

# Pro-Turf Indiana, LLC Terms and Conditions

**IMPORTANT NOTICE: THIS AGREEMENT CONTAINS IMPORTANT PROVISIONS REGARDING THE REMEDIES AVAILABLE TO CUSTOMER IN THE EVENT OF A DISPUTE BETWEEN CUSTOMER AND PRO-TURF INDIANA, LLC. PLEASE REFER TO THE SECTION ENTITLED “CLASS ACTION WAIVER.”**

**CUSTOMER ACKNOWLEDGMENT.** Customer hereby acknowledges that: 1) Customer is 18 years of age or older and has authority to enter into an agreement for lawn care, landscaping, and / or snow services; 2) that Customer has read and fully understands these terms and conditions; and 3) that these terms and conditions shall be deemed a binding part of Customer’s agreement with Pro-Turf Indiana, LLC for lawn care, landscaping, and / or snow services contracted through the Pro-Turf Indiana, LLC website, or by telephone, email, and / or any other method. Customer acknowledges that these terms and conditions are a material inducement for Pro-Turf Indiana, LLC to enter into an agreement with Customer. Lawn care and landscaping treatments must be applied in compliance with product label requirements. Accordingly, Customer agrees to follow instructions regarding product label requirements that are left with Customer following a lawn care and / or landscaping treatment, including, but not necessarily limited to, watering in the treatment.

**OUR GUARANTEE.** If we perform a service that doesn’t meet your satisfaction, we will fix it. If you still aren’t completely satisfied, we will pay a competitor of your choosing to complete the service.

**CONTINUOUS SERVICE.** To optimize the effectiveness of the services provided, Customer’s plan shall continue from year to year without any action on Customer’s part. This includes any services purchased initially or added at a later time. Remember, Customer’s plan will continue unless Customer contacts Pro-Turf Indiana, LLC at 765-480-0595 to cancel. Customer or Pro-Turf Indiana, LLC may cancel service at any time, subject to Customer’s obligation to pay for all contracted services as provided herein. All pre-paid amounts shall be NON-REFUNDABLE and any remaining account balance for pre-pay Customers who terminate their annual plan early (prior to completion of all scheduled plan applications) shall remain the property of Pro-Turf Indiana, LLC. Pro-Turf Indiana, LLC reserves the right, in its sole discretion, to implement annual price increases due to inflation, cost of goods and services, or other economic factors.

**COST OF SERVICES/BILLING.** Except as otherwise set forth herein, billing for each lawn application (and applicable fuel, handling, processing, or other economic surcharges) will occur after service is rendered with payment due upon receipt of invoice. All new Customers are required to enroll in Pro-Turf Indiana, LLC Auto-Pay program or prepay for their annual lawn care service plan. The cost of services in a Customer’s plan may vary. Current year discounts may not apply in subsequent years. Any credits or discounts offered by Pro-Turf Indiana, LLC shall only be applied to future Pro-Turf Indiana, LLC services and are not redeemable by Customer for cash.

**AUTO-PAY AGREEMENT.** Customer’s enrollment in the Pro-Turf Indiana, LLC Auto-Pay option constitutes Customer’s agreement to the following terms and provisions which shall be deemed a binding part of Customer’s agreement to receive and pay for services provided by Pro-Turf Indiana, LLC. Please read these provisions carefully and contact Pro-Turf Indiana, LLC immediately in the event that you wish to cancel your Auto-Pay Enrollment.

- Customer agrees to pay for all services provided and authorizes Pro-Turf Indiana, LLC to initiate electronic payment transactions from the credit card account that Customer has

provided to Pro-Turf Indiana, LLC. Customer's consent applies to all invoices issued by Pro-Turf Indiana, LLC for all services provided at any time, including invoices for services that automatically renew each year. All payments will be automatically withdrawn from Customers specified credit card account on the date Pro-Turf Indiana, LLC issues an invoice for services unless Customer terminates the above authorization in the manner described herein.

