



Bayer's Plumbing, Inc.

GENERAL TERMS AND CONDITIONS

(Revised 02/2024)

1. GENERAL PROVISIONS. These General Terms and Conditions, together with the proposal, estimate, and/or scope of work, and all attachments thereto ("Proposal"), provided to you ("Customer") by Bayer's Plumbing, Inc. ("Bayer's"), incorporated herein by reference, form the complete agreement between the parties (collectively, "Agreement"). By signing a Proposal Customer acknowledges that Customer has read this Agreement, understands it, and agrees to be bound by its terms and conditions. IN THE CASE OF A CONFLICT BETWEEN THIS AGREEMENT AND ANY OTHER DOCUMENTATION SUPPLIED BY CUSTOMER TO BAYER'S, THE CONTENTS, TERMS AND CONDITIONS OF THIS AGREEMENT SHALL PREVAIL. THIS PROVISION, AND EACH AND EVERY OTHER PROVISION HEREIN, MAY NOT UNDER ANY CIRCUMSTANCES BE MODIFIED, CHANGED, AMENDED OR WAIVED VERBALLY, BUT MAY ONLY BE MODIFIED, CHANGED, AMENDED OR WAIVED BY A WRITTEN AGREEMENT EXECUTED BY ALL PARTIES HERETO. Neither party shall be bound by any statements or representations not contained in this Agreement. Unless otherwise agreed in writing by Bayer's, Customer is responsible for obtaining all licenses and permits and for paying all applicable taxes and fees unless otherwise agreed to in writing. Where the Proposal is not executed by Customer, payment by Customer or acceptance by Customer of the materials, supplies, products, goods, systems, fixtures, and/or equipment (individually a "Product" and collectively, "Products") and labor and services (individually, "Service" and collectively, "Services") ("Product", "Products", "Service" and "Services" collectively, "Products and Services") set forth on the Proposal shall constitute acceptance of the terms and conditions of this Agreement.

2. VALIDITY PERIOD. The price quote(s) provided in the Proposal are valid for thirty (30) days unless otherwise specified in writing by Bayer's.

3. PAYMENT TERMS. Payment terms are as set forth in the Proposal. Customer's failure to make payment when due is a material breach of this Agreement. In the event payment is not received according to terms, Bayer's may, at its discretion, assess interest at the maximum rate allowed by law or at the rate of 1.5% per month, whichever is greater. Customer also agrees to pay all costs and expenses incurred by Bayer's in pursuit of payment which is past due, or otherwise in enforcing the terms of this Agreement, including, but not limited to, court costs and attorneys' fees.

4. CHANGES. Customer acknowledges that the Products and Services may be subject to alterations or deviations from the Proposal due to unforeseen circumstances or conditions; alternatively, Customer may request changes to the Products and Services (as applicable, each a "Change"). Bayer's may document a Change by email, text, or other written method (each a "Change Order") and Customer agrees that such documentation shall be deemed to be a writing signed by Customer and constitute a Change Order. Customer agrees that due to the nature of the Products and Services, Changes requested by Customer are subject to Bayer's approval and may not be reduced to writing. Notwithstanding anything herein to the contrary, Customer's failure to provide written objection within one (1) calendar day to any Change not memorialized in writing, which objection must be delivered to Bayer's at its business address, shall constitute Customer's acceptance of such Change. All such accepted Changes and Change Orders shall be deemed incorporated herein as part of this Agreement. At Bayer's election, payment for a Change shall be made by Customer prior to such Change being performed, and in all events within seven (7) days after a claim for payment is submitted to Customer. Customer acknowledges that a Change may impact the Proposal's anticipated completion date, and that such revised completion date shall control.

