

# Terms and Conditions of Sale for Procare Shower and Bathroom Centre Limited

*These terms do not apply if you are a consumer, for this purpose a 'consumer' means any natural person acting for purposes wholly or mainly outside his trade, business or profession. The general terms and conditions of sale below apply to ProCare Shower and Bathroom Centre Limited (company number 04300621), whose registered office is 'The Gateway, Enfield Industrial Estate, Enfield Street, Wigan, WN5 8DB'. Health and safety information about the use of the goods is provided and it is your responsibility to bring this to the attention of the user of the goods.*

## 1 DEFINITIONS

In these Sale Terms:

"we" and "us" means ProCare Shower and Bathroom Centre Limited, its employees and agents and "our" shall be construed accordingly

"you" means the person, firm or company, seeking to purchase goods from us and "your" shall be construed accordingly

"the goods" means the goods and/or services to be supplied by us

"the terms" means these terms and any special terms agreed in writing between you and us

"the contract" means the contract for the supply of goods incorporating these terms

## 2 THESE TERMS

- These terms and conditions apply to all trading between us and you to the exclusion of all other terms (including any which you purport to apply) unless expressly agreed in writing in advance by one of our directors.

## 3 THE CONTRACT

- All orders are accepted by us only under these Terms and they may not be altered without our written agreement. Any contrary or additional terms unless so agreed are excluded.
- Each order or acceptance of a quotation for Goods by you shall be deemed to be an offer by you to buy Goods subject to these Terms. No order or acceptance of a quotation by you shall be deemed to be accepted by us until we confirm and process your order. We shall be entitled to withdraw any quotation at any time (whether or not already accepted by you).
- Quotations shall lapse 45 days from issue.
- You shall be responsible to us for ensuring the accuracy of the terms of any order including and applicable design, drawing or specification provided by you and for giving us any necessary information relating to the Goods within a sufficient time to enable us to perform the Contract in accordance with its Terms.
- We shall not be liable in respect of any misrepresentation made by us to you as to the condition of the Goods their fitness for any purpose or as to quantity or measurements unless the representation is:
  - made or confirmed in writing by us; and/or
  - fraudulent
- Without prejudice to clause 3.5 of these Terms, while we take every precaution in the preparation of our brochures, technical circulars, price lists, website and other literature, these documents are intended for your general guidance only and statements made therein (in the absence of fraud on our part) shall not constitute representations by us and we shall not be bound by them. If you require advice in relation to the Goods please make a specific request for advice. Only advice given in writing in response to such a request shall amount to a representation.
- Cancellation of the whole or any part of any order is permitted only agreed by us in writing. In the event of such agreed cancellation you shall indemnify us against all expenses incurred as a result of such cancellation. In any case in which we are required to place a deposit with a manufacturer or supplier in respect of your order then we may require you to reimburse us with this amount in the event of your cancellation of the order any part thereof. Where cancellation involves Goods designed, made or ordered specially for you then you will be liable for any costs incurred by us in respect of such cancellation.

## **MATERIALS/SAMPLES**

- There are a number of characteristics of the products we sell which you should be aware of and which should be fully considered prior to purchase including:
  - It is recognised that a degree of shading and crazing to varying degrees as well as marginal size differences is inherent in all tiles.
    - fixing or installation of tiles should not be undertaken unless an acceptable blend of shades can be obtained
    - it is recommended that the contents of a number of boxes be mixed to achieve a random blend
  - We would stress the importance of satisfying yourself as to the shading/crazing/appearance of the products supplied prior to fixing or fitting as once fixed or fitted they will not be in returnable, saleable condition.
  - We draw to your attention that shading and crazing differences may arise between the Goods supplied and any sample you have viewed when placing your order. This is due to tiles being a fired and glazed product. You must satisfy yourself as to the quality, shading and crazing of the Goods supplied before they are fixed or fitted as once they are fixed or fitted they will not be in returnable, saleable condition and you will be deemed to have accepted them.
  - The Classification of Glazed Tiles according to their Abrasion Resistance is based on BS EN 14411:2012 and ISO 10545-7:1996 and is available in our showroom
  - We recommend that all ceramic wall tiles are fixed using only the ProCare recommended range of screeds, adhesives and grouts.
  - Instructions for use and full specifications of all ProCare products are available within the latest technical literature which is available on request
  - We recommend that all tiles are installed according to the fixing methods issued by the British Standards or EN Standards and cannot be responsible for problems occurring because of fixing by other means or methods.

## **PRICE**

- The price of the Goods shall be as published in our price list current at the date of delivery of the Goods. The price is exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice.
- Contract price quotes are applicable to the quantity, specification, delivery dates and information provided by you.

