

# BARWICK BATHROOM DISTRIBUTION LIMITED LIABILITY PARTNERSHIP

## STANDARD TERMS OF BUSINESS

- 1. General**
  - (i) In these terms (unless the context otherwise requires) the expression "The Seller" means Barwick Bathroom Distribution Limited Liability Partnership and the expression "The Buyer" means the person, firm or company to whom a quotation is addressed or whose order is accepted by the Seller.
  - (ii) Unless otherwise expressly agreed in writing by the Seller these terms shall apply to all quotations given, orders received and accepted and contracts under taken by the Seller. In the event of a conflict between the contents of any quotation, orders that are received and accepted, or contracts undertaken by the Seller, and these terms, then these terms shall prevail. Acceptance of any quotations and the placing of any order with the Seller includes acceptance of these terms. If the Buyer's order contains special printed conditions such conditions are only binding insofar as they are not at variance with these terms and have been accepted in writing by the Seller.
  - (iii) The singular in all cases shall imply the plural and vice versa.
- 2. Prices and Illustrations**
  - (i) Prices are subject to continual changes. Illustrations contained in the Seller's brochure are current at the time of going to press and are subject to alteration without notice. All goods are invoiced ex-works at the prices ruling at the date of dispatch. Whilst every care has been taken in compiling the Seller's brochure the Seller cannot accept responsibility for errors or omissions, descriptions or illustrations.
  - (ii) If the Seller agrees to deliver the goods otherwise than at the Buyer's premises the Buyer shall be liable to pay the Seller's charges for transport and insurance.
  - (iii) All prices are exclusive of any applicable Value Added Tax which the Buyer shall be additionally liable to pay to the Seller.
- 3. Payment**
  - (i) Subject to any terms of payment stated in a quotation or otherwise agreed in writing all accounts shall be paid strictly nett monthly. Cheques and money orders shall be made payable to or to the order of the Seller. Only the Seller's official receipt shall be treated as valid.
  - (ii) The Seller shall be entitled to charge interest on all over due accounts both before and after judgement until full payment is made at the rate of 4% per annum above the base rate of National Westminster Bank PLC for the time being.
  - (iii) Buyers desirous of opening a credit account are required to furnish four trade references. Buyers will also be required to complete and sign a Customer Details Form.
- 4. Delivery and Passing of Risk**
  - (i) Whilst every endeavour will be made to keep delivery promises given in good faith the Seller cannot accept responsibility for late delivery. The Seller shall have the right to dispatch any portion of the goods sold or agreed to be sold separately and to invoice the Buyer therefore on the same terms and conditions as are herein set forth for the whole contract. Each portion so dispatched shall for the purpose of payment be deemed to be a separate contract and may be invoiced separately. The goods shall be at the Buyer's risk on delivery and no liability will be accepted for:
    - a) Damage or short delivery unless a claim is made on receipt of the goods and confirmed in writing within seven days;
    - b) Non-delivery unless a claim is made on receipt of invoice and confirmed in writing within seven days;
    - (ii) The Seller reserves the right to put the goods or any portion thereof into storage at the Buyer's risk and expense in any other comparable circumstances;
    - a) Where goods are about to be dispatched and the Buyer notifies the Seller that the Buyer is or will be unable to receive or provide suitable storage space for goods or any other reason will be unable to accept delivery when tendered;
    - b) Where the Seller is ready to dispatch the goods but needs delivery instructions and such instructions have not been provided by the Buyer;
    - c) In an ex-works contract where the Buyer fails to collect the goods when ready after the Seller has sent to the Buyer a notice that the goods are ready and seven days have elapsed since the dispatch of such notice or the Buyer has acknowledged the notice;
    - d) Where the goods are refused delivery by the Buyer.
- 5. Passing of Property**
  - (i) The property in any part of the goods (whether the legal equitable or beneficial interest thereon) shall not pass from the Seller until the Buyer shall have paid to the Seller the whole of such sums due to the Seller under any contract between the Seller and the Buyer.
  - (ii) If any of the goods are processed into, incorporated in, used as materials for or mixed with other goods or property or materials prior to such payment the property (but not the risk) in the whole of such other goods or materials shall pass to the Seller at the moment of such processing, incorporation, use or admixture and shall remain with the Seller until payment of all such monies are as specified in paragraph (5.i) above.
  - (iii) Until such payment is made the Buyer shall possess all goods and materials the property in which is vested by the Seller by virtue of this condition on a fiduciary basis only and as bailee only for the Seller and the Buyer shall store such goods and materials at no cost to the Seller so that they are clearly identified as belonging to the Seller.
  - (iv) If any payment is overdue the Seller may (without prejudice to any of its other rights and remedies) recover and re-sell any or all of such goods or materials and may enter upon any land or building upon which the goods are situated or in which the goods have become incorporated for that purpose. Without prejudice to the generality of this clause provided the Seller uses reasonable care then the Seller may remove any such goods from any display fittings in which they have been placed and may disconnect any pipes connected to the goods by the Buyer without any liability to the Seller for any damage or loss that ensues to the Buyer.
  - (v) The Buyer has the right as agent of the Seller to sell for the account of the Seller any goods or materials of the said property in which is vested in the Seller by virtue of this Condition and to pass good title to the goods or products to his customer being a bona fide purchaser for value without notice of the Seller's rights. In such event the Seller shall be entitled to and the Buyer shall be under a fiduciary duty to retain in a separate account and to pay to the Seller the proceeds of such sale to the extent that any monies are owed by the Buyer to the Seller. In addition, the Seller shall be entitled to make a claim directly Against the Buyer's customer for any purchase monies unpaid by such customer provided that the Seller shall return to the Buyer any monies recovered in excess of the amount then owing by the Buyer to the Seller together with costs and expenses involved in making such claim.
- 6. Suspension or Cancellation of Deliveries**
  - (i) This clause applies if:
    - a) The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
    - b) An encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer; or
    - c) The Buyer ceases or threatens to cease to carry on business; or
    - d) The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
    - e) The Buyer fails to make a payment to the Seller on the due date or is in any other way in breach of a contract between the Buyer and the Seller to which these terms apply.
  - (ii) If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel any contract between the Buyer and the Seller incorporating these terms or suspend any further deliveries under any such contract without any liability to the Buyer and if any goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 7. Liability**
  - (i) Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of any contract for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the Buyer.
  - (ii) The Seller shall not be liable to the Buyer or be deemed to be in breach of any contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control.
    - a) Act of God, explosion, flood, tempest, fire or accident;
    - b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
    - c) acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
    - d) import or export regulations or embargoes;
    - e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
    - f) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
    - g) power failure or breakdown in machinery.
- 8. Orders**

Written confirmation of telephone orders should be clearly marked as such otherwise the seller cannot be responsible should the order be duplicated. The right is reserved to refuse cancellation of any order placed. The Seller reserves the right to impose a surcharge on orders of less than £5.00 nett value exclusive of Value Added Tax and a minimum invoice charge of £10.00 may be applied.