

# TERMS OF AGREEMENT

## A.B. MAY HOME WARRANTY FOR SELLER AND BUYER

This Warranty is between the Seller and Buyer (which may sometimes be referred to as "You" and "Your") of the property shown on the Warranty Confirmation (the "Covered Property") and A.B. May Company (which is referred to as "We," "Us" and "Our"). We and other companies under Our direction will provide Services to repair the home mechanical systems outlined in this Warranty. During the term of this Warranty and subject to these terms and conditions, We warrant to You to repair to normal operational condition or replace, at Our discretion, any covered appliance or home mechanical system (plumbing, heating, air conditioning, electrical) located at the Covered Property. This Warranty covers only the appliances and systems which are noted on the Warranty Confirmation as being covered and which are located on the Covered Property and in normal operating condition on the first date of the term of this Warranty.

### 1. TERM

The term of this Warranty for covered appliances and systems for Seller will begin when the Warranty Confirmation Number is issued by Us and will remain in effect for the initial listing period (up to 180 days). The term of this Warranty for covered appliances and systems for Buyer will be 12 months from closing date and payment of coverage fees. We reserve the right to inspect the Covered Property and all covered appliances and systems before issuing this Warranty.

### 2. SERVICE TIME

We guarantee a response time of within 24 hours on emergency service\*, 24 hours daily, 7 days weekly including holidays, with FAST, PRIORITY service on all routine service requests. For non-emergency service requests, it is Your responsibility to provide access to the Covered Property for repairs during normal business hours.

\*An emergency is defined as the failure of a covered item which may cause personal injury or substantial damage to property if not repaired within 24

hours of notification.

### 3. COVERAGE FEES

The initial fee will be \$449.00 for basic coverage, due and payable at closing of the sale and must be received by Us within 14 days of closing. In addition to the fee for basic coverage, if there is any required additional coverage or optional additional coverage shown on the Warranty Confirmation, You will be responsible for payment of the fees for the additional coverage due and payable at the same time as the fee for basic coverage.

### 4. SERVICE CALL FEES

For mechanical systems: Seller – (during listing) \$95.00 (or actual charges, whichever is less) for each occurrence; Buyer – (after We receive payment of Coverage Fees) \$75 fee for each occurrence. We will charge a service fee(s) for each occurrence, for items repaired or replaced under the same home mechanical system. Service calls for differing mechanical systems cannot be combined into 1 call. We will warranty repairs performed under this Warranty for 30 days on parts and labor. Service fees are in addition to Warranty Coverage Fees.

### 5. ITEMS COVERED

(as listed on the Warranty Confirmation, some items listed as options for Buyer only):

- sewer blockages within the property lines
- all drain cleaning
- water heater-first system\*\* (standard residential 50 gallon max)
- toilet mechanisms, toilet seats
- dripping and broken faucets
- tub/shower valves
- built-in bathtub/whirlpool (motor and pump assembly only)
- sump pump (permanently installed)
- garbage disposal
- washing machine outlet and hook-ups
- hot water dispensers
- concealed and underground leaks in pipes (all pipes must be within property lines)
- gas or electric furnace - up to 2\*\*,

electric central air conditioning - up to 2\*\*, and heat pumps - up to 2\*\*

- humidifier (excludes maintenance and steam humidifiers)
- basic appliances-first system\*\* (range, range hood, dishwasher, trash compactor, microwave)
- home electrical systems

Optional coverage (for Buyer only when listed on the Warranty Confirmation and we have received full payment for any additional agreement fees):

- septic tank (distribution box, inlet & outlet tees and necessary pumping only)
- swimming pool/spa, hot tub (pump and motor only)
- water softener (excludes maintenance)
- sewage ejector
- tankless water heater
- battery back-up sump pump (excludes battery)
- zone controls
- electronic air cleaner
- media air filters
- ultra-violet germicidal light (includes 1 bulb per year)
- clothes washer
- clothes dryer
- refrigerator
- freezer
- boiler controls (thermostat, flue damper, transformer, thermocouple, pilot, pilot safeties, sight glass, gas valve, electronic ignitor, coupler)

\*\*Additional fees are applicable and coverage is required for additional HVAC systems, additional water heaters, and additional appliances.