## **PAYMENT**

- Payment for Goods supplied on a credit account shall be due not later than the 30th day following the month end of which goods are purchased unless agreed by us in writing. If you default on payment the entire balance of the account shall be payable immediately and we may charge interest, together with costs and expenses.
- For non-credit account purchases, payment shall be with the order or, at our discretion, on delivery or deemed delivery.
- Time for payment shall be of the essence of the Contract. You shall make all payments in pounds sterling and in full without any deduction.
- We reserve the right to refuse to execute any order or contract or dispatch relevant products if the arrangements for payment are or your credit is not satisfactory to us and in our sole discretion we may require payment for each consignment when it is available and before it is despatched in which case delivery will not be made until we are in receipt of cleared funds.
- You may not withhold payment of any invoice or another amount due to us by reason of any right or set off or counterclaim which you may have or allege to have for any reason whatever.
- We shall be entitled at all times to set off any debt or claim of whatever nature which we may have against you against any sums due from us to you.
- When there is a query/dispute on an invoice, such as query/dispute must be notified to us, in writing before the date on which payment becomes due.
- If you or your consignee break bulk on delivery or unload the whole or part of a consignment of Goods then you are deemed to have accepted delivery.

## **DELIVERY**

- Our liability for delivery ends when unloaded from our vehicle or the premises of our suppliers when the Goods are delivered direct from suppliers to you or where Goods are delivered by an independent carrier by delivery to that carrier.
- Delivery dates are given in good faith but are estimates only and should not be relied on in relation to your commitments to third parties.
- Unless otherwise agreed in writing time for delivery shall not be of the essence of the Contract.
- As delivery dates are estimates only, we cannot accept liability for any loss damages costs or expenses of any kind whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from actual delivery dates being different.
- We are not responsible for delays outside our control. If delivery of the Goods is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any products you have paid for but not received.



- If we fail to deliver the Goods our entire liability shall be limited to the excess (if any) over the price of the Goods, of the cost to you (purchasing in the cheapest market reasonably available to you) of similar Goods to replace those not delivered.
- If you fail to take or make arrangements to accept delivery or collect the Goods or if we are unable to deliver because of inadequate access or instructions delivery shall be deemed to have taken place and we may do any one or more of the following (without prejudice to any other right or remedy we may have):
  - 1 Make additional charges for failed delivery
  - 2 Invoice you for the Goods
  - 3 Terminate this Contract without liability on our part
  - 4 Recover from you all costs and losses incurred by us
- Unless otherwise stated all quotations and estimates assume delivery in volume rates. We reserve the right to levy additional charges for deliveries by instalments where requested by you.
- We reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Any claim you may have in respect of one instalment shall not affect your liability in respect on any other instalment.
- The price agreed for deliveries where applicable includes the cost of delivery on week days during normal working hours. An additional charge will be made if we agree to your request to deliver outside normal working hours, Saturdays, Sundays and/or Bank Holidays.
- We shall deliver the Goods as near as possible to the delivery address as a safe hard permits. If a vehicle delivers or collects Goods to or from a place off the public road you shall be solely responsible for any accident or damage resulting. You shall provide free of charge any labour or machinery necessary for unloading the Goods when delivered and our driver's responsibility is limited to handling Goods off the vehicle. If our vehicle is kept on site for an unreasonable time or has to return to the depot without completing delivery through lack of assistance or is additional staff have to accompany our driver, an appropriate additional charge may be made. If you do not accept delivery of Goods ordered for any reason costs incurred may be charged. We reserve the right to refuse to deliver the Goods to premises which our driver considers to be unsuitable.
- If Goods are to be deposited other than on your private premises you shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and will indemnify us in respect of all losses damages and costs and expenses we may incur as a result of such delivery whether on the public highway or elsewhere.
- You will indemnify us in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with your instructions. This indemnity will be reduced in proportion to the extent that such losses damages costs or expenses are due to our negligence.
- In the event that we are unable to supply the Goods to you for whatever reason, we reserve the right to substitute the Goods for similar products which are of no less quality and you shall be entitled to a refund of any difference in the price if the substitute is cheaper.
- Whilst we try to maintain continuity of supply in relation to our product lines, we reserve the right to discontinue any product at any time and we shall be under no obligation to supply you with a discontinued product in the future.
- In the case of certain products, variations may arise in the finish of those products where they originate from different factory batches. We shall not be liable for any loss caused by such variation where Goods bought for a specific job or purpose are not purchased at the same time.

