

GREEN FLUSH TECHNOLOGIES, LLC

Terms and Conditions

1. Agreement. This Agreement consists of both the Contract and these Terms and Conditions as is between Green Flush Technologies (the “**Seller**”) and Town of Fraser, Colorado (the “**Buyer**”).
2. Scope of Services. This Contract is for the fabrication and delivery of the Keystone model flush restroom building as described in the attached Quote #FCO02 dated 1/26/2022 (the “**Product**”), delivered to Fraser, CO.
3. Purchase Price & Payment Terms. The purchase price for the Product, shall be \$223,709. Unless otherwise stated, all applicable duties or federal, state or local taxes that are, or may hereafter be, applicable are separate and not included in the Purchase Price. Before the start of engineered drawings and calculations for the Product, the Buyer shall pay the Seller a deposit of 10% to cover the Seller’s costs for the preparation and approval of engineered drawings and calculations including the costs of plan review and approval by the State Modular Building Office. Seller shall begin manufacturing the Product after receiving the approval of the plans and specifications by the local building department and upon receipt of payment equal to an additional 10% of the Purchase Price. The Seller may request partial payments on a monthly basis for expenses incurred in the work of manufacturing the Product. Upon notice that the Product is ready to ship, Buyer shall pay the Seller a sum equal to 90% of the purchase price minus previous payments. The Seller shall not be required to ship the Product until this payment has been received, or other arrangements have been mutually agreed to. Within 25 calendar days of the delivery date, the Buyer shall pay the Seller the full remaining unpaid balance of the Purchase Price. However, at that time, should the Buyer wish to retain monies from the unpaid balance of the Purchase Price due to warranty concerns for which the Seller is liable, the Buyer shall not be required to pay Seller said retained monies until such time as the warrantee work is completed. Monies held for warrantee work shall not be in excess of the actual cost of the warrantee work. The purchase and payment terms herein shall be controlling over any other document. The purchase price may be adjusted by written change order, signed by both the Buyer and Seller. Delinquent payments shall be subject to 1% interest per month.
4. Bonds. If Buyer requires the Seller to carry bonds, the cost of such bonds will be paid to the Seller within 30 days of Sellers invoice(s) following the payment(s) made by the Seller to the Bonding Agent.
5. Liquidated Damages. Under no circumstances shall the Seller be required to make payment for any liquidated damages assessed by the Buyer or assessed against the Buyer by others.
6. Cancellation; Termination. Buyer may cancel or modify the Contract prior to fabrication of Product upon written notice to Seller and provided that Buyer has paid Seller for all reasonable charges for expenses incurred and commitments made by the Seller up to the date of such modification or cancelation. Buyer cannot cancel or modify Contract after Seller has started fabrication of Product without Seller’s written consent and the payment by Buyer to Seller of all direct costs and economic damages incurred due to such cancelation or modification.
7. Force Majeure. In the event the completion of the Product under the Contract is prevented or delayed due to weather, fire, accident, natural disaster, theft, labor strikes, material shortage, delay of any governmental agency in issuing any required permit or certificate, or in performing inspections, litigation, or any act of God, completion of work shall be delayed until a later date that is agreed to by the parties. Under no circumstances will Seller bear any liability for such act, the delay such act creates, or damages caused by such act.

8. Delivery and Installation. The Seller shall make reasonable accommodation to the Buyer to have access to the restroom either in person or through electronic media to inspect the restroom before shipment. However, any costs incurred by said accommodation(s) shall be borne by the Buyer. Seller will deliver the Product to Buyer's specified location. Seller shall be responsible for repairs due to any shipment or transport damage to the restroom building provided such damage is noted on the delivery documentation given to the Buyer upon arrival and prior to unloading the restroom from the delivery vehicle. Buyer shall be responsible for any damage to the buildings or vaults that occurs on-site and that is the result of Buyer's installation. Delivery shall be made by the Seller to the installation site or to the closest location to the installation site that is accessible for the semi-trucks delivering the product. Any costs for mobilization beyond this shall be borne by the Buyer. Buyer shall be responsible for preparing the site for installation per the drawing provided by the Seller including but not limited to excavation, leveling, and stabilization of receiving soils. Buyer shall also be responsible for all contracted on-site utility connections, backfilling, final grading, landscaping, hardscaping, walkways, and site cleanup.
9. Intellectual Property. Unless otherwise agreed upon in writing prior to receipt of Contract, Seller retains the right in perpetuity to use all Product images that are taken during construction and delivery and while the goods are in Seller's possession. The images may be used on Seller's website, in marketing materials, at trade shows, entered in industry related competitions or in any other manner as Seller decides to use such images.
10. Confidential Information. During the course of this Agreement, Buyer may gain possession of or access to Seller's confidential information including, but not limited to certain drawings or specifications with regard to the Product, proprietary methods and protocols, and any and all information and know-how (collectively, the "**Confidential Information**"). Buyer acknowledges and agrees that it has no claim, right, title, property or other interest of any kind in the Confidential Information. Buyer will not make copies or give originals of any documents that are indicated as being Confidential Information to any other persons or entities without the written permission of the Seller, which Seller may withhold at its sole discretion.
11. Inspection. Buyer will promptly inspect the Product upon delivery and installation and will notify Seller in writing of any nonconformity or defect within 10 days following actual installation date. Upon such notice, Seller will cure such defect or nonconformity within a reasonable period of time and will pay for any repair costs. However, such defect or nonconformity will not relieve Buyer of its obligation to pay Seller the remainder of the Purchase Price, delivery, installation, taxes, duties, or other costs owed, except as noted in paragraph 3 above.
12. Express Warranty. Seller warrants for a period of one year (after notice that the product is ready to ship) that all Products shall be free of any defects in workmanship and materials and, except as stated below, will conform to the specifications stated or referred to in the Contract. No warranties exist beyond the specifications stated or referenced in this Agreement. Seller will replace or repair any goods or component that are found to be defective or nonconforming provided that Buyer gives Seller written notice of the defect or nonconformity within the warranty period and the notice given specifies the defect or nonconformity with reasonable particularity. If practical, Buyer will return defective or nonconforming goods or components F.O.B. to Seller's manufacturing facility and accept the same as repaired or the replacement F.O.B. at Seller's installation site. Repair or replacement shall be at Seller's sole option. Notwithstanding the foregoing Seller may elect to terminate all of its obligations and liability to Buyer, including the obligation to repair or replace, by refunding the purchase price to Buyer if Seller determines that repair or replacement cost may exceed the purchase price.
13. **WARRANTIES AND REPRESENTATIONS. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SELLER SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, OR DAMAGES TO**