### 6. ITEMS NOT COVERED (INCLUDE BUT ARE NOT LIMITED TO FOLLOWING):

- cosmetic defects
- appliance failure resulting from rust or corrosion
- poor water pressure or rust in water where original galvanized piping is still in place
- color or purity of hot and cold water systems
- water recirculating systems
- grouting caulking, cracked or

broken ceramic, porcelain, fiberglass, simulated marble, granite, tubs, sinks, tile walls, floors, subflooring and any fixture

- foundation and building structure
- oil furnaces, gravity furnaces, gas air conditioning systems
- window air conditioning units
- outside or underground piping and component for geothermal and/or water source heat pumps, pumps and pump components for geothermal and/or water source heat pumps
- heating/water heater combination units
- solar water heating and components, power vented water heaters, water heater maintenance
- steam humidifiers
- generators
- electric garage door openers
- garage doors
- lighting fixtures, exhaust fans
- french drains
- cracked or broken sewer lines
- exterior gas lines
- fireplace systems
- intercom systems
- fire, smoke and security alarms systems
- electrical service upgrades
- radon remediation systems
- batteries, light bulbs
- computerized/electronic management systems for energy lighting system, security or appliances, and doorbell when part of an integrated intercom system
- items damaged by abuse, negligence or improper use, hazardous or toxic materials
- mold and/or fungus, chemicals, asbestos
- duct cleaning
- missing parts
- detachable accessories for any covered item
- mechanical system failures due to local code violations, pre-existing conditions and concealed or camouflaged damage
- damage resulting from alterations or additions made to property or ground
- damage to any item as a result of fire, flood, smoke, lightning, freeze, earthquake or settling of ground or foundation, theft, storms, accidents, war, riots, acts of God, vandalism, improper installation, power failure or surge, pest/pet damage, neglect (including coil and blower cleaning) or

misuse

- septic tank drain field lines and pumps within the septic tank
- boiler sections, piping, radiators, pumps and gauges
- treatment for wood infestation or other insects
- pool/spa items not covered with optional coverage, heaters, structural defects, liners, lighting systems, cleaning equipment, any removable item, underground electrical, plumbing and gas lines
- The expense incurred to gain access required to make repairs, or the expense of repair of damage necessary in order to gain access

## 7. LIMITATIONS OF COVERAGE AND DAMAGES

This Warranty applies only to a single-family residence and does not cover mobile homes. This Warranty covers only matters of which We are advised during the term of the applicable Warranty, and does not cover conditions which existed prior to the issuance of this Warranty nor items that are Your responsibility.

This Warranty excludes repairs due to improper installations, over/under sized and mismatched equipment, inadequate airflow, and failures due to insufficient maintenance. After the initial Warranty term, compressors, coils, and heat exchangers are excluded on heating and cooling systems 15 years or older and out of warranty. We are not responsible for matching color, finish or brand. Replacement is based on builders' standard grade makes and models. Unless optional premium appliance replacement upgrade \*\*\* is included, replacement is based on builders' standard grade makes and models of appliances. We will not be responsible for replacing combination appliances when failure of one component does not affect the operation of the remaining appliances within the unit. We will offer cash or credit in lieu of repairs when parts are unavailable through our standard purchasing channels. We will not reimburse other vendors for service performed without our prior approval. **We will not be liable for consequential damages to property or personal injury resulting from the failure of any component, system or appliance or from Our delay or failure to provide service due to**

**conditions beyond Our control such as, but not limited to, unavailability of materials or labor difficulties.** We are not responsible for code violations or design limitations in systems or appliances. We will upgrade to code at Your expense, but such upgrades are not covered by this Warranty. We will secure the necessary permits, however, the the cost of acquiring them is Your responsibility. It is Your responsibility to provide access required to make repairs. Flue inspections will be limited to an inspection from the appliance or unit to the first penetration (i.e. wall, ceiling, etc), or three feet whichever distance is shorter. The expense incurred to gain access, or the expense to repair the damage necessary in order to gain access such as, but not limited to landscaping, sheetrock, flooring, carpet, ceramic tile, bath or shower enclosures and paving and damage to finished areas such as paint, wallpaper and cosmetic damage resulting from any repair made under this Warranty will be Your responsibility.

\*\*\*In the event a covered appliance is deemed to be beyond repair and the optional premium appliance replacement upgrade is in effect, We will provide a reasonable allowance based on the replacement cost of a like appliance. See Limitations of Liability for more information.

## 8. LIMITATIONS OF LIABILITY

The express warranties and agreements in this Warranty are Our only obligations to You under the Warranty. **All other agreements, undertakings and warranties by Us, including but not limited to warranties of merchantability of fitness for a particular purpose, are expressly excluded.** This Warranty does not create, establish or confirm any obligation by Us to any person not designated as You, a Buyer or Seller. Our maximum liability under this Warranty is \$2,000.00 per occurrence for Buyer and \$500 per occurrence for Seller under the listing plan and a \$500 maximum coverage for the life of the contract on blue polybutylene pipe. Premium appliance replacement upgrade is available to Buyer only and to a maximum of \$2,000.00 per occurrence and \$4,000.00 per year.

