

## **NORTH EAST TOILET CUBICLES LIMITED Terms & Conditions**

### **1. Interpretation**

1.1. In these Conditions the following definitions apply:

'Acknowledgement of Delivery' means an acknowledgment of delivery signed by the Buyer under Condition 6.3;

'Business Day' means a day other than Saturday, Sunday and public holidays when banks generally are open for non-automated business in London;

'Buyer' means the persons or firm who purchases Goods from the Seller;

'Conditions' means the terms and conditions set out in this document;

'Contract' means the agreement between the Seller and the Buyer for the sale and purchase of Goods incorporating these Conditions;

'Delivery Location' means the roadside of the address for delivery of the Goods as being the date agreed or deemed under condition 6.1;

'Drawing Confirmation' means the document provided by the Seller to the Buyer in accordance with condition 3 setting out the measurements, colours, materials and product range of the Goods and the specifications and measurements of the area (including the measurements of any relevant surrounding fixtures and fittings) in which the Buyer is to install the Goods;

'Force-Majeure' means an event or sequence of events beyond a party's control preventing or delaying it from performing its obligations under the **Contract** including (but not limited to) an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest, strike, lockout or boycott or other industrial action; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required by for performance of the Contract, except any party's failure to pay shall not be an event of force majeure in any event;

'Goods' means the goods and related accessories and fittings (being those fittings that the Seller believes necessary to install the Goods in the area specified in the Drawing Confirmation) and installation and fitting guides set out in the Quotation (as amended by the Drawing Confirmation and condition 3.4) and to be supplied by the Seller to the Buyer;

'intellectual property rights' means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case:

- (i) whether registered or not,
- (ii) including any applications to protect or register such rights,
- (iii) including all renewals and extensions of such rights or applications,
- (iv) whether vested, contingent or future,
- (v) to which the Seller is or may be entitled and
- (vi) in whichever part of the world existing;
- (vii)

'Price' means the price payable for the Goods;

'Quotation' means the quotation issued by the Seller to the Buyer under these Conditions setting out the Goods and the Price for such Goods (as amended by condition 3.4, 3.8 or 4.4);

'Seller' means North East Toilet Cubicles Limited, a company registered under England and Wales with company number 05674561 whose registered office is at Green Street, Hartlepool, TS24 7LD;

'Value Added Tax or VAT' means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

1.2 Unless the context otherwise requires:

1.2.1 each gender includes the others;

1.2.2 the singular includes the plural and vice versa;

1.2.3 references to the Contract include the Conditions;

1.2.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;

1.2.5 clause headings do not affect their interpretation;

1.2.6 general words are not limited by example; and

1.2.7 references to any legislation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## **2 Application of these terms and conditions**

2.1 These terms and conditions apply and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of supply.

2.2 No terms or conditions endorsed on, delivered with, or contained on any correspondence, purchase orders or any other document received by the Buyer will form part of the Contract.

2.3 Following initial contact being made by the Buyer requesting that the Seller provides Goods, the Seller will prepare and provide to the Buyer the Quotation, setting out the Goods that are proposed to be supplied and the proposed Price. A Contract will only be formed between the Buyer and Seller upon payment in full by the Buyer of the Price specified in the Quotation to the Seller in cleared funds (unless the Seller agrees in writing, following approval of the quotation by the Buyer, that the Contract will be formed between the Seller and Buyer prior to the payment of the Price, whereby the Contract will be formed upon receipt by the Buyer of such written notice).

2.4 No variation of these Conditions can be made unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.

2.5 The Seller will have no liability to the Buyer whatsoever for any re-sale of the Goods.

## **3 Drawing Confirmation**

3.1 Following the formation of the Contract between the Buyer and the Seller in accordance with condition 2.3, the Seller will prepare and provide to the Buyer the Drawing Confirmation.

3.2 The Buyer will confirm in writing (although the Seller is entitled in its absolute discretion to accept oral confirmation of the same) to the Seller within a period of 24 hours from date of receipt of the Drawing Confirmation that the contents of the Drawing Confirmation are acceptable or not. In accepting the Drawing Confirmation, the Buyer is confirming that:

3.2.1 the measurements and specifications within the Drawing Confirmation are accurate and acceptable to the Buyer (subject to a tolerance of up to 5mm in any measurement); and

3.2.2 that the colours, materials and product range contained in the Drawing Confirmation are (subject to condition 7 and condition 8) acceptable.

