

**MORGAN COMPOSTING, INC.**  
**SALES TERMS AND CONDITIONS**

1. **Applicability.** These terms and conditions of sale (these “**Terms**”) apply to the sale of all goods (“**Goods**”) by Morgan Composting, Inc. (“**Seller**”) to the buyer named on Seller’s Purchase Order Confirmation (“**Buyer**”). These Terms also apply to the services provided to Buyer as described in Seller’s Purchase Order Confirmation (“**Services**”). Services may include, but are not limited to, the delivery of Goods, spreading of product for Buyer, soil testing, and soil consulting. If a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, then the terms and conditions of that contract shall prevail to the extent they are inconsistent with these Terms. If Buyer has executed a Commercial Application for Credit with Morgan Composting, Inc., then that credit application and the Terms and Conditions of Credit incorporated in it (the “**Credit Application**”) are incorporated by reference. Seller’s Purchase Order Confirmation, these Terms, and/or the Credit Application (collectively, the “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms. For the avoidance of doubt, Seller will not be bound by any additional or different terms or conditions contained in any purchase order, correspondence, or other documents or records referencing any order or transaction (and this shall constitute Seller’s objection to any such terms and conditions under Section 2-207(2)(c) of the Michigan Uniform Commercial Code). Any such additional or different terms or conditions shall be deemed mere surplusage and shall not alter these Terms. Pursuant to Section 2-2201(2) of the Michigan Uniform Commercial Code, Buyer must object in writing to the contents of any Purchase Order Confirmation provided by Seller within 10 days after it is received. Buyer’s failure to object will be deemed to be an acceptance of all terms thereof, including but not limited to these Terms. Without limiting the foregoing, submission of Buyer’s order to Seller, through any available method, Buyer’s acceptance of Goods in whole or in part, or other asset by Buyer to these Terms and this Agreement shall constitute Buyer’s agreement to and acceptance of these Terms and this Agreement, including without limitation provisions limiting warranties and liability of Seller, Buyer’s assumption of risk, and all other terms of this Agreement.
2. **Delivery of Goods.** All delivery dates and performance dates are approximate only. Seller shall not be liable for any delays, loss or damage in transit. Unless otherwise specified in Seller’s Purchase Order Confirmation, delivery shall be FOB Seller’s designated point of shipment. Seller will make the Goods available for shipment at the Seller’s Facility using Seller’s standard methods for packaging and shipping such Goods. Buyer shall be responsible for all loading costs. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the quantity or units of Goods shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order. Seller shall use reasonable efforts to meet any performance or delivery dates specified in the Purchase Order Confirmation, but any such dates shall be estimates only. Any additional amounts payable to the shipping carrier, including, but not limited to, charges for demurrage, detention, redelivery, unloading, sorting, stop-off, excess freight, switching or other charges, will be Buyer’s responsibility and Buyer shall reimburse Seller for such amounts upon receipt of proper documentation. Buyer undertakes to take delivery of the Goods at the agreed date and at the agreed upon quantity and price during the terms of this Agreement and agrees to indemnify the Seller against any costs or losses incurred by the Seller as a result of any failure to do so. In such circumstances, the Seller may terminate the Agreement, without liability, and sell the Goods and charge the Buyer for any shortfall below the Agreement price. Seller shall have no liability for any loss or damage arising as a result of Buyer’s breach of its obligations in these Terms.
3. **Non-Delivery.** The quantity of any installment of Goods as recorded by Seller on shipment at the point of shipment is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Goods (even if caused by Seller’s negligence) unless Buyer gives written notice to Seller of the non-delivery within seven days of the date when the Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Goods shall be limited to delivering the shortfall in Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. Buyer shall not have the right to reject partial shipments. Buyer acknowledges and agrees that the remedies set forth in this Section 3 are Buyer’s exclusive remedies for the non-delivery or partial delivery of Goods.
4. **Title.** Each order that has been accepted by Seller pursuant to these Terms shall be an “**Individual Transaction.**” Title to Goods ordered under any Individual Transaction passes to Buyer upon payment by Buyer for the Individual Transaction in full.
5. **Risk of Loss.** Risk of loss to all Goods ordered under any order passes to Buyer upon Seller’s tender of such Goods to the carrier for delivery.
6. **Price.** As orders are placed by Buyer, and accepted by Seller in a written confirmation (“**Purchase Order Confirmation**”), Seller will sell Goods to Buyer, and Buyer agrees to pay for the Goods, at the prices stated in Seller’s Purchase Order Confirmation. These Terms do not obligate Seller to accept any additional or future orders. All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by

Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets. Seller reserves the right to change the pricing on any Individual Transaction in its own discretion to (1) correct errors or omissions, (2) reflect an alteration to the Goods requested by the Buyer, or (3) reflect any increase in the costs of completing the Individual Transaction including, but not limited to, increases in the cost of production, delivery charges, and insurance, or (4) for any other unforeseen event beyond Seller's control.

7. **Payment Terms.** Seller shall issue an invoice for each Individual Transaction. Unless otherwise noted in the invoice or Purchase Order Confirmation, Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of such invoice or Purchase Order Confirmation, except for any amounts disputed by Buyer's in good faith pursuant to Section 10 below. Buyer shall make all payments in U.S. dollars by check or wire transfer.
8. **Late Payments.** Buyer shall pay a time-price differential on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall also reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.
9. **Purchase Money Security Interest.** Buyer hereby grants Seller a security interest in all Goods purchased hereunder (including Goods, Nonconforming Goods and Excess Goods) and the proceeds therefrom to secure Buyer's payment obligations under this Agreement. Buyer acknowledges that the security interest granted under this Section is a purchase money security interest under Michigan law and also constitutes a purchase money security interest under applicable personal property security acts. Seller may file a financing statement for such security interest and Buyer shall execute any such statements or other documentation necessary to perfect Seller's security interest in such Goods. Buyer hereby waives receipt of such statements and any amendments thereto under applicable legislation. In the event Buyer does not execute such documents within a reasonable time, Buyer hereby grants Seller an irrevocable special power of attorney to execute such documents in Buyer's name. Seller is hereby authorized to file financing statements with respect to such lien. Buyer agrees and acknowledges that, in an event of default under the Agreement, Seller may seek all remedies available to a secured party under the Michigan Uniform Commercial Code or other applicable law, including, without limitation, by retaining the collateral in satisfaction of Buyer's payment obligations or selling the collateral at a public or private sale. If the collateral is insufficient to satisfy the Buyer's payment obligations, Buyer is liable for any deficiency.
10. **Unsatisfactory Credit Status.** If Seller determines in its sole discretion that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Seller's other rights, Seller may without liability or penalty take any of the following actions: (a) accelerate all amounts owed by Buyer to Seller under this Agreement and any Individual Transaction; (b) on seven day's prior written notice, modify the payment terms specified in Section 7 above for outstanding and future Individual Transactions, including requiring Buyer to pay cash in advance; (c) cancel any previously accepted orders; (d) delay any further shipment of Goods; (e) on seven day's prior written notice, terminate this Agreement; or (f) any combination of the above. No actions taken by Seller under this Section 9 (nor any failure of Seller to act under this Section) constitute a waiver by Seller of any of its rights to enforce Buyer's obligations under this Agreement including, but not limited to, the obligation of Buyer to make payments as required under this Agreement.
11. **Invoice Disputes.** Buyer shall notify Seller in writing of any dispute with any invoice (along with a reasonably detailed description of the dispute) within seven days from the date of such invoice. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of disputes, and shall pay all undisputed amounts due under such invoices within the period set forth in Section 7 above. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, Buyer's obligation to pay all due and undisputed invoice amounts.
12. **Limited Warranties for Goods.** **SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY (i) WARRANTY OF MERCHANTABILITY; OR (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. THE REMEDIES SET FORTH IN THESE TERMS SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE TERMS SET FORTH HEREIN.**
13. **Inspection and Remedies for Nonconforming Goods.** For purposes of these Terms, "Nonconforming Goods" means the following: (i) Goods shipped that are different than identified in Buyer's Purchase Order; or (ii) Goods bearing a label or packaging that incorrectly identifies its contents. Buyer shall inspect the Goods within seven days of receipt ("Inspection Period") of the Goods and either accept or, if such Goods are Nonconforming Goods, reject such Goods. Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall determine, in its sole discretion, whether the Goods are Nonconforming Goods. If Seller determines that the Goods are