- Customer understands and agrees that Pro-Turf Indiana, LLC shall automatically charge Customer's credit card account, as applicable, for the total amount due on Customer's account. The charge or debit shall be initiated by Pro-Turf Indiana, LLC as required without further notice to Customer. PRO-TURF INDIANA, LLC SHALL BEAR NO LIABILITY OR RESPONSIBILITY FOR ANY LOSSES OF ANY KIND THAT CUSTOMER MAY INCUR AS A RESULT OF A PAYMENT MADE ON ITEMS INCORRECTLY BILLED OR FOR ANY DELAY IN THE ACTUAL DATE ON WHICH CUSTOMER'S ACCOUNT IS DEBITED OR CUSTOMER'S CREDIT CARD IS CHARGED.
- To cancel your Auto-Pay Enrollment, Customer must call Pro-Turf Indiana, LLC at 765-480-0595. Customer agrees that Pro-Turf Indiana, LLC may contact Customer via telephone, text, or email and further agrees to promptly notify Pro-Turf Indiana, LLC of any changes or updates to Customer's credit card information.
- Customer agrees to promptly notify Pro-Turf Indiana, LLC in the event of any billing errors so that Pro-Turf Indiana, LLC can correct any such errors. If Customer's payment is rejected, refused, returned, disputed, or reversed by Customer's financial institution or card issuer for any reason, Pro-Turf Indiana, LLC shall have the right to immediately terminate its contractual relationship with Customer.
- Pro-Turf Indiana, LLC reserves the right to terminate Customer's Auto-Pay enrollment at any time.
- Customer is responsible to verify whether or not any additional charges will be applied by Customer's credit card issuer and agrees to be bound by any rules that Customer's financial institution requires for pre-authorized credit card transactions. Customer is responsible for all fees charged by your financial institution associated with this pre-authorized payment option.
- Pro-Turf Indiana, LLC reserves the right to revise the terms of Auto-Pay Enrollment from time to time and will provide notice of any such changes by posting revisions on the Pro-Turf Indiana, LLC website which shall be deemed effective at the time of posting. If Customer does not agree with any such revisions, Customer must terminate the Auto-Pay Enrollment immediately. Customer's continued use of the Auto-Pay Enrollment constitutes Customer's agreement with these terms and conditions, as amended.

**CHECK PROCESSING POLICY ACH.** Payment by check constitutes Customer's authorization to either use information from Customer's check to make a one-time electronic fund transfer from Customer's account or to process the payment as a check transaction. If we use information from Customer's check to make an electronic fund transfer, funds may be withdrawn from Customer's account as soon as the same day we receive payment and Customer will not receive a copy of the check back from Customer's financial institution. If any check, draft, credit card, or EFT transfer payable to Pro-Turf Indiana, LLC is not honored, Pro-Turf Indiana, LLC will assess a \$25.00 fee for each such item (in addition to all other rights and remedies for the unpaid balance).

**LATE FEES.** A service charge of 5.00% per month shall be added to the unpaid balance of all accounts not paid within 30 days of being past due. If payment is not made, you agree to be responsible for and reimburse Pro-Turf Indiana, LLC for all costs of collection, including any court fees and attorney's fees incurred for the collection of your account.

**NON-PAYMENT/DEFAULT.** The obligation of Pro-Turf Indiana, LLC hereunder is conditioned upon payment in full of all service charges and failure to pay such charges shall cancel this agreement in its entirety and discharge Pro-Turf Indiana, LLC of any liability. All amounts paid shall be deemed the property of Pro-Turf Indiana, LLC.

**ACCESS TO PROPERTY.** Customer authorizes Pro-Turf Indiana, LLC to access Customer's property on days and times of Pro-Turf Indiana, LLC choosing to provide the services requested. Pro-Turf Indiana, LLC may further move personal property on the grounds as may be reasonably needed to perform its services.

