

## Terms and Conditions

**CONTROLLING PROVISIONS** – This document, including any provisions on the face hereof (the “Contract”) constitutes an offer by the Company to provide the products described herein (the “Products”) to the buyer to which this offer is addressed (the “Buyer”). If this document is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained herein. Buyer's acceptance of this offer is limited to the terms, covenants and conditions contained in this offer. The Company hereby objects to and rejects any additional, different or varying terms proposed by Buyer, unless the Company expressly agrees to such terms in writing. Such proposal of additional, different or varying terms by Buyer shall not operate as a rejection of the Company's offer unless such variances are in the terms of the description, quantity, price or place or date of delivery of the Products, and the Company's offer shall be deemed accepted without such additional, different or varying terms. **THIS CONTRACT CONSTITUTES THE FINAL EXPRESSION OF THE TERMS BETWEEN SELLER AND BUYER REGARDING THE PRODUCTS AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS MADE IN WRITING AND SIGNED BY SELLER AND BUYER.** The Company's sales representatives are without authority to change the terms of this Contract. Buyer shall be deemed to have made an unqualified acceptance of this offer and these terms and conditions on the earliest of the following to occur: (1) the Company's receipt of a copy of this Contract signed by Buyer; (2) Buyer's payment of any amounts due under this Contract; (3) Buyer's delivery to the Company of any material to be furnished by Buyer; (4) the Company's delivery of the Products; (5) failure by Buyer to notify the Company to the contrary within one business day of placing the order; or (6) any other event constituting acceptance under applicable law. It is the express wish of the parties that this Contract and any related documents be drafted in English. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachent soient rédigés en anglais.

**PRICES** – Prices quoted herein are subject to change without notice and all orders that are accepted are subject to prices prevailing at time of order entry.

**TERMS OF PAYMENT** – Unless stipulated by the Company elsewhere, net payment is due 60 days from invoice date. A 1-1/2% cash discount will be allowed on invoices paid on or before 50 days from invoice date. Cash discounts must be calculated on the total amount of the invoice, before transportation charges and any applicable taxes. A 1-1/2% per month service charge will be added to all past due invoices. Annual rate of 18% or the maximum amount allowable by law. Buyer agrees to reimburse the Company for all costs and fees incurred by the Company in collecting any sums owed by Buyer to the Company including, without limitation, attorneys' fees and repossession fees. Buyer shall not set off any claims against amounts due to the Company.

**TAX NOTICE** – Buyer shall pay or reimburse the Company on demand for all taxes, fees and costs including, but not limited to, any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value added tax, duty, customs agent or broker fees, inspection or testing fee, freight costs, insurance, consular fees or any other tax, fee or charge of any nature whatsoever, including interest, imposed on, in connection with or measured by any transaction between the Company and Buyer, in addition to the prices quoted or invoiced.

**CREDIT APPROVAL** – All orders are subject to credit approval by the Company's Credit Department prior to acceptance of the order. At the Company's option, orders may be refused, the Company's obligations may be terminated, amounts may be declared immediately due and payable, credit terms may be changed, delivery may be withheld and/or shipments stopped in transit on accepted orders without any liability on the Company's part, if Buyer defaults in performance hereunder or if, in the Company's sole opinion, Buyer's

ability to pay for the Products on the terms and conditions contained herein is in doubt. All New Accounts must submit a \$500.00 net minimum order with credit and bank references.

**ORDERS** – Buyer's orders are firm following the Company's acceptance and acknowledgement thereof. The Company may accept or reject orders in its sole discretion. All undelivered Products may be cancelled by Buyer only upon written approval of an authorized representative of the Company. In the event of any cancellation of an order by Buyer, Buyer shall pay to the Company its reasonable costs and expenses, plus the Company's usual rate of profit for similar work. Buyer may not alter or modify its order or any part thereof without the Company's prior, written consent. The Company reserves the right to change the price, terms of payment and delivery dates for any Products affected by any alterations or modification to which it consents.