## **INSPECTION/OWNERSHIP/RISK**

- You shall inspect the Goods at the place and time of unloading but nothing in these Terms shall require you to break packaging and/or unpack Goods which are intended to be stored before use.
- You must give us written notice within 48 hours of unloading of any claim for short delivery.
- If you do not give us that notice within that time the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.
- You shall not be entitled and irrevocably and unconditionally waive any right to reject the Goods or claim any damages whatsoever for short delivery however caused.
- Our liability for short delivery is limited to making good the shortage

## **DEFECTIVE/FAULTY GOODS**

- 9.1 The risk in Goods shall pass to you upon delivery of the Goods or upon the Goods being appropriated to you but kept at our premises at your request.
- 9.2 We remain the owner of the Goods affected by the Contract until we have been paid in full for such Goods
- 9.3 You shall inspect the Goods immediately upon receipt and shall notify us within 48 Hours of delivery if the Goods are damaged or do not comply with any of the Contract. If you fail to do this you are deemed to have accepted the goods
- 9.4 Any Goods in respect of which any claim of defect or damage is made shall be preserved by you intact together with the original packing at your risk and either
  - 1 a) Retained by you for a reasonable period to enable the us or our agent to inspect or Collect the Goods or
  - 2 b) At our option returned by you to us who will refund the cost of postage and packing to you if Goods are in fact defective.



## RETURNS/CANCELLATIONS

- 10.1 All returns requests must be agreed in writing before we can process the returns request.
- 10.2 If it is agreed that the goods are to be returned:-
- 1 a) A Goods Return number obtained from us must be clearly shown on the returned parcels.
  - 2 b) You will be liable cost of remedying any damage to the Goods returned where such damage has, in the opinion of us, been caused by the Goods being inadequately packaged by you or through your fault
  - 3 c) We reserve the right to make a handling and restocking charge of 25% on Goods which are returned if they were ordered in error or are no longer required. If the goods are faulty or being returned under clause 10.2 then the restocking charge will not apply.
- 10.3 If you are a consumer you have the right, in addition to your other rights, to cancel your contract with ProCare and receive a refund. You must contact us and inform us in writing of your desire to cancel your contract within 7 working days of receipt of the relevant product(s). You must return the goods to us at your cost and we advise you to ensure the goods are adequately insured during any return journey.
- 10.4 For the avoidance of doubt, we will not accept the return of any goods supplied under a Special Order

## TITLE AND RISK

- The property in Goods sold by us to you shall remain vested in us until all sums owed by you to use on whatsoever grounds shall have been paid. Risk in the Goods shall pass to you when the Goods are delivered.
- You shall store Goods sold by us to you in such a way that they are readily capable of being identified as our property. Our labels and markings shall not be removed, obscured or defaced before title shall have passed to you upon payment in full. You shall maintain and safely store the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery. You shall notify us immediately if you become subject to any of the events listed in clause 13.
- You grant us a licence to enter at all times, with transport, any premises in your occupation or to which you have access and where the Goods to which title has not passed to you from us may then be situated. We shall have the right to check that the Goods are appropriately stored and labelled and to repossess any Goods sold by you which have not been paid for. We may require you to deliver up all Goods in your possession which have not been resold, or irrevocably incorporated into another product.
- You shall not deal with the Goods in any way other than in the normal course of your business. Until such time as payment in full has been made of all sums payable in respect of Goods, you shall not be entitled to sell or otherwise deal in or transfer the property in the Goods (whether or not they have been attached to other products) except on the condition that as between you and us, you shall be deemed to be acting as our fiduciary agent. However nothing herein contained shall be construed so as to create any privacy of contract between us and any person other than you. In the event of any sale or disposal of any of the Goods to a third party whether or not they have been attached to other products:
  - 1 You shall, if we so require, assign to us any right of action against the third party in respect of money due for such Goods;
  - 2 If you receive money for such Goods you shall act as our fiduciary agent and shall hold such monies in a separate account to identify the same as being our property;
  - 3 We shall account for any monies received that exceed the sum due from you to us in respect of Goods sold;
  - 4 Where the Goods have been sold together with any products to which they have become attached, the price payable by the third party shall be deemed to include a price in respect of the Goods equal to the price payable by you to us.
  - 5 In the event that we repossess Goods we shall be absolutely entitled to resell the same or use them in our business as we may think fit. If we resell the same we shall be absolutely entitled to the proceeds of resale
  - 6 If we repossess Goods then your liability in respect of transport, storage or handling charges or in respect of damages of any kind.
- All Goods sold are at your sole risk after their delivery or collection. However, if we repossess Goods risk shall pass to us on delivery to our premises or upon your collection of the Goods.