5. CANCELLATION. Any permitted cancellation must be made in writing and delivered to Bayer's at its business address. Recognizing that Bayer's damages arising from cancellation will be difficult to estimate or determine, the following charges shall be construed as liquidated damages representing an approximation of the administrative cancellation fee: if, prior to performance or shipment of any Products and Services Customer cancels this Agreement or any portion thereof, for any reason not attributable to Bayer's, Customer agrees to pay Bayer's an amount equal to twenty percent (20%) of the price of the Products and Services canceled. If Customer cancels after shipment, Customer agrees to pay the above twenty percent (20%) of the price of the Products and Services canceled, return the Products already shipped, and to pay Bayer's an additional amount equal to twenty percent (20%) of the value of the Products and Services. If any additional Products and Services have been provided prior to such cancellation, Customer agrees to pay one hundred percent (100%) of the Products and Services so provided. Notwithstanding this Section, the foregoing does not authorize or otherwise permit Customer to cancel the Agreement except as required by law.

6. INSURANCE; SUBROGATION. Customer understands and agrees that Bayer's is not an insurer and that it is Customer's obligation to obtain and maintain any insurance covering any losses to property or personal injury or any other damage which may occur at the premises where the Products and

Services are delivered, assembled, installed, used, or performed. Customer agrees to look exclusively to Customer's insurer to recover for injuries or damage in the event of any loss or injury; that the amounts payable to Bayer's hereunder are based upon the value of the Products and Services and the scope of liability set forth herein; and that Bayer's is not guaranteeing that no loss will occur. Customer does hereby, for itself and all others claiming for it under this Agreement, release and discharge Bayer's from and against all hazards covered by Customer's insurance, it being expressly agreed and understood that no insurance company, insurer, or any other third party will have any right of subrogation against Bayer's.

7. SECURITY INTEREST; LIENS. Customer grants to Bayer's, and Bayer's retains, a security interest in all Products and Services provided pursuant to this Agreement until the Customer shall have made full payment for said Products and Services. Such interest is intended to be effective as a purchase money security interest. Customer agrees that Bayer's may file this Agreement as a financing statement. In the event of failure to make payment on the due date in accordance with terms designated, the entire balance shall become due and payable at once. In case of default of payment, and to the extent permitted by law, Bayer's shall have the right to take possession of the Products immediately, wherever it may be found, and remove it with or without process of law and may retain all money paid hereunder. Customer agrees to pay Bayer's costs of collection, including without limitation reasonable attorneys' fees and legal expenses, and that the same are secured by the security interest granted herein. Customer shall not sell, prior to payment (except in the ordinary course of business), mortgage, pledge, or lease said Products without prior written permission of Bayer's. Customer acknowledges that Bayer's shall maintain all mechanic's lien rights under applicable law.