Nonconforming Goods, it shall, in its sole discretion: (i) replace such Nonconforming Goods with conforming Goods, or (ii) refund the Price for such Nonconforming Goods together with all shipping and handling expenses incurred by Buyer in connection therewith. If Seller exercises its option to replace Nonconforming Goods, Seller shall pay reasonable shipping costs to return the Nonconforming Goods to Seller. After receiving Buyer's shipment of Nonconforming Goods, Seller shall, at Seller's expense, send the replacement Goods to the delivery location.

**BUYER ACKNOWLEDGES AND AGREES THAT THIS SECTION SETS FORTH THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH UNDER THESE TERMS.**

**14. Returning Good and/or Acceptable Product. BUYER MAY RETURN GOODS PURCHASED TO SELLER, UPON APPROVAL BY SELLER AND SUBJECT TO A 20% RESTOCKING FEE.**

**15. Representation and Warranty for Services.**

a. Seller represents and warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualification and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. Any testing completed as part of the Services is for information purposes only and is only a single reading of the soil. Buyer understands that soil chemistry is subject to change. Buyer also understands and agrees that the purpose of soil testing is merely informational in nature and is used as a tool to determine the propose Goods to purchase for and individual Buyer.

b. The Seller shall not be liable for breach of the warranty set forth above unless Buyer gives written notice of defective Services, reasonably described, to Seller within seven days of the time when Buyer discovers or should have discovered the Services were defective. The Seller shall not be liable for any inaccurate or false certifications provided to it by a third party. Seller shall only guarantee the certification that Seller has obtained for its products. Such certification may include a third party's organic certification for purchased materials that is used to fulfill an Individual Transaction or is sold directly to a Buyer.

c. If Buyer timely notifies Seller of any defective Services, Seller shall determine, in its sole discretion, whether the Services are defective. If Seller determines the Services are defective, it shall, in its sole discretion: (i) correct the defective Services, or (ii) refund the Buyer for the cost of the defective Services.

**16. Limitation of Liability.**

**IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER. THE LIABILITY LIMITATION SET FORTH IN THIS SECTION SHALL NOT APPLY TO LIABILITY RESULTING FROM SELLER'S FRAUD OR WILLFUL MISCONDUCT.**

Neither party will be liable for any failure or delay in performance with respect to an Individual Transaction which results, directly or indirectly, in whole or in part, from any cause or circumstance beyond the control of Seller, including, without limitation: fires; floods; strikes; riots; explosions; conditions not reasonably anticipated; unavoidable casualties; unavailability of labor, materials, goods or services; failure of electric power or of public utilities; equipment malfunctions; acts of God or of the public enemy; court orders; acts, orders or regulations of any governmental agency; or pandemic/endemic. Seller will perform any obligation that is delayed under this force majeure provision as soon as possible without additional charge, and will refund any fees for any Individual Transaction that is not provided as a result of a force majeure event.

**17. Buyer Indemnification.** Subject to the terms and conditions of this Agreement, Buyer shall indemnify, defend and hold harmless Seller and its members, 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 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 (collectively, "**Losses**"), arising from or relating to: (i) Buyer's handling, storage, marketing, or distribution of the Goods; (ii) the use of the Goods by Buyer or its employees, agents, contractors, successors, assigns, or customers, including without limitation, as an ingredient or component of any other item or otherwise, in their respective manufacturing, production, labeling, marketing or distribution processes and the subsequent marketing and/or sale of products which used or contained the Goods into the retail or wholesale marketing or distribution channels; (iii) any negligent or more culpable act or omission of Buyer or its personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement; (iv) any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent acts or omissions of Buyer or its personnel; (v) any packaging, formulas, or labeling supplied by or obtained at the direction of Buyer; (vi) any allegation that the Goods or the use thereof by Buyer or its employees, agents, contractors, successors, assigns, or customers infringes any

intellectual property right of a third party; or (vii) any failure of Buyer to comply with any applicable laws. Notwithstanding the foregoing, Buyer is not obligated to indemnify or defend Indemnified Party against any claim (direct or indirect) to the extent such claim or corresponding Losses arise out of or result from Indemnified Party's or its personnel's gross negligence or more culpable act or omission (including recklessness or willful misconduct), or bad faith failure to materially comply with any of its material obligations set forth in this Agreement.