## RESPONSIBILITIES

- Nothing in these Terms shall exclude or restrict our liability for death or personal injury resulting from our negligence or our liability for fraudulent misrepresentation.
- We are willing to undertake liability in addition to that provided by these Terms if a higher selling price for the Goods is agreed and such additional liabilities are agreed by us in writing.
- In this clause "Defect" shall mean the condition and/or any attribute of the Goods and/or any condition or other circumstances which but for the effect of these Terms would have entitled you to damages.
- Subject to clauses 12.1 to 12.3 of these Terms we shall not be liable by reason of any misrepresentations (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any loss damages costs or expenses of any kind whatsoever. Instead of liability in damages we undertake liability under Clause 12.5 below.

- Where but for the effect of Clause 12.4 of these Terms you would have been entitled to damages against us we shall not be liable to pay damages but subject to the conditions set out in Clause 12.6 below shall in our sole discretion either repair the Goods at our own expense or supply replacement Goods free of charge or refund all (or where appropriate part) of the price paid for the relevant Goods.
- We will not be liable to you under these Terms:
  - 8 If the Defect would have been apparent on a reasonable inspection under Clause 8.1 of these Terms at the time of unloading.
  - 9 unless the Defect is discovered within 6 months from the date of delivery and we are given written notice of the Defect within 2 working days of it being discovered;
  - 10 If the Defect arises from fair wear and tear;
  - 11 If the Defect arises from your wilful damage negligence abnormal working conditions misuse of alteration or repair of the Goods failure to follow British Standard or EN Standard or industry instructions relevant to the Goods or storage of the Goods in unsuitable conditions; or
  - 12 Unless after discovery of the Defect we are given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with. We acknowledge that the costs of suspending works are relevant to the determination of what is a reasonable opportunity and this sub-clause shall not apply to any works affecting the Goods which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.
- If the Goods are not manufactured by us or have been processed by a third party whether or not at our or your request our liability in respect of any defect in workmanship or materials of the Goods will be limited to such rights against the manufacturer or third party as we may have in respect of the Goods. We will on written request provide details of our rights against the manufacturer or third party and any other terms and conditions imposed by the manufacturer or third party and so far as possible will on request assign to you any such rights.
- If the Goods are manufactured or processed by us to the design quantity measurement or specification of you then:
- Subject to clauses 12.1 to 12.3 of these Terms we shall not be under any liability for any loss damages costs or expenses of any kind whatsoever or under Clause 12.5 of these Terms as the case may be except in the event of:
  - 1 Fraudulent misrepresentation;
  - 2 Misrepresentation where the representation was made or confirmed in writing;
  - 3 Non-compliance with such design quantity measurement or specification;

Or

- 1 Breach of a written warranty by us that the Goods are fit for that purpose.
- You will unconditionally fully and effectively indemnify us against all losses damages costs on an indemnity basis and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim:
    - 2 For infringement of any patents copyright design trademark or any other industrial or intellectual property rights of any other person; and/or
    - 3 Arising from any such manufacturing or processing including but not limited to any Defect in the Goods. This indemnity will be reduced in proportion to the extent that such losses damaged costs and expenses are due to our negligence.
  - You will unconditionally fully and effectively indemnify us against all losses damages costs on an indemnity basis and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim by any third party arising from the supply or use of the Goods including loss arising from our negligence. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to our negligence.
  - Without prejudice to any other provisions in these Terms in any event our total liability for any one claim or for the total of all claims arising from any one act of default on our part (whether arising from our negligence or otherwise) shall not exceed the contract price actually paid for the relevant Goods or, if lower, such sum as is from time to time the limit of liability laid down by our insurers in respect of such claim.

## **NON-PAYMENT/INSOLVENCY**

- "Insolvent" means you becoming unable to pay your debts within the meaning of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act 1986; the levying or the threat of execution of distress or any of your property; notice of intention to appoint or the appointment of the receiver or administrator over all or any part of your property; a proposal for a voluntary arrangement or compromise between you and your creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding-up or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction; the presentation of a petition for your winding-up (Company) or bankruptcy (Individual) or for an administration order in relation to you; if you suffer any analogous step or proceedings under foreign law or you ceasing to pay your debts in the ordinary course of business or ceasing or threatening to cease to carry on your business.