**We will not be liable under any circumstances for actual, incidental, or consequential damages arising out of Our performance or claimed nonperformance under this Warranty, including but not limited to, liability for damage to property, personal injury or death.** In no event will We be responsible for any loss, damage, illness or injury resulting from condensation leaks or frozen pipes or drains. Notice to Kansas residents – any disclaimers or exclusions of the warranties of merchantability or warranties of fitness for a particular purpose may be void under Kansas law. Notwithstanding any such disclaimers or exclusions, other remedies may be available to the consumer under Kansas law.

## **9. RENEWAL; TRANSFER**

At Our sole discretion and option, You may renew this Warranty for additional 1-year periods upon payment to Us of the then-effective renewal charges. You may assign this Warranty during its term to a subsequent purchaser of the Covered Property (a "Transferee"), but after such assignment, this Warranty will only cover systems and appliances which are transferred to the Transferee as part of the sale of the Covered Property. For an assignment of this Warranty to be effective, the Transferee must, within 30 days of closing of the sale of the Covered Property, notify the Us in writing of the sale and of the name and address of the Transferee. We reserve the right to inspect the Covered Property and all covered appliances and systems before renewing or transferring Warranty.

## **10. NOT INSURANCE**

This Warranty is not a contract of insurance.

## **11. TERMINATION AND CANCELLATION**

We may cancel this Warranty: 1) for Your failure to pay service call fees; 2) in the event of fraud or material misrepresentation by You of any fact or circumstances relating to appliances, electrical or mechanical systems; 3) in the event the Covered Property is determined to be unsafe and the conditions are not corrected by You within 30 days of

notification in writing by Us. If You fail to make payment as required by this Warranty, We may terminate the Warranty without notice. You acknowledge that all services have been provided under the Warranty at a discount per the Warranty and agree that at the time of such termination, You will be responsible for the full price of all services provided to date of termination at the current rate for like services not provided under a Warranty. We will bill You for those services and payment will be due and payable upon receipt. Any unpaid balance will accrue interest at 1.5% per month, or the highest amount permitted by law whichever is less. If this Warranty is referred for collection or legal action, You agree to pay Us all interest, costs and expenses including reasonable attorney's fees that We incur.

## **12. LEGAL MATTERS; WAIVER OF JURY TRIAL; WAIVER OF CLASS ACTION**

The laws of the State where the Covered Property is located govern the interpretation of this Warranty and all other claims, regardless of conflict of laws principles.

**EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY COURT ACTION ARISING AMONG THE PARTIES UNDER THIS WARRANTY OR OTHERWISE RELATED TO THIS WARRANTY, WHETHER MADE BY CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR OTHERWISE.**

**ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE IN ANY FORUM WILL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS. NEITHER YOU NOR WE WILL SEEK TO HAVE ANY DISPUTE HEARD AS A CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION OR IN ANY OTHER PROCEEDING IN WHICH EITHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY.**

## **13. SEVERABILITY; WAIVER**

If any part of this Warranty is declared invalid, unenforceable or impaired in any way, the validity of

the remaining portions will remain in full force and effect as if the Warranty had been executed without such invalid portion. The waiver of a breach of any term or condition of this Warranty does not constitute the waiver of any other breach of the same or any other term. To be enforceable, a waiver must be in writing, signed by the waiving party.

## **14. ENTIRE AGREEMENT**

This Warranty and the Warranty Confirmation constitute the entire agreement between the parties, superseding any prior oral or written agreements. No oral representation applies.

## **15. RELATIONSHIP WITH REAL ESTATE FIRM**

The named Real Estate firm, in addition to representing the Seller or Buyer, has a business relationship with Us to the extent that it serves the Company in the marketing and initial registration of our Home Warranty products and services. The Warranty fee paid at closing includes the full amount of fees due and payable to Us for the registration and administration of the Warranty. Additional service fees, trade call fees and coverage limits are set out in more detail herein and in the Warranty registration materials. The purchase of the Warranty is not a condition for the purchase of the subject property.

This Warranty is not effective for Buyer until payment is received in full.

**Call your serviceman from A.B. May:  
913-ABMayKC  
[www.abmay.com](http://www.abmay.com)**

Effective date: 05/2016