3.3 If the Buyer does not confirm whether the Drawing Confirmation is acceptable or not under condition 3.2 within a period of 2 calendar months from the date of receipt of the Drawing Confirmation, the Seller shall be entitled (but shall not be obliged) to terminate any relevant Contract and the Seller shall (a) be entitled to raise an invoice and retain the sum of £50.00 plus VAT for each hour spent in preparing, discussing or amending the Drawing Confirmation and (b) will return the remaining part of the Price to the Buyer within 28 days of such notification to the same account to which the funds were originally received or (if paid by cheque) by cheque.

3.4 If the Buyer confirms to the Seller that the Drawing Confirmation is unacceptable and the reasons why it is unacceptable, the Seller will liaise with the Buyer with a view to amending the Drawing Confirmation (provided that the Seller has no obligation to complete such process within any set timescales). The Drawing Confirmation will be deemed to be accepted by the Buyer upon the Buyer indicating (whether orally or in writing) that the Drawing Confirmation is acceptable to the Buyer, provided that at any time until the Drawing Confirmation has been approved under this condition 3.4 the Seller can notify the Buyer that it is no longer able to provide the Goods in accordance with the required measurements, specifications, colours or materials, whereby (on receipt of such written notice) the Contract will be terminated and the Seller shall (a) be entitled to raise an invoice and retain the sum of £50.00 plus VAT for each hour spent in preparing, discussing or amending the Drawing Confirmation and (b) will return the remaining part of the Price to the Buyer within 28 days of such notification to the same account to which the funds were originally received or (if paid by cheque) by cheque.

3.5 The Buyer shall act in good faith in accepting or rejecting the Drawing Confirmation under condition 3.2 and 3.4 and shall respond to any correspondence or update Drawing Confirmations within 24 hours or receipt.

3.6 If the Buyer, during the discussions undertaken under condition 3.4, requests amendments to the Drawing Confirmation and such amendments increase the Price of supplying the Goods, the Buyer will advise the Seller of the same and the Price will be increased to take account of such increase and be binding upon the Buyer on approving the amended Drawing Confirmation, whereby the Buyer will immediately pay the Seller the amount of the increase.

3.7 If the Buyer indicates to the Seller that the Drawing Confirmation is acceptable then the Seller will commence ordering materials and manufacturing the Goods in accordance with the Drawing Confirmation and no variation to an Order or to the Drawing Confirmation can be made unless expressly agreed in writing (including any increase as to the Price) and executed by a duly authorised signatory on behalf of the Seller.

3.8 It is the Buyer's responsibility to:

3.8.1 ensure that all measurements and specifications contained in the Drawing Confirmation are accurate and/or in accordance with the Buyer's requirements and specifications;

3.8.2 that the colours, materials and product ranges listed in the Drawing Confirmation are acceptable to; and

3.8.3 advise the Seller if any of the sanitary units (such as sinks and toilets etc) are not of standard size (being the size if listed in the Drawing Confirmation);

and the Seller shall have no liability whatsoever to the Buyer for any failure by the Buyer in respect of such matters.

#### **4 Price**

4.1 The price for the Goods will be as set out in the Quotation (as amended by condition 3.6, 3.8 or 4.4) and will be invoiced at the point of delivery of the Goods.

4.2 The Price listed in the Quotation includes packaging and part of the costs of delivery. The remaining costs of delivery (which may depend upon the mode or type of delivery selected) are contained in the costs of delivery document provided to the Buyer with the Quotation.

4.3 All sums listed in these conditions are exclusive of Value Added Tax unless stated and Value Added Tax will be charged in addition on any such sums at the same time as such sums become due.

4.4 The Seller reserves the right to increase the Price of the Goods with immediate effect by written notice to the Buyer, where such increase arises as a consequence of any increase in the direct cost to the Seller of supplying the relevant Goods (such as an increase in the cost of materials or an increase in costs caused by a colour or material becoming unavailable and the Seller having to arrange alternate arrangements under conditions 7.2 or 8.3) which is due to any factor beyond the direct control of the Seller.

#### **5 Credit limit**

No credit terms will be provided by the Seller unless specifically confirmed in writing to the Buyer prior to the formation of the Contract under condition 2.3.

#### **6 Delivery**

6.1 (Subject to the provisions of condition 6.13) the Goods will be delivered by or for the Seller to the location agreed between the Seller and Buyer (which must be in the post code provided to the Buyer by the Seller which is listed on the Quotation) (Delivery Location).