- If you fail to pay any invoice or any sum due to us under any contract on the due date or you become Insolvent or if there is a material charge in your constitution or you commit a material breach of this Contract (and, if remediable, you fail to remedy that breach within 7 days of notice to do so) all sums outstanding between you and us shall become immediately due and payable and we shall be entitled to do any one or more of the following (without prejudice to any other right or remedy we may have):
  - require payment in cleared funds in advance of further deliveries;
  - claim interest and compensation on the sums outstanding pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment is received after as well as before judgment;
  - cancel or suspend any further deliveries to you under this or any other contract without liability on our part;
- without prejudice to the generality of Clause 10 of these Terms exercise any of our rights pursuant to that clause; and/or
  - Terminate this or any other contract with you without liability on our part.

13:3 you shall reimburse our costs including legal costs on an indemnity basis which we incur in enforcing these Terms including but not limited to recovery of any sums due. Such sums shall be in addition to statutory compensation payable.

## **DATA PROTECTION**

- If you are an individual or a group of individuals you agree that we may:
  - Seek, hold and process any information obtained about you as a result of applications you have made to us for credit and/or in connection with this or any other contractor agreement you may have with us.
  - Use this information for credit assessment purposes and to administer and operate the credit account granted to you and to monitor and analyse the conduct of that credit account and to assess your credit limit.
- We will not disclose any information we hold about you except to licensed credit reference agencies, other suppliers and creditors to help us and others make credit decisions, to help prevent or detect fraud or other crimes and to trace debtors, on a confidential basis to our agents, and sub-contractors, to insurance companies for the purposes connected with insurance products that relate or might relate to your credit account, to any person to whom we propose to transfer our rights and/or responsibilities under this Contract and to the extent we are required or permitted to do so by law.

## **BRIBERY/LEGISLATION**

- You agree that you will not, in connection with the Goods or services to be supplied under this contract, bribe or attempt to bribe us, or any of our employees, agents of affiliates nor engage in any activity which is violation of any applicable bribery or anti money laundering laws. We may terminate the contract in the event of your breach of this clause. You shall indemnify us against all liabilities, costs, expenses, damages, claims, demands and losses suffered or incurred by us arising out of or in connection with any breach of this clause, whether or not the contract has been terminated.

## **EXPORT/OVERSEAS CONTRACTS (IF APPLICABLE)**

- In relation to Goods sold outside the UK, the Channel Islands and the Isle of Man, risk in the Goods shall pass to you when they leave our premises. Shipping and insurance shall be payable by you but will be managed by us unless otherwise agreed. You are responsible at your own expense for obtaining any license and complying with any export or import regulations in force with the UK and any country for which the Goods are destined. Separate conditions and prices apply to all export orders and contracts.

## **WASTE**

- You will be responsible for the disposal of any waste arising from the Goods and will comply with all applicable laws, regulations and waste management licenses relating to such waste, including the appropriate disposal by you of any Goods marked with a crossed out wheelee bin symbol. You will indemnify us against all costs, liabilities and expenses arising from any breach by you of this provision.

## **MATTERS BEYOND OUR CONTROL**

- We shall not be liable for any breach of contract delay or failure to perform any of our obligations if the breach delay or failure was due to any cause beyond our reasonable control, including industrial action.
- In particular, we may defer the date of delivery, cancel the contract or reduce the volume of the Goods and/or services ordered by you (without liability to you) if we are unable to deliver of supply due to any cause beyond our reasonable control (including the acts or omissions of our suppliers and subcontractors).

## **OTHER IMPORTANT TERMS**

- This contract shall be governed and interpreted exclusively according to the Law of England and Wales and you agree to submit to the non-exclusive jurisdiction of the English Courts.
- The Waiver by us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- If any clause or sub-clause of these terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.



- If the Housing Grants, Construction and Regeneration Act 1996 Part II applies to this Contract the Scheme under that Act shall apply and take precedence in the event of conflict between the Scheme and these Terms.
- Any reference in these Terms to any Statute, Statutory Provision or Regulation includes a reference to that Statute, Statutory Provision or Regulation as amended extended or re-enacted at the relevant time.
- The headings of these Terms are for convenience only and shall not affect their interpretation.
- Termination of this Contract shall not affect rights and obligations which have already accrued at the time of termination.
- Nothing in these terms or the Contract is intended to or will create any benefit for or right to enforce any of the terms of the Contract to any third party.
- This Contract contains the whole agreement between you and us in respect of the supply of Goods to you and supersedes any prior written or oral agreement between you and us relating to it and you confirm that you have not entered into this Contract on the basis of any representations that are not expressly incorporated in this contract.

*Separate conditions and prices apply to all export orders and contracts*

*Nothing in this Contract purports to exclude liability for any fraudulent statement or act. (01/06).*

