

GENERAL CONDITIONS OF MAINTENANCE AGREEMENT FOR TOILET FRIEND ODOUR REMOVAL SYSTEMS

These are the general conditions which will apply if the Customer's order is accepted by Toiletfriend. "Toiletfriend" means Toiletfriend (Pty) Ltd trading as Toiletfriend or its cessionaries, delegates, assignees or successors in title.

1. This Agreement shall commence on the date (as certified by Toiletfriend and as noted as "Start Date" on the Schedule) the equipment is installed and shall continue in force for the full period as noted on the schedule. Thereafter, this Agreement will remain in force for further monthly periods unless terminated by either party giving to the other not less than 90 (ninety) days written notice by registered post.
2. The customer shall pay Toiletfriend the total monthly minimum charge if any, and additional charges if any, calculated at the rate specified in the Schedule, monthly in arrears upon presentation of invoice. Toiletfriend shall be entitled to charge interest on all overdue accounts at the rate of 2% above the prime lending rate charged by its bankers or any cessionary.
3. Toiletfriend shall provide a maintenance service for the equipment during the period of this Agreement in accordance with the following provisions:
 - a. It will, subject to the provisions of this Agreement, make inspections, carry out such adjustments and repairs and replace such parts as Toiletfriend or its authorized Dealer may deem necessary to keep this equipment in good working order throughout the period of this Agreement.
 - b. Toiletfriend shall not charge for any routine maintenance, any repair work done, or for any replacement parts, where the need for such work or parts arises only from fair wear and tear. However, if the repair arises out of the carelessness or misuse in operation, careless handling, damage caused as a result of floods, fire, riots, acts of God, adjustments or repairs made by any person other than Toiletfriend or authorized Dealer, a charge will be levied at the prevailing rates as determined by Toiletfriend from time to time.
 - c. Toiletfriend will be entitled to charge for any work carried out at the Customer's request where work is to be done outside of Toilet Friend's normal business hours.
 - d. Where the Customer is obliged to pay a charge for any work, traveling or replacement parts, the charge shall be payable at Toilet Friend's then prevailing rates and charges as determined by Toiletfriend from time to time.
 - e. Toiletfriend offers service free of traveling charge within a 50km radius from the allocated Toiletfriend or authorized Dealer servicing centre. If, however, the location of the equipment is outside of this 50km radius, a traveling charge will be levied, this charge to be at Toilet Friend's prevailing rates as determined by Toiletfriend from time to time.
4. During the period of this Agreement the Customer shall:
 - a. Not move the installed equipment without Toilet Friend's prior consent;
 - b. Toiletfriend will move the equipment to a new site (whether or not in the premises in which it was originally installed) if so requested by the Customer, provided that the Customer shall pay Toiletfriend the cost of so doing, based upon Toilet Friend's charges prevailing at the time, and as determined by Toiletfriend. In the event that the Customer, or anyone else, other than Toiletfriend, so moves the equipment, the Customer shall be liable to pay to Toiletfriend, for any repairs, new or substituted parts or materials required as a result of such a move;
 - c. use the equipment with care and take reasonable precautions to avoid accidents and to safeguard it from loss or damage and excessive wear and tear;
 - d. notify Toiletfriend immediately of any loss of, or damage to, the equipment or part thereof or any failure of the equipment to function;
 - e. not repair the equipment nor have it repaired by anyone else other than Toiletfriend or its authorized Dealer in terms of clause 3;
 - f. not use any part or component for the equipment which has not been supplied or approved by Toiletfriend.
 - g. allow Toiletfriend or anyone authorized by Toiletfriend to inspect and examine the equipment at all reasonable times, subject however, to the Customer's security regulations in force from time to time;
 - h. use the equipment only for the purpose for which it has been designed, and in accordance with Toilet Friend's instructions;
 - i. nominate a responsible person to act as key operator for the unit (such initial person to be trained by Toiletfriend free of charge).
5. Toiletfriend shall be exempted from and shall not be liable under any circumstances whatsoever for any loss of profit or other special damages or any indirect or consequential damages of any nature, whether in the contemplation of the parties or not which the Customer may suffer as a result of any breach by Toiletfriend of any of its obligations to the Customer.
6. Toiletfriend may vary any of the terms of this agreement by giving the Customer written notice of the variations at least 30 (thirty) days before they are due to take effect
 - a. the customer shall thereupon have the right to terminate this Agreement with effect from the date on which the variations are due to take effect by giving written notice to Toiletfriend within 15 (fifteen) days from the date he received Toilet Friend's notice of the variations, failing which the variations will be binding on the Customer.