6.2 The date for delivery will be (subject to the availability of subcontractors to deliver the Goods and the Buyer complying with its obligations under these Conditions) the date of delivery agreed between the Buyer and the Seller, provided that

6.2.1 the agreed date shall be an indicative date of delivery only and time shall not be of the essence in delivering any Goods under these Conditions;

6.2.2 the Seller shall have no liability whatsoever to the Buyer for any failure to deliver due to any failure of the Buyer to comply with its obligations under these Conditions;

6.2.3 if no date of delivery can be agreed, then the date of delivery will be 30 days following the date of approval of the Drawing Confirmation under condition 3.2 or 3.4; and

6.2.4 delivery will take place between 8am and 6pm on weekdays (excluding bank holidays).

6.3 On delivery the Buyer will be afforded an opportunity to inspect the Goods before signing an acknowledgement (Acknowledgement of Delivery) confirming (a) delivery of the Goods and (b) that the Goods were inspected and found in an acceptable state of repair and condition.

6.4 The Goods will be unloaded at the Delivery Location upon signing the Acknowledgement of Delivery and the Goods will be deemed delivered on completion of unloading of the Goods at the Delivery Location.

6.5 The Goods may be delivered by instalments. Any delay in delivery or defect in an instalment will not entitle the Buyer to cancel any other instalment.

6.6 Each Acknowledgement of Delivery must be signed for by an authorised representative of the Buyer before they will be unloaded at the Delivery Location.

6.7 Deliveries of the Goods will be accompanied with/or by a delivery note stating:

6.7.1 the relevant Buyer and Seller details;

6.7.2 the product numbers and type and quantity of Goods in the consignment; and

6.7.3 fitting and installation instructions.

6.8 It is the Buyer's responsibility to remove and dispose of all packaging used in the delivery of the Goods.

6.9 The Seller utilises subcontractors to deliver the Goods. Although the Seller can (on request of the Buyer) request that the relevant subcontract provides notice of the intended delivery time of the Goods at the Delivery Location, the Seller assumes no responsibility for any failure of the relevant subcontract to provide such notice and it remains the Buyer's responsibility to accept delivery of the Goods at the Delivery Location when the Goods arrive.

6.10 The Seller will not be liable for any delay in or failure of delivery caused by:

6.10.1 the Buyer's failure to: (i) make the Delivery Location available, (ii) prepare the Delivery Location as required for delivery of the Goods, (iii) provide the Seller with adequate instructions, for delivery or otherwise relating to the Goods or (iv) ensure someone is available at the Delivery Location to sign the Acceptance of Delivery; or

6.10.2 an event of Force Majeure.

6.11 If the Buyer fails to accept delivery of the Goods, fails to make the Delivery Location available or fails to ensure an authorised signatory is present to sign the Acceptance of Delivery:

6.11.1 the Seller will store and (if the Seller deems appropriate) insure the Goods pending redelivery, and the Buyer will pay all costs and expenses incurred by the Seller in doing so;

6.11.2 the Seller will not be obliged to attempt to redeliver the Goods unless specifically instructed to do so by the Buyer provided that such delivery date will (subject to the availability of subcontractors available to deliver the Goods) be such date as agreed between the Seller and the Buyer or (in the absence of agreement) a date approximately 5 Business Days after the initial attempted delivery.;

6.11.3 the Seller will not be obliged to redeliver the Goods under condition 6.11.2 unless the cost of redelivery has been paid in full in cleared funds by the Buyer to the Seller.

6.12 If 10 Business Days after the initial attempted delivery the Buyer has not taken delivery of or collected them, the Seller may treat delivery as having taken place and resell or otherwise dispose of the Goods.

6.13 The Seller does not supply Goods to areas outside of the United Kingdom.

## **7 Colour**

7.1 The proposed colour of the Goods (or any relevant part of the Goods) will be listed in the Drawing Confirmation. The relevant colour will have been selected by the Buyer from the websites from time to time operated by the Seller. Consequently the colours shown on such website may look different on an electronic screen to how they appear on the Goods. The Seller offers free colour samples that can be obtained on request. It is the Buyer's responsibility to make such a request and to check that the Buyer is happy with the selected colour with reference to the sample and not an electronic screen. The Seller will have no liability whatsoever if the Buyer is unhappy with the colour selected.

7.2 From time to time the colours offered by the Seller may be discontinued by the suppliers of the Seller. In such circumstances the Seller will, in its absolute discretion, either:

7.2.1 seek to obtain the closest colour match to the original selected colour from such supplier; or

7.2.2 seek to obtain the same colour from an alternative supplier.

## **8 Material**

8.1 The Seller offers various materials that the Goods (or relevant parts of them) can be constructed from. It is the Buyer's responsibility to ensure that the materials selected and listed in the Drawing Confirmation are suitable (taking into account where the Goods are to be installed, the proposed use of the Goods and the extent of such use).