**SHIPPING AND HANDLING** – Except as otherwise provided in this paragraph, all sales are F.O.B. the Company's facility (the "Facility") (EX WORKS the Facility for sales to Buyers outside the United States, pursuant to INCOTERMS 2000 of the International Chamber of Commerce, as amended ("INCOTERMS")). The Company shall have no obligation or risk of loss of or damage to Products following delivery at the Facility, even if the Company agrees to arrange for transportation as a courtesy to Buyer. Any such transportation shall be at Buyer's sole risk and expense, except to the extent described below. The Company will allow full freight at the prevailing CWT rate on shipments of the Company's products with a net invoice value of:

\$500.00 or more when shipments are within the continental United States or Canada and have as destination Buyer's usual business address or designated job location. Original P.O. must meet FFA (full freight allowed) terms. Subsequent additions will not be considered towards freight allowance. If Buyer requests the Company to make part shipment of an accepted order, this freight allowance shall apply only to such individual part shipments which in themselves have a net invoice value of \$500.00 or more (continental United States or Canada). Freight allowed on shipments to Alaska and Hawaii shall be calculated F.A.S., Seattle, Washington. "F.A.S" shall be defined in accordance with INCOTERMS but shall not be deemed to impose any risk or obligation concerning the goods or the shipment thereof upon the Company after the delivery of the goods to the initial carrier. Under no circumstances will a direct C.O.D. shipment be made to the wholesaler's customer. Routing of shipments shall be determined at the sole discretion of the Company.

**DELIVERY** – Delivery to the Facility (or, for shipments to Alaska and Hawaii, the initial carrier) shall constitute delivery to Buyer. The Company's responsibility and liability for loss or damage in transit cease upon such delivery, and all Products are shipped at Buyer's risk. Buyer shall check each incoming shipment carefully before acknowledging receipt from the carrier. If Products are visibly damaged, Buyer should insist that written confirmation of the damage be noted on the freight bill by the carrier. If concealed damage is noted after unpacking, Buyer should immediately notify the carrier involved and obtain verification of the damage from the carrier. Claims for shortages in orders will not be considered unless presented to the Company within 30 days after delivery hereunder. Failure to make claims within such time period shall constitute unqualified acceptance and a waiver of all such claims by Buyer. All claims for damage in transit or nondelivery must be filed against the carrier by Buyer. Partial shipments shall be permitted. All delivery dates are approximate. Delivery dates given by the Company are based on prompt receipt of all necessary information regarding the order. The Company will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by the Company to meet any delivery date does not constitute a cause for cancellation and/or damages of any kind. Time for delivery shall not be of the essence. Any delay in delivery due to causes beyond the Company's reasonable control, or due to any priorities or allocations necessitated by governmental orders or regulations, or due to any causes specified in the following sentence, shall extend the term of delivery by a period equal to the length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's (1) failure to supply adequate instructions; (2) failure to arrange for transit or pickup; (3) failure to supply or approve necessary data in a timely manner; (4) requested changes; or (5) failure to provide documents required for the Company to effect delivery, the Company will store all Products at Buyer's risk and expense. Buyer shall pay all storage costs and expenses upon the Company's demand.

**FORCE MAJEURE** – The Company will not be responsible for delay in delivery of Products or other default under this Contract, or for any damages suffered by reasons thereof, when such delay or default is occasioned by accident, fire, flood, embargo, terrorism, strike, war, labor stoppages, inadequate transportation, shortage of materials, delay or default on the part of vendors, government regulations or any other cause beyond its control.

**RETURNED GOODS** – Products may not be returned to the Company unless prior written approval is obtained by Buyer from the Company. Credit will be issued at the net price of invoice or purchase order noted on the return (or previous price sheet) on all products returned by permission, less a minimum handling charge of 25% (35% if repackaging is necessary). No credit whatsoever will be allowed on products not listed in the Company's current price list or returned twelve months or more after shipment from the factory, except in accordance with any applicable limited warranty offered by the Company. Transportation must be prepaid by the buyer. Buyer's account will be credited for shipping charges if the Company determines that the return is due to error on the Company's part and the buyer must supply a copy of their freight bill. Returns will not be accepted for custom or obsolete products. Account numbers may be changed after verification of original PO number. If changes are made by the Company's Credit Department while processing your return, these adjustments will appear only on your "credit memo" paperwork.

**PRODUCT CHANGES** – The Company reserves the right to make reasonable changes of any kind in its Products and their packaging without notice.

**MINIMUM CHARGE** – No invoice will be made for less than \$25.00 (Twenty Five Dollars Net invoice amount).

**GOVERNING LAW** – This Contract shall be governed by and construed according to the internal laws of the State of Illinois, including, without limitation, the Uniform Commercial Code as adopted in Illinois, as modified by this Agreement. Neither this Contract nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a Court situated in the State of Illinois. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court.