8. LIMITATION OF WARRANTY; WARRANTY DISCLAIMER. SUBJECT TO THE LIMITATIONS BELOW, BAYER'S WARRANTS THAT THE PRODUCTS AND SERVICES SHALL BE AS SPECIFIED, WITH ALL SERVICES TO BE COMPLETED IN A WORKMANLIKE MANNER ACCORDING TO APPLICABLE BUILDING CODES AND STANDARD PRACTICES IN THE COUNTY WHERE THE PRODUCTS AND SERVICES ARE PROVIDED; PROVIDED, HOWEVER, THAT BAYER'S SOLE LIABILITY, AND CUSTOMER'S SOLE REMEDY, UNDER SAID WARRANTY, SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCTS AND SERVICES OR PORTION THEREOF, WHICH BAYER'S DETERMINES TO BE DEFECTIVE, AT BAYER'S SOLE DISCRETION AND SUBJECT TO THE AVAILABILITY OF SERVICE PERSONNEL AND PRODUCTS, AS DETERMINED BY BAYER'S, WHERE BAYER'S PROVIDES PRODUCTS WHICH ARE PART OF ANY THIRD-PARTY OR MANUFACTURER WARRANTY, BAYER'S WILL WARRANT SUCH PRODUCTS ONLY TO THE EXTENT WARRANTED BY SUCH THIRD PARTY AND THIS WARRANTY IS EXPRESSLY LIMITED TO SUCH THIRD-PARTY WARRANTY. EXCEPT AS EXPRESSLY SET FORTH HEREIN, BAYER'S DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF WORKMANSHIP, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PERFORMED OR THE PRODUCTS SUPPLIED, IF ANY, PROVIDED HEREUNDER. BAYER'S IS ALSO NOT LIABLE FOR NOTIFYING CUSTOMER OF RECALLS ON ANY PRODUCTS. THIS WARRANTY DOES NOT APPLY TO ANY PRODUCTS WHICH HAVE BEEN SUBJECT TO NEGLIGENCE, ABUSE, MISHANDLING, OR IMPROPER USE AS DETERMINED BY BAYER'S, OR ANY DAMAGE EXACERBATED BY CUSTOMER'S FAILURE TO INSPECT, MAINTAIN OR NOTIFY BAYER'S IN A TIMELY MANNER OF A DEFECT OF ANY PRODUCT OR SERVICE. UNLESS THE PRODUCTS OR SERVICES PROVIDED BY BAYER'S ARE SUBJECT TO A THIRD PARTY WARRANTY PERIOD, THE WARRANTY PROVIDED HEREIN SHALL EXPIRE NINETY (90) DAYS FROM THE DATE SUCH PRODUCTS AND SERVICES ARE PROVIDED. Warranty service will be performed between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of Bayer's holidays, unless otherwise agreed by Bayer's. Certain warranty services provided by Bayer's will be charged at Bayer's regular rates in effect at the time the service is provided. Warranty service requested to be performed at times other than during Bayer's normal work hours shall be chargeable at Bayer's standard overtime rates. All repairs or adjustments that are or may become necessary under the warranty provisions of this Agreement shall be performed only by an authorized representative of Bayer's. Any repairs, adjustments, or interconnections performed by Customer or anyone other than an authorized Bayer's representative shall void all warranties and Bayer's shall have no liability to Customer for the cost or expense thereof.

9. LIMITATION OF LIABILITY; LIQUIDATED DAMAGES. CUSTOMER AGREES THAT BAYER'S SHALL NOT BE LIABLE FOR ANY EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, TREBLE OR LIQUIDATED DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ECONOMIC LOSS DAMAGES OR LOSS OF PROFITS OF ANY KIND,

DAMAGES ARISING FROM CUSTOMER OR USER OF THE PRODUCTS, THE OPERATION OR FAILURE OF ANY PRODUCTS TO OPERATE, THIS AGREEMENT, OR THE INSTALLATION, USE, DESIGN OR FUNCTION OF ANY THIRD PARTY MATERIALS, SUPPLIES, PRODUCTS, GOODS, SYSTEMS, FIXTURES, AND/OR EQUIPMENT. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, CUSTOMER AGREES THAT BAYER'S LIABILITY FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED TWO TIMES (2X) PURCHASE PRICE PAID FOR THE PRODUCTS AND SERVICES. SUCH SUM SHALL BE CUSTOMER'S SOLE, COMPLETE AND EXCLUSIVE REMEDY AND SHALL BE PAID AND RECEIVED AS LIQUIDATED DAMAGES OR A LIMITATION OF LIABILITY AMOUNT AGREED ON BY THE PARTIES AND NOT AS A PENALTY. IN NO CIRCUMSTANCES WILL BAYER'S BE HELD LIABLE FOR ANY CLAIMS, LOSSES, DAMAGES OR INJURIES ARISING FROM OR CAUSED BY THE CUSTOMER'S OR ANY OTHER PARTY'S MATERIALS, SUPPLIES, PRODUCTS, GOODS, SYSTEMS, FIXTURES, EQUIPMENT, ACTIONS, OR OMISSIONS. If Customer desires Bayer's to assume greater liability, the parties shall amend this Agreement by entering into a written addendum, signed by both Customer and the President of Bayer's, setting forth the additional liability and additional amount payable by Customer for the assumption by Bayer's of such greater liability, provided however, such addendum shall in no way be interpreted to hold Bayer's as an insurer.