8.2 Any recommendations by the Seller regarding the use of certain materials are recommendations only and the Seller gives no warranties and shall have no liability to the Buyer whatsoever in this regard. From time to time the materials offered by the Seller may be discontinued by the suppliers of the Seller. In such circumstances the Seller will, in its absolute discretion, either:

8.2.1 seek to obtain the closest material match to the original selected material from such supplier (in light of the normal day to day use of such original material); or

8.2.2 seek to obtain the same material from an alternative supplier.

## **9 Fitting**

9.1 It is the Buyer's responsibility to ensure that the Goods are installed at the required location and the Seller will have no liability whatsoever to the Buyer including (but not limited to) any liability for:

9.1.1 failure to install the Goods in the correct manner using the correct techniques;

9.1.2 failure to install the Goods in the correct location; or

9.1.3 damage to the Goods during installation.

9.2 The Seller may, from time to time, provide fitting and installation guides with the Goods or make the same available on websites operated by the Seller. It remains the Buyer's responsibility to ensure that the Goods are installed in the correct manner, in the correct location, using the correct techniques regardless of the content of such fitting guides. The Seller gives no warranty regarding the accuracy or effectiveness of such guides and provides such guides without any liability to the Buyer whatsoever.

## **10 Title and risk**

10.1 Risk in the Goods will pass to the Buyer on completion of delivery.

10.2 Title to the Goods will only pass to the Buyer following delivery if the Seller has received payment in full for the Goods.

10.3 Until title to the Goods has passed to the Buyer, the Buyer will:

10.3.1 hold the Goods as bailee for the Seller;

10.3.2 store the Goods separately from all other material in the Buyer's possession;

10.3.3 take all reasonable care of the Goods and keep them in reasonable condition;

10.3.4 insure the Goods: (i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the price (v) noting the Seller's interest on the policy;

10.3.5 ensure that the Goods are clearly identifiable as belonging to the Seller;

10.3.6 not remove or alter any mark on or packaging of the Goods;

10.3.7 inform the Seller as soon as possible if it becomes subject to any of the events set out in condition 15.1;

10.3.8 provide the Seller such information concerning the Goods as the Seller may request from time to time.

10.4 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs the Seller, or the Seller reasonably believes, that the Buyer has or is likely to become subject to any of the events specified in condition 15.1, the Seller may:

10.4.1 require the Buyer at the Buyer's expense to redeliver the Goods to the Seller; and

10.4.2 if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

## 11 Warranty

11.1 The Seller warrants that, on delivery, the Goods will:

11.1.1 conform in all material respects to their description and any description listed in the Drawing Confirmation;

11.1.2 have such measurements as listed in Drawing Confirmation (subject to a tolerance of up to 5mm in any measurement);

11.1.3 consist of the materials listed in the Drawing Confirmation (or such substitute material as listed in condition 8);

11.1.4 be of the colour listed in the Drawing Confirmation (or such substitute colour as listed in condition 7);

11.1.5 be free from material defects in design, material and workmanship;

11.1.6 be of satisfactory quality within the meaning of the Sale of Goods Act 1979, as amended.

11.1.7 be fit for any purpose held out by the Seller or set out in the Drawing Confirmation.

11.2 The Seller will, at its option, repair, replace or refund the price of defective Goods, provided that and subject to this condition 11:

11.2.1 the Buyer informs the Seller prior to signing the Acknowledgement of Delivery (after having an opportunity to inspect the Goods);

11.2.2 the Buyer gives the Seller a reasonable opportunity to examine the defective Goods;

11.2.3 the Buyer returns the defective Goods to the Seller at the Buyer's expense (which such reasonable costs of returning the Goods will be refunded to the Buyer if the Seller determines that such a defect exists).

11.3 The Conditions will apply to any Goods repaired or replaced under condition 11.2.

11.4 The Seller will not be liable for any failure of the Goods to comply with condition 11.1:

11.4.1 to the extent that such defect did not exist at the point of delivery of the Goods;

11.4.2 to the extent caused by the Buyer moving the Goods after the point of delivery to the Buyer;

11.4.3 to the extent caused by any unpacking of the Goods;

11.4.4 to the extent caused by the Buyer's failure to comply with good practice in relation to the storage, installation, commissioning, use or maintenance of the Goods;

11.4.5 to the extent caused by the Buyer's installation of the Goods;

11.4.6 to the extent caused during the return of any Goods (which will be at the Buyer's risk until delivered and accepted by the Seller at its premises);

11.4.7 where the Buyer repairs or alters any Goods without the Seller's prior written agreement; or

11.4.8 where the Buyer uses any of the Goods after notifying the Seller that it does not comply with condition 11.1.