**CONTACT INFORMATION.** By providing your phone number to Pro-Turf Indiana, LLC, Customer expressly consents for Pro-Turf Indiana, LLC, along with its agents and affiliates, to contact Customer by telephone, including through the possible use of an automatic telephone dialing system or other automated technology, text and pre-recorded message, with marketing messages, offers and other information regarding Pro-Turf Indiana, LLC products and services. Customer expressly consents to be contacted through such means at the telephone numbers (including wireless numbers) that Customer provides to Pro-Turf Indiana, LLC. Customer represents and warrants that any mobile or wireless telephone number provided belongs to Customer and is associated with Customer's account for a mobile device in Customer's possession. Customer agrees to notify Pro-Turf Indiana, LLC immediately if Customer's mobile or wireless telephone number changes and further agrees to indemnify and hold Pro-Turf Indiana, LLC harmless for all claims, damages, and liabilities resulting from Customer's failure to do so. Consent is not a requirement of purchase. Should Customer have any questions about which addresses, telephone numbers or email addresses Customer provided to Pro-Turf Indiana, LLC or should Customer wish to stop receiving calls from Pro-Turf Indiana, LLC please review your account information or call Pro-Turf Indiana, LLC at 765-480-0595.

**BINDING EFFECT.** This document constitutes a valid binding agreement between Customer and Pro-Turf Indiana, LLC. The rights and obligations created hereunder are binding upon Customer and Pro-Turf Indiana, LLC. Pro-Turf Indiana, LLC may assign any of its rights and obligations to another company. No other person shall acquire or have any rights under or by virtue of these Terms & Conditions.

**MODIFICATIONS.** Pro-Turf Indiana, LLC reserves the right to revise these terms and conditions from time to time with or without notice to Customer. In the event of a conflict between or among previously published terms and conditions, the latest terms and conditions published on this Pro-Turf Indiana, LLC, website shall be controlling. Customer acknowledges and agrees that Customer's continued use of Pro-Turf Indiana, LLC services constitutes Customer's acknowledgement and agreement to be bound by all terms and conditions, including all revisions. Customer should visit this website periodically to review updated terms and conditions.

**WAIVER / SEVERABILITY.** Pro-Turf Indiana, LLC failure to enforce any of these Terms or Conditions shall not be deemed a waiver of Pro-Turf Indiana, LLC rights. If a court finds a provision in this Agreement to be invalid, Customer and Pro-Turf Indiana, LLC agree that such court should incorporate a similar provision that would be considered valid, with all other provisions remaining valid and enforceable.

**SURVIVAL.** The terms and provisions contained herein that by their nature and content are intended to survive the performance of Pro-Turf Indiana, LLC obligations shall so survive the completion of the performance, expiration and termination of this Agreement.

**NOTICE OF CLAIM AND OPPORTUNITY TO CURE.** Customer acknowledges that Pro-Turf Indiana, LLC is a lawn maintenance company that provides lawn maintenance, landscaping, and snow services and that Pro-Turf Indiana, LLC is not a home improvement contractor and / or a real property improvement supplier. Pro-Turf Indiana, LLC applies all lawn care products per the manufacturer label. Before any claim can be asserted by Customer against Pro-Turf Indiana, LLC arising from any alleged breach of its service agreement, or asserting damage or injury to person or property arising from any act or omission on the part of Pro-Turf Indiana, LLC or its agents, employees, or representatives, Customer must provide timely written notice to

Pro-Turf Indiana, LLC identifying and documenting the damage or injury alleged and the acts or omissions that are the basis of Customer's claim. The written Notice of Claim must be presented by Customer to Pro-Turf Indiana, LLC within 60 days of the date of the alleged act or omission that caused damage, regardless of the date upon which the damage was first observed. Pro-Turf Indiana, LLC will have 60 days following its receipt of Customer's Notice of Claim to investigate Customer's claim and to correct any deficiency or repair any damage that Pro-Turf Indiana, LLC determines to have been its responsibility. Customer agrees to provide Pro-Turf Indiana, LLC reasonable access and a reasonable opportunity to observe, test, document, and investigate Customer's damage claims, and to effect remedial measures. The failure of Customer to submit a timely written Notice of Claim constitutes an irrevocable acceptance by Customer of the sufficiency of Pro-Turf Indiana, LLC performance of its contractual obligations. Customer waives and releases all claims for damage or injury allegedly arising from any act or omission on the part of Pro-Turf Indiana, LLC or its agents, employees, or representatives that are not asserted in a timely served Notice of Claim.