18. **Intellectual Property.** At all times, Seller will retain its rights and title to all intellectual property rights for all products and service currently produced, manufactured, marketed licensed, sold or distributed by Seller to a party and all products and services currently under development that a party intends to make commercially available. Such intellectual property rights includes the tangible title, rights and interest of any kind in the intellectual property, including without limitation those that may be evidence by, embodied in, or associated with registered intellectual property (i.e. patents, patent application, trademark and service mark registrations and application, copyright applications and registrations, and domain name and domain name registrations.) The only method of transferring these intellectual property rights shall be through a mutually agreed upon transfer of ownership agreement between the Seller and a buyer.
19. **Compliance With Laws.** Buyer shall at all times comply with all Laws applicable to this Agreement, Buyer's performance of its obligations hereunder and Buyer's use or sale of the Goods. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use of the Goods, and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use or otherwise, that violates any Law.
20. **Seller's Right to Terminate.** Seller may terminate any and all Agreements between Buyer and Seller upon written notice to Buyer: (a) if Buyer fails to pay any amount when due under this Agreement ("**Payment Failure**") and such failure continues for 14 days after Buyer's receipt of written notice of nonpayment; (b) if within any 12 month period, two or more Payment Failures occur; (c) if Buyer breaches any provision of this Agreement or any Individual Transaction (other than a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Buyer within 14 days after Buyer's receipt of written notice of such breach; (d) if any action by the Buyer causes the Seller to reasonable deem the Seller to be insecure; or (e) if Buyer (i) becomes insolvent or is generally unable to pay its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
21. **Effect of Termination.** The termination of this Agreement will not affect any rights or obligations of the parties that come into effect upon or after expiration or termination of this Agreement. Any notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Goods to Buyer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Goods had been accepted by Seller. With respect to any Goods that are still in transit upon termination of this Agreement, Seller may require, in its sole and absolute discretion, all sales and deliveries of such Goods be made on either a cash-only or certified check basis.
22. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. 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.
23. **Further Assurances.** Upon Seller's reasonable request, Buyer shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.
24. **Entire Agreement.** This Agreement, including all mutually agreed upon related exhibits, schedules, attachments and appendices, special product blend documents, together with the Terms, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
25. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other party at its address set forth on the order, Purchase Order Confirmation, or scale ticket, as applicable. Notice may also be given by facsimile or email (with confirmation of transmission).
26. **Solvency.** Buyer warrants that Buyer is from the date of this Agreement, solvent within the meaning of the Michigan Uniform Commercial Code, MCLA 440.1101, et seq.
27. **Choice of Law.** This Agreement, including all Individual Transaction documents and 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 Michigan, United States of America, without regard to its conflict of laws provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

28. **Dispute Resolution.** The parties shall attempt to resolve any disputes through good faith business negotiations. In the event negotiations fail to result in an acceptable outcome, either party may bring litigation in the proper venue, as discussed below.
29. **Venue.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be brought in the state courts in Osceola County, Michigan, or in the federal courts in the Western District of Michigan, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
30. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
31. **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.
32. **Relationship.** The relationship between the parties is that of independent contractors. 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.
33. **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.
34. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Remedies and Limitation of Liability, Confidential Information, Compliance with Laws, Governing Law, Venue, Survival, and Statute of Limitations.
35. **Statute of Limitations.** Notwithstanding any right under any applicable statute of limitations to bring a claim, no legal suit, action or proceeding based upon or arising in any way out of this Agreement may be brought by either party more than 12 months after the date of Seller's Confirmation, and the parties waive the right to file any such action after such period; provided, however, that the foregoing waiver and limitation do not apply to the collection of any amounts due to Seller or to claims arising from Buyer's disclosure of Seller's Confidential Information.
36. **Amendment.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized officer of each party.