11.5 Except as set out in this condition 11:

11.5.1 the Seller gives no warranty in relation to the Goods ; and

11.5.2 will be under no liability for their failure to comply with the warranty in clause 11.1. In particular, the conditions implied by ss 13–15 of the Sale of Goods Act 1979 are expressly excluded.

## **12 Advertising**

The Seller reserves the right to market its brand name on the Goods in an area no greater than 70mm x 70mm. This branding must not be removed by the Buyer or covered at any time and the intellectual property rights in such brand name will at all times remain with the Seller.

## **13 Liability**

13.1 The Seller does not exclude its liability:

13.1.1 for death or personal injury caused by its negligence; or

13.1.2 for breach of the terms implied by s 12 of the Sale of Goods Act 1979 and by s 2 of the Supply of Goods and Services Act 1982; or

13.1.3 for defective products under the Consumer Protection Act 1987; or

13.1.4 for fraud or fraudulent misrepresentation.

13.2 Neither party will be liable for:

13.2.1 loss of data or use

13.2.2 any form of indirect, consequential or special loss, or

13.2.3 any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether any such loss is direct or indirect,

and, in each case, however arising.

13.3 Other than as set out above, the Seller limits its liability (however arising) in respect of or in connection with the Goods, and otherwise in connection with this Contract, to the Price.

#### **14 Force Majeure**

14.1 A party will not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

14.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

14.1.2 uses reasonable endeavours to minimise the effects of that event.

#### **15 Termination**

15.1 The Contract may (as well as the rights of termination contained in these conditions) be terminated forthwith (without liability of any kind to the Buyer) at any time by the Seller on written notice to the Buyer if:

15.1.1 the Buyer commits a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is not remediable or is not remedied within 15 days of written notice to do so;

15.1.2 the Buyer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due;

15.1.3 the Buyer (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts or (c) makes an application to court for protection from its creditors generally;

15.1.4 the Buyer passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the other, or a winding-up order is made in relation to the other;

15.1.5 a receiver or administrative receiver may be or is appointed in relation to the Buyer or any of its assets;

15.1.6 any creditor of the Buyer attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the Buyer's assets, and such attachment or process is not discharged within 14 days;

15.1.7 the Buyer takes or suffers any action similar to any of the above in any jurisdiction;

15.1.8 there is a material change in the management, ownership or control of the Buyer;

15.1.9 the Buyer suspends trading, ceases to carry on business, or threatens to do either;

15.1.10 the Buyer, (being an individual) dies or ceases to be capable of managing his own affairs; or

15.1.11 the Buyer is subject to an event of Force Majeure under condition 14.

15.2 Upon termination under condition 15.1, the Seller will immediately be entitled to raise an invoice in consideration of the work undertaken in preparing the Goods and the potential loss of revenue for the sum of the Price and use the funds in its possession (if any) to satisfy such invoice. The Seller will have no further obligation to carry out any of the terms of the Contract or in these Conditions.

## 16 General

16.1 Time Unless stated otherwise, time is not of the essence of any date or period specified in these Conditions.

16.2 No set-off All payments by the Buyer will be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless a party is compelled by law to deduct or withhold any such amounts, in which case it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.

16.3 Relationship The parties are independent businesses and not principal and agent, partners, or employer and employee.

16.4 Severability If any part of these Conditions is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Conditions and the remaining provisions of the Conditions will otherwise remain in full force.

16.5 Notices Notices under this Contract will be in writing and sent to the persons and addresses set out in the Quotation. They may be given, and will be deemed received:

16.5.1 by first-class post: two Business Days after posting;

16.5.2 by airmail: seven Business Day after posting;

16.5.3 by hand: on delivery;

16.5.4 by facsimile: on receipt of a successful transmission report from the correct number, and

16.5.5 by e-mail: on receipt of a delivery or read receipt mail from the correct address.

16.6 Waiver No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

16.7 Rights of Third Parties This Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

16.8 Priority The terms of the Conditions prevail over those of the Order, Quotation or Final Layout Plan.

16.9 Entire Agreement The Contract constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply.

16.10 Succession This Contract will bind and benefit each party's successors and personal representatives.

16.11 Governing Law & Jurisdiction

16.11.1 This Contract will be governed by the law of England and Wales.

Disputes will be submitted to the exclusive jurisdiction of the courts of England and Wales.