**TIME LIMIT FOR FILING CUSTOMER CLAIMS.** Notwithstanding the provisions of any other statutes of limitations, Customer agrees that all claims by Customer against Pro-Turf Indiana, LLC are barred if such claims are not initiated within one year of the last date of service provided by Pro-Turf Indiana, LLC to Customer, or the date of the act or omission upon which such claim is based, whichever comes first. A claim is "initiated" when Pro-Turf Indiana, LLC receives a written demand for arbitration of such claim. If the arbitration provisions of this contract are determined inapplicable or unenforceable to such claim, the claim is not "initiated" until Pro-Turf Indiana, LLC receives service of a Summons and Complaint.

**MANDATORY ARBITRATION.** Customer and Pro-Turf Indiana, LLC agree that all claims by Customer against Pro-Turf Indiana, LLC which in any way relate to this agreement, or to the lawn care, landscaping, and / or snow services provided to Customer by Pro-Turf Indiana, LLC, will be resolved by mandatory binding arbitration. This arbitration requirement applies to all claims, regardless of the legal theory under which such claim is brought, including claims sounding in agreement, tort, strict liability, fraud, or based on statute. The arbitration shall be conducted in Howard County Indiana under the Commercial Arbitration Rules of the American Arbitration Association.

**LIMITATION OF LIABILITY.** In no event shall Pro-Turf Indiana, LLC be liable to Customer, and Customer expressly waives and agrees to make no claim for, intangible, consequential, incidental, or indirect damages, including, by way of example, loss of use of property, lost profits, loss of business, damage to reputation, business interruption, or emotional or mental injury. In no event shall Pro-Turf Indiana, LLC be liable to Customer, and Customer expressly waives and agrees to make no claim for exemplary or punitive damages, or for statutory minimum damages or treble damages or costs or attorney fees. In any claim for damage to Customer's lawn, plants or landscaping, Pro-Turf Indiana, LLC liability is limited to, and shall not exceed, the amount Customer paid for the lawn care, landscaping, and / or snow service alleged to have caused the damages claimed by Customer.

**GOVERNING LAW / VENUE.** If the arbitration provisions of this contract are determined to be inapplicable or unenforceable as to any claim of Customer against Pro-Turf Indiana, LLC, any litigation between Customer and Pro-Turf Indiana, LLC shall be governed by Indiana law and resolved exclusively in the courts located in Howard County Indiana. Customer agrees to personal jurisdiction and venue in Howard County Indiana. Customer expressly waives any right to a trial by jury in any litigation against Pro-Turf Indiana, LLC.

**ATTORNEYS FEES.** If litigation or arbitration is initiated against Pro-Turf Indiana, LLC by Customer in violation of the terms of this Agreement, or if Pro-Turf Indiana, LLC initiates litigation or arbitration against Customer to enforce Pro-Turf Indiana, LLC rights under the terms

of this agreement, Customer agrees to pay Pro-Turf Indiana, LLC litigation / arbitration costs, including attorney fees, incurred in successfully enforcing the terms of this Agreement.

**CLASS ACTION WAIVER.** TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER EXPRESSLY WAIVES ANY AND ALL RIGHTS TO MAKE A CLAIM FOR DAMAGES AS A CLASS MEMBER IN ANY CLASS ACTION OR AS PART OF A PLAINTIFF GROUP. CUSTOMER AND PRO-TURF INDIANA, LLC AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN THEIR INDIVIDUAL CAPACITY AND NOT AS A MEMBER OF ANY CLASS OR AS PART OF A CLASS OR REPRESENTATIVE ACTION. CUSTOMER WILL NOT CONSENT TO THE CONSOLIDATION OF HIS OR HER CLAIMS WITH THE CLAIMS OF ANY OTHER CUSTOMER OR GROUP OF CUSTOMERS WITHOUT THE EXPRESS WRITTEN CONSENT OF PRO-TURF INDIANA, LLC.

