feet) where Company is to perform the Services (the “Premises”), which shall be set forth on the purchase order. In no event shall Company be required to provide the Services outside of the Premises, unless the Company agrees in writing to perform the Services outside of the Premises. Customer shall provide Company with access to the Premises for purposes of performing the Services.

**6. Scope of Services.** Customer hereby acknowledges and agrees that the Services are not intended to protect the Premises from disease or surface feeding insects. In addition, Customer hereby acknowledges and agrees that Company shall not be liable, nor deemed to have defaulted under these Terms, for any failure or delay in providing the Services when and to the extent such failure or delay is caused by, or results from, any acts beyond Company’s control, including without limitation: Customer’s application of products not included in the Services to the Premises; incorrect maintenance of the Premises by the

Customer following the performance of all or any part of the Services; acts of God; flood; fire; government order, law or action; or other similar events beyond the control of Company.

**7. Limitation on Liability.** THE COMPANY PROVIDES AND CUSTOMER ACCEPTS ALL GOODS “AS IS” WITH ALL FAULTS AND ASSUMES THE RISK OF LOSS FOR ANY DEFECT OR NONCONFORMITY. THE COMPANY DISCLAIMS ALL WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. THE COMPANY SHALL HAVE NO LIABILITY TO CUSTOMER OR ANYONE ELSE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION PERSONAL INJURY, DEATH, PROPERTY DAMAGE, LOST PROFITS, LABOR COSTS, OR ANY OTHER PECUNIARY DAMAGE, WHETHER DUE TO ANY DEFECT IN THE GOODS OR SERVICES, BREACH OF THIS AGREEMENT, DELAY, NON-DELIVERY, NON-PERFORMANCE, RECALL, OR ANY OTHER REASON. ALL CLAIMS IN TORT, STRICT LIABILITY, AND FAILURE OF ESSENTIAL PURPOSE ARE WAIVED, RELEASED, AND EXCLUDED, INCLUDING CLAIMS OF THE COMPANY’S NEGLIGENCE. CUSTOMER WAIVES, RELIEVES AND RELEASES THE COMPANY FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, AND LIABILITY FOR ANY REDHIBITORY, PATENT, OR LATENT VICES OR DEFECTS IN THE GOODS. UNDER NO CIRCUMSTANCES SHALL THE COMPANY’S LIABILITY, IF ANY, WHETHER BASED ON CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY, EXCEED THE PURCHASE PRICE OF THE GOODS. THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT, AND CUSTOMER SHALL PASS THESE TERMS AND LIMITATIONS TO SUBSEQUENT BUYERS AND USERS OF THE GOODS. **CUSTOMER ACKNOWLEDGES THAT THESE LIMITATIONS AND WAIVERS HAVE BEEN BROUGHT TO ITS ATTENTION, THAT CUSTOMER HAS READ AND UNDERSTANDS ALL TERMS AND AGREES TO BE SO BOUND, AND THAT CUSTOMER’S RECEIPT OF THE AGREEMENT AND GOODS, AND ANY PAYMENT FOR THESE, SIGNIFIES THAT CUSTOMER HAS VOLUNTARILY AND KNOWINGLY CONSENTED TO ALL TERMS, INCLUDING THESE WAIVERS AND LIMITATIONS.**

**8. Indemnification.** Customer shall defend, indemnify and hold harmless the Company and its subsidiaries, affiliates, successors or assigns and each of their respective managers, officers, members and employees (collectively, “Indemnitees”) against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, “Losses”) arising out of or occurring in connection with Customer’s negligence, willful misconduct or breach of these Terms. The Company shall not be responsible for any Losses sustained by Customer or any other person, and Customer waives all such claims, arising out of or resulting from the improper installation or misapplication of the Services, or from any defect or alleged defect in the design, manufacture, instructions, warnings or labeling of any of the goods supplied in connection with the Services, unless such Losses are a direct result of Company’s willful misconduct. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

**9. Waiver.** No waiver by the Company of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by the Company. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**10. Assignment.** Customer shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of the Company. Any purported assignment or delegation in violation of this provision shall be null and void. No assignment or delegation shall relieve the Company of any of its obligations hereunder. The Company may at any time assign or transfer any or all of its rights or obligations under this Agreement without Customer’s prior written consent to any affiliate or to any person acquiring all or substantially all of the Company’s assets.

**11. Governing Law and Venue.** This Agreement shall be governed by, and interpreted according to, Indiana law. Any legal action or proceeding with respect to this Agreement may be brought only in the state or federal courts located in St. Joseph County, Indiana. Customer hereby irrevocably consents that such courts shall have personal jurisdiction over Customer and waives any objection that the court is an inconvenient forum.