**SEVERABILITY; WAIVER** – The invalidity of any provision or clause of this Contract shall not affect the validity of any other provision or clause hereof. The Company reserves the right to correct clerical or similar errors relating to price or any other term shown in this Contract. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract shall not be construed as a waiver or relinquishment or any right granted hereunder or the future performance of such term, covenant or condition.

**COMPLIANCE WITH LAWS** – Buyer agrees to comply with all laws and regulations applicable to the purchase, transport, use, storage, sale, lease and/or disposal of the Products including, without limitation, to the extent applicable, the U.S. Export Administration Act and all regulations thereunder, and Buyer shall cause its employees and agents to comply with such laws and regulations. Without limiting the foregoing or the applicability of any other legislation now or hereafter in effect in any state or municipality, Buyer specifically acknowledges and agrees to comply with (and cause its employees and agents to comply with) 2006 California Assembly Bill 1953, 2008 California Senate Bill 1334 ch. 580, and section 116875 of the California Health and Safety Code, and Act of June 7, 2008, No. 193, 2008 Vt. Acts and Resolves which, among other requirements, strictly limit the amount of lead in solder or flux, and in pipes, pipe or plumbing fittings and fixtures (including replacement parts) intended or used to convey or dispense water for human consumption, and generally prohibit the sale, use, offer or introduction into commerce in California or Vermont, as applicable, at any level, of any such items not meeting the lead content requirements.

Certification requirements may apply. In addition, sellers of such items may be required to post warnings at the point of sale and provide buyers with information on the risks of lead exposure.

**ASSIGNMENT** – Buyer may not assign this Contract without the prior written consent of the Company, which consent may be withheld by the Company in its sole discretion. Subject to the foregoing, this Contract shall inure to the benefit of, and be binding upon, the parties' successors and assigns. The Company's warranty limitations and exclusions and damage limitations and exclusions, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of this Contract for any reason. All of the Company's remedies herein are cumulative and not exclusive of any other remedies available to Company at law, by contract or in equity.

**INDEPENDENT CONTRACTOR** – Buyer is an independent contractor and neither Buyer nor any of its employees or agents shall be considered an employee or agent of the Company. Neither Buyer nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on the Company's behalf.

**TRADEMARKS** – The Company does not grant, and Buyer does not acquire, any license, rights, title or interest to or in any of the trademarks or trade names of the Company by virtue of this Contract, and Buyer shall not use or in any way refer to the Company's trademarks or trade names without the Company's prior written permission.

**BUYER'S INDEMNIFICATION OF THE COMPANY** – Buyer hereby releases and agrees to promptly defend, indemnify and hold the Company and its affiliates and its and their shareholders, directors, officers, employees, successors and assigns (collectively, "Company Parties") harmless from and against all liabilities, losses, claims, judgments, actions, fines, penalties, costs, damages, attorneys' fees and expenses (collectively, "Damages") arising out of or relating to (a) the alleged violation of any law by Buyer or any of its employees, agents, successors or assigns ("Buyer Parties"), (b) bodily injuries, deaths or property damage caused by the negligent or wrongful act or omission of Buyer or any of the Buyer Parties, (c) any breach of this Contract by Buyer or any of the Buyer Parties, (d) any failure to install or maintain Products in accordance with the Company's written instructions, and/or (e) Buyer's products. The provisions of this section shall be effective whether or not such loss, damage or injury was proximately caused by the sole or partial negligent acts or omissions of the Company or any Company Parties.

**LIMITED WARRANTY** – The Company offers limited warranties regarding certain of its products. Such limited warranties may be found in the Company's catalogs and on its website at [www.geberit.us](http://www.geberit.us). **THE COMPANY SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR THE COMPANY'S ACTS OR OMISSIONS OR OTHERWISE. THE COMPANY AND BUYER AGREE THAT THE EXPRESS WARRANTIES DESCRIBED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. ALL OTHER EXPRESS WARRANTIES ARE DISCLAIMED. FOR COMMERCIAL PRODUCTS, ALL WARRANTIES IMPLIED BY LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. FOR CONSUMER PRODUCTS, WARRANTIES IMPLIED BY LAW, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY LIMITED TO THE PERIOD OF THE EXPRESS LIMITED WARRANTY FOR THE RELEVANT PRODUCT.** Some States do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you. **IN NO EVENT SHALL THE COMPANY BE LIABLE FOR**

**INCIDENTAL, COMPENSATORY, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES. THE COMPANY'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THIS CONTRACT SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE MONIES PAID TO THE COMPANY FOR THAT DEFECTIVE PRODUCT.** Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. Please see the Company's limited warranty statement for details on limitations.