PERSONS OR PROPERTY RESULTING FROM FAILURE OR DEFECTIVE OPERATION OF THE PRODUCT OR DELAY IN SELLER'S PERFORMANCE UNDER THIS AGREEMENT NOR SHALL SELLER BE LIABLE FOR PUNITIVE, DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND SUSTAINED FROM ANY CAUSE, INCLUDING TORT AND STRICT LIABILITY. ALSO, SELLER SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES OR MALFUNCTION RESULTING FROM BUYER'S MODIFICATION OF THE PRODUCT OR FAILURE TO PROPERLY MAINTAIN THE PRODUCT IN ACCORDANCE WITH SELLER'S RECOMMENDED OPERATION, MAINTENANCE, AND SERVICE GUIDELINES.

14. EXCLUSION OF IMPLIED WARRANTIES. AS A MATERIAL PART OF THE BARGAIN, ALL IMPLIED WARRANTIES, (NOT INCLUDING EXPRESS WARRANTIES AS LISTED IN SECTION 10 AND INCLUDING MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE), EXCEPT IMPLIED WARRANTIES OF TITLE AND AGAINST INFRINGEMENT, ARE EXCLUDED AND BUYER EXPRESSLY WAIVES ANY CLAIM OR REMEDY BASED THEREON.
15. Miscellaneous. Any dispute between the parties shall be submitted by the complaining party to the Arbitration Service of Portland and shall be resolved in accordance with the rules of the Arbitration Service of Portland. The headings in this Agreement are for convenience only and are not intended to, and shall not be construed to affect the scope or intent of this Agreement nor the meaning of any of its provisions. This Agreement is personal to the specific parties and neither party may assign or transfer its rights, obligations, and responsibilities under this Agreement without the express written consent of the other party, which shall not be unreasonably withheld. This Agreement shall be given a fair and reasonable construction in accordance with the intention of the parties and without regard to the identity of its drafter. This Agreement sets forth the entire, integrated understanding and Agreement of the parties with respect to the independent contractor relationship between them, incorporates all of the terms, covenants and conditions agreed to by the parties, and is controlling. This Agreement can only be modified or amended in writing, signed by both parties. In the event of any legal action or proceeding initiated by either party in order to enforce the Agreement or any of its provisions, including arbitration, the non-prevailing party will pay all of the prevailing party's reasonable attorneys' fees and costs incurred in connection with such action or proceeding. If any part of this Agreement is determined by a court of competent jurisdiction to be unenforceable, all other parts of this Agreement will remain in full force and effect. The laws of the State of Washington will govern this Agreement, without giving effect to the principles of conflict of law thereof. The Courts of Clark County shall be the venue for any dispute related to this Agreement. In addition, each of the parties to this Agreement (a) consents to submit itself to the personal jurisdiction of Washington state courts in the event any dispute arises out of this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (c) agrees that it will not bring any action relating to this Agreement in any other court. This Agreement may be executed in one or more counterparts, each of whom shall be deemed an original and all of which counterparts together will constitute one integrated agreement. Execution of this Agreement at different times and places by the Parties will not affect its validity as long as all the parties execute a counterpart of this Agreement. In the event of a breach of this Agreement, the non-breaching party may maintain an action for specific performance or file for an injunction against the party who is alleged to have breached any of the terms of the Agreement. Failure of either party to insist upon the strict performance of any of the Agreement's terms and conditions, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, will not release the other part of any of its obligations under the Agreement, nor will any purported oral modification or rescission

of this Agreement by either party operate as a waiver of any of the Agreement's terms. No waiver by either party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, right, condition, or provision hereof will constitute a waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, agreement, covenant, right, condition, or provision.

Green Flush Technologies, LLC (SELLER)

Representative's Name and Title

(Signature)

Date

Town of Fraser, Colorado (BUYER)

Representative's Name and Title

(Signature)

Date

Attachment: Quote #FCO02