 - b. Notwithstanding the foregoing, Toiletfriend shall be entitled to review and increase the service charges/fees set out in the Schedule hereto on an annual basis; a 10% increase to take effect only from the anniversaries of the date of installation of the equipment and not to be notified to the Customer a variation entitling the Customer to terminate this Agreement in terms of paragraph (a) of this clause. Toilet Friend's charges/fees will however, always remain related.
 - c. Toiletfriend review of charges/fees as contemplated in paragraph (b) of this clause is designed to cater for the effects of inflation and other increases in labour and traveling costs, and assumes that Rand foreign currency exchange rate fluctuations will be of a minor nature. If, however, unfavourable exchange rates are experienced, Toiletfriend reserves the right, at any time, to review the charges/fees applied under this Agreement, to cater for such unfavourable exchange rates. Such a review will be construed as a variation as noted in clause (a) above.
7. Toiletfriend may cancel this Agreement summarily if the Customer:
 - a. fails to pay any amount due in terms of clause 2 above; or
 - b. commits any act of insolvency, is sequestered whether provisionally or finally, or enters into judicial management or liquidation, whether provisional or final; or
 - c. commits any other breach of any of the terms of this Agreement and fails to remedy such breach within 7 (seven) days after receipt of written notice requiring him to do so.
 - d. Toilet Friend's rights under (c) are not exhaustive and in particular in the event of cancellation of this Agreement by Toiletfriend on the basis of any of the grounds set out in (b) above, then the Customer shall, on demand by Toiletfriend, pay to Toiletfriend all amounts in arrear in terms thereof at the date of cancellation, plus an amount equal to the aggregate of what would have been the total monthly minimum charge (as set out in the Schedule hereto) for the balance of the period of this Agreement.
 - e. No relaxation of or waiver by Toiletfriend of any of the terms of this Agreement shall prejudice Toilet Friend's right to enforce this obligation on any subsequent occasion.
 - f. In the event of the Customer being in breach of any of its obligations in terms of this Agreement then, without prejudice to any other remedies or rights that Toiletfriend may have, including the right of cancellation, all of which rights and remedies it shall nevertheless be entitled to exercise, Toiletfriend shall be entitled to suspend the performance of its own obligations, including service obligations, until the breach is remedied by the customer.
8. The customer shall not be entitled to cede any of its rights under this Agreement without Toilet Friend's prior written consent which shall not unreasonably be withheld.
9. This document, the Schedule and any Annexure/s hereto signed by the parties and attached hereto, shall constitute the whole Agreement between Toiletfriend and the Customer, and the Customer acknowledges that Toiletfriend has not agreed to any terms, conditions or warranties or made any representations, other than those stated in the aforementioned documents. The conditions of this Agreement shall apply to each and every Annexure which the parties may enter into. The conclusion of each Schedule shall create a separate independent Agreement.
 - a. Subject to the provisions in clause 6 no alteration or variation of this Agreement shall be of any force or effect unless it is recorded in writing and signed by both parties.
 - b. By signing this Agreement the signatory confirms that he has the authority (ex-officio or by board resolution) to sign, endorse and execute all documents for and on behalf of the Customer.
10. This Agreement is subject to and conditional upon the information provided by the Customer in terms of the confidential Customer Information being acceptable to Toiletfriend.
11. This Agreement shall be governed by and construed in accordance with the Laws of the Republic of South Africa.
12. The Customer hereby consent to Toiletfriend instituting any proceedings against it arising out of this Agreement in any Magistrate's Court, otherwise having jurisdiction in respect of the Customer, notwithstanding that the amount claimed in such proceedings would exceed the jurisdiction of such Court.
13. The parties accept as their respective domicilium et executandi for the purposes of this Agreement the addresses as recorded in the Schedule.

Either Party may change it's aforesaid address to any other address in the Republic of South Africa by giving to the other party no less than 14 (fourteen) days written notice of such change.
14. Any notice addressed to the Customer at the domicilium citandi et executandi required to be stated as per clause 13 above, and sent by post shall be deemed to be received by him 7 (seven) days after its posting.
15. All notices and all payments effected or made in terms of or in pursuance of this Agreement, shall be effected or made, as the case may be, to the domicilium citandi et executandi specified or provided for in terms of clause 13 above.
16. All prices quoted in this Agreement, Schedule and any Annexure/s attached reflects both VAT Exclusive and VAT inclusive amounts.