## Warranty

**TO WHOM DOES THIS WARRANTY APPLY?** – The Company extends the following limited warranty to the original user only.

### **WHAT DOES THIS WARRANTY COVER AND HOW LONG DOES IT LAST?**

**This warranty covers the following Residential Products:**

**BATH WASTE & OVERFLOW PRODUCTS WARRANTY** – Bath Waste & Overflow products are warranted against defects in material and workmanship for the life of the Products.

**CONCEALED INSTALLATION SYSTEMS** – Frame, Flushing Tanks, and Actuators for Concealed Installation Systems are warranted against defects in material and workmanship for the life of the Products. Filling and Flushing valves are warranted against defects in material and workmanship for 10 years from the date of Product purchase. The Company offers **NO WARRANTY** for Product batteries.

**FIVE YEAR FINISH WARRANTY – RESIDENTIAL** – For Products used in residential applications, the finish of the Product is warranted against material manufacturing defects for a period of five (5) years from the date of Product purchase.

**FOREVERSHINE™ and HARD COAT FINISHES WARRANTY – RESIDENTIAL** – ForeverShine™ and Hard Coat finishes installed in residential-use applications are warranted not to corrode, tarnish or discolor for the life of the Product.

**OTHER WARRANTIES** – All other Products not covered above are warranted against material manufacturing defects for a period of one (1) year from the date of Product purchase.

**WHAT THIS WARRANTY DOES NOT COVER** – The Company will not be liable for any labor, transportation or consequential expenses not specifically stated above. There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, damage due to environmental or natural elements, failure to follow the Company's instructions, unauthorized repair, incorrectly performed maintenance or repair, improper installation or storage or use of acidic, abrasive cleaning materials. In order for this Warranty to apply, Buyer must retain and provide to the Company receipts showing date of Product purchase and documenting proper maintenance. Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as an express warranty. **THE COMPANY SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR THE COMPANY'S ACTS OR OMISSIONS OR OTHERWISE. THE COMPANY AND BUYER AGREE THAT THE EXPRESS WARRANTIES DESCRIBED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. ALL OTHER EXPRESS WARRANTIES ARE DISCLAIMED. FOR COMMERCIAL PRODUCTS, ALL WARRANTIES IMPLIED BY LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. FOR CONSUMER PRODUCTS, WARRANTIES IMPLIED BY LAW, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY LIMITED TO THE PERIOD OF THE EXPRESS LIMITED WARRANTY STATED ABOVE FOR THE RELEVANT PRODUCT.** Some States do not allow limitations on how long an

implied warranty lasts, so the above limitation may not apply to you. Any assistance the Company provides to or procures for Buyer outside the terms, limitations or exclusions of this warranty will not constitute a waiver of the terms, limitations or exclusions of this limited warranty, nor will such assistance extend or revive the warranty. The Company will not reimburse Buyer for any expenses incurred by Buyer in repairing, correcting or replacing any defective Products, except for expenses incurred with the Company's prior written permission.

**HOW TO GET SERVICE** – For complete warranty details, or to provide notice of a warranty claim or request warranty service, contact your Geberit Sales Representative or Geberit, Customer Service, 2100 S. Clearwater Drive, Des Plaines, Illinois 60018 or 847- 803-5000. As the Company's sole and exclusive obligation under this warranty (and Buyer's sole and exclusive remedy), upon prompt written notice of breach from Buyer during the warranty period, the Company will either replace or repair the defective Product or refund the wholesale purchase price, at its option, if an inspection by the Company discloses defects in material or workmanship covered by this warranty. These warranty provisions do not cover the battery shipped with the electronic products.

**LIMITATION ON DAMAGES – IN NO EVENT SHALL THE COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES. WITHOUT LIMITING THE FOREGOING, THE COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGE A PALM DEVICE OR ANY SOFTWARE OR RELATED EQUIPMENT ALLEGEDLY CAUSES TO A SYSTEM OR OTHERWISE. THE COMPANY'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THIS CONTRACT SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE MONIES PAID TO THE COMPANY FOR THAT DEFECTIVE PRODUCT.**

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

**HOW DOES STATE LAW APPLY?** – This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

**Restrictions Apply**