10. UNKNOWN CONDITIONS; ENVIRONMENTAL MATTERS. Conditions may exist that Bayer's could not reasonably anticipate at the time the Proposal was submitted to Customer or before providing the Products and Services. If such unexpected conditions exist, Bayer's will give Customer notice (verbally, by text, email or written instrument) and Customer shall pay for all costs and expenses to remedy the unexpected conditions. Homes built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust can pose health hazards. Lead exposure is especially harmful to children and pregnant women. Customer has represented they have no knowledge of Hazardous Substances (defined below) or latent defects affecting their property. Bayer's is not responsible to inspect, discover, abate, mitigate, remedy, or remove latent defects, lead, mold or other hazardous wastes or materials, environmental pollutants, or other health hazards (collectively "**Hazardous Substances**") and is not responsible for any damages or losses resulting from Hazardous Substances or latent defects. CUSTOMER RELEASES, INDEMNIFIES AND HOLDS BAYER'S, ITS EMPLOYEES, AGENTS, AND REPRESENTATIVES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS (DEFINED BELOW) BASED UPON, RELATING TO OR ARISING FROM HAZARDOUS SUBSTANCES AND/OR LATENT DEFECTS.

11. INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND Bayer's FROM ANY AND ALL CLAIMS, DEMANDS, SUBROGATION CLAIMS BY CUSTOMER'S INSURERS, CAUSES OF ACTION, FINES, CONTROVERSIES, LIABILITIES, REGULATORY ACTIONS, SEIZURES OF EQUIPMENT OR SYSTEMS, LOSSES, DAMAGES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO ATTORNEYS' FEES AND EXPERT WITNESS AND LITIGATION EXPENSES AND COSTS) (HEREINAFTER COLLECTIVELY "**CLAIMS**"), ARISING FROM OR IN CONNECTION WITH ANY INJURY, DEATH, PROPERTY DAMAGE OR ANY OTHER CLAIM, WHETHER BASED UPON CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, RELATING TO THIS AGREEMENT, THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES, THE GOODS, PRODUCTS, EQUIPMENT, SYSTEMS, COMPONENT PARTS, AND/OR SERVICES PROVIDED HEREUNDER, CUSTOMER'S USE, MODIFICATION, OR ALTERATION OF THE GOODS, PRODUCTS, EQUIPMENT, SYSTEMS OR COMPONENT PARTS, CUSTOMER'S FAILURE TO MAINTAIN THE SYSTEMS, PRODUCTS, GOODS AND/OR EQUIPMENT OR KEEP SUCH IN OPERATIVE CONDITION OR CUSTOMER'S BREACH OF THIS AGREEMENT. Bayer's RESERVES THE RIGHT TO SELECT COUNSEL TO REPRESENT IT IN ANY SUCH ACTION. IN NO EVENT SHALL BAYER'S BE LIABLE FOR ANY DAMAGE, LOSS, INJURY, OR ANY OTHER CLAIM ARISING FROM ANY ALTERATIONS, MODIFICATIONS, CHANGES, OR MOVEMENTS OF THE PRODUCT, SYSTEM OR SERVICES BY CUSTOMER OR ANY THIRD PARTY. THE INDEMNITY PROVISIONS CONTAINED IN THIS AGREEMENT SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE AGREEMENT AND SHALL APPLY REGARDLESS OF WHETHER OR NOT SEPARATE, SEVERAL, JOINT, OR CONCURRENT LIABILITY MAY BE IMPOSED ON Bayer's AND WHETHER OR NOT THE SAME IS CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF Bayer's, OR WHETHER OR NOT IT IS ALLEGED THAT BAYER'S IN ANY WAY CONTRIBUTED TO THE CLAIMS OR IS LIABLE DUE TO A NON-DELEGABLE DUTY. NOTWITHSTANDING THE FOREGOING, THIS INDEMNITY PROVISION DOES NOT PURPORT TO INDEMNIFY BAYER'S FOR ITS OWN SOLE NEGLIGENCE TO THE EXTENT SUCH INDEMNIFICATION IS CONTRARY TO LAW. CUSTOMER, FOR ITSELF AND ITS INSURERS, EXPRESSLY WAIVES ANY AND ALL LIMITATIONS OR LIABILITY CAPS, IF ANY, ON CUSTOMER'S INDEMNITY TO BAYER'S ARISING FROM ANY APPLICABLE WORKERS COMPENSATION OR DISABILITY ACTS IN THE EVENT OF THE

PERSONAL INJURY OR DEATH OF CUSTOMER'S EMPLOYEES, REPRESENTATIVES OR SERVANTS.