## **SNOW SERVICES AGREEMENT**

This agreement for Snow Removal and Ice Melt services between "Client" and Pro-Turf Indiana, LLC (hereafter referred to as "Contractor") is made and entered into upon the following date of the signed estimate.

The Client hereby has contracted with Contractor to perform the services set out in the attached estimate.

**SCOPE OF SERVICES.** Contractor shall perform these services for Client, automatically and without need for any request, (the "Services"): Salt and Plow all drive lanes, fire lanes, sidewalks (if agreed upon) and parking areas on the subject property upon start of snow or ice accumulation once at least one (1) inch of snow or ice has accumulated. Client shall ensure Contractor has access and contact information for Client twenty-four (24) hours a day / seven (7) days per week. ALL SIDEWALKS SHALL BE SPECIFICALLY EXCLUDED FROM THIS AGREEMENT UNLESS SUCH SERVICES HAVE BEEN ELECTED BY CLIENT AND INCLUDED IN ESTIMATE DESCRIPTION.

**PAYMENT OF SERVICES RENDERED:** must be paid within thirty (30) days of the invoice date. After (60) days of the invoice date, a late fee of 5% will be applied to the invoice and services will be paused. After (90) days of the invoice date, the invoice will be sent to collections. Client agrees to compensate Contractor as follows:

1" to 4" of SNOW / ICE: QUOTED RATE IN ESTIMATE

4.1" to 8" of SNOW / ICE: 1.5 TIMES QUOTED RATE IN ESTIMATE

8.1" and up of SNOW / ICE: 2.0 TIMES QUOTED RATE IN ESTIMATE

**PERFORMANCE.** Contractor shall perform all services diligently and in a safe and timely manner which does not unduly interfere with the operation of the property or any businesses therein. Contractor shall obtain and maintain, at its expense and at all times during the term of this agreement, all necessary licenses, permits, training or other authorizations which may be necessary to perform the Services. Contractor shall be considered an independent contractor and shall not be considered an employee of Client. Contractor shall be liable for the payment of its employees' wages, benefits and all taxes with respect thereto, and Contractor shall comply with all applicable federal, state and local laws, regulations, codes, rules and ordinances with respect to (a) the hiring, employment, compensation, health and safety of employees and (b) the environment. Contractor agrees that Client shall not be liable for any loss of or damage to Contractor's materials or equipment located on the Property.

**LIABILITY.** The Client waives any and all claims against Contractor for damages or injuries to any person on, or about, the subject property from any cause arising at any time during Contractor's services. The Client shall indemnify and hold Contractor harmless against any

claim arising from Contractor's services or any claim arising from the alleged failure of Contractor or the Client to keep the demised property safe and accessible. The Client agrees to indemnify and hold Contractor harmless from any claims, losses, damages and expenses, including reasonable attorney fees, of any nature, whether for personal injury, property damage, or any other damage, or costs, arising out of the Contractor's services including any liability arising out of injury to the Client or its invitees, guests, employees, contractors or agents.

**INSURANCE.** Throughout the term of this agreement, Contractor shall maintain appropriate liability and casualty insurance.

**DEFAULT AND REMEDIES.** If Client fails to pay any invoice within thirty (30) days of receipt, then Contractor may elect to utilize any remedy available under Indiana law and Client shall be responsible for all costs of collection including, but not limited to, reasonable attorney fees. Client agrees to submit to Howard County, Indiana as proper venue for any legal action.

**TERMINATION.** Either party shall have the right, in its sole discretion, to terminate this Agreement upon seven (7) day written notice to the other party. If not termination is made, in writing, then this Agreement shall renew continuously each year hereafter.

November 2022