12. ONE-YEAR LIMITATION OF ACTIONS; LEGAL FEES. To the fullest extent permitted by law, it is agreed that no suit or cause of action or other proceeding shall be brought against Bayer's more than one (1) year after the date the Products and Services were delivered and/or performed, whether known or unknown when the claim arises or whether based on tort, contract, or any other legal theory. Bayer's shall be entitled to recover from Customer all reasonable attorneys' fees, court costs and expenses incurred in connection with Bayer's enforcing the terms and conditions of this Agreement.

13. FORCE MAJEURE. Bayer's shall not be liable for any loss or damage of any kind resulting from delay, inability to deliver, or install, or to perform any other work under this Agreement on account of fire, flood, labor problems, supply chain delays, pandemics, epidemics, access to premises, accidents, acts of civil or military authorities, acts of God, or from any other causes beyond Bayer's control.

14. DISPUTE RESOLUTION. Except for non-payment by Customer of any Bayer's invoice which may be brought in Vanderburgh County, Indiana superior or circuit court, any and all disputes, complaints, controversies, claims, grievances and questions directly or indirectly arising under, out of, in connection with, or in any manner related to this instrument or the relationship of the parties hereunder shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Evansville, Indiana before one (1) arbitrator who shall be a licensed attorney with extensive experience in construction law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Indiana (not including the choice of law rules thereof). The party who does not prevail in such arbitration shall pay all the prevailing party's reasonable attorneys' fees, experts' fees, costs and expenses incurred by such prevailing party in resolving said matter. As used herein the term 'prevailing party' shall include, but not be limited to, a person who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement, or judgment. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving two or more parties. Either party may apply to any court of competent jurisdiction for injunctive relief or other interim measures in aid of the arbitration proceedings, or to enforce the arbitration award, but not otherwise. Any such application to the court shall not be deemed incompatible or a waiver of this section. The arbitrator shall be required to make written findings of fact and conclusions of law to support their award. By acceptance of this Agreement, the parties consent to the jurisdiction of the American Arbitration Association and waive any objection which either party may have to any proceeding so commenced based on improper venue or *forum non conveniens*. Notwithstanding anything herein to the contrary, Bayer's shall be entitled to apply to a court in of competent jurisdiction in Evansville, Indiana to collect amounts due from Customer pursuant to this Agreement, including past due service fees, costs of collection and attorneys' fees.

15. DEFAULT. Customer shall be in default of this Agreement upon the occurrence of including but not limited to, any of the following: (a) Customer's failure to make due and punctual payment of any payment due pursuant to this Agreement; (b) Customer's failure to perform any obligation under this Agreement; (c) An order, judgment or decree entered, with or without the approval or consent of Bayer's, by any court of competent jurisdiction, approving a petition seeking reorganization of Customer or appointing a receiver, trustee, or liquidator (or other officer having power, under applicable law, similar to those of a receiver, trustee, or liquidator) of Customer or of all or a major portion of its assets, and such order, judgment, or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days; (d) Customer fails to provide Bayer's with adequate assurances of due performance under this Agreement, after receiving a written request for same from Bayer's; (e) Customer's financial position materially deteriorates; or (f) Customer shall cease to do business as a going concern.

16. SEVERABILITY. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement will continue to be valid as to the other provisions and the remainder of the affected provision. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that this Agreement may be signed by electronic transmission in portable document format or facsimile transmission and shall be deemed to be original signatures.

17. CONFLICT; REVISIONS. In the event of conflict between these Terms and Conditions and the Proposal, the Proposal shall control as to such conflicting terms. Bayer's may modify these Terms and Conditions at any time, in its sole discretion and without formal notice to Customer, such modified Terms and Conditions to be posted on its website.