

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL,

Plaintiff,

v.

Case No. 118072

FREEDOM WALK IN TUBS & SHOWERS

**SERVE: Office of the Secretary of the
Commonwealth
Service of Process Department
P.O. Box 2452
Richmond, VA 23218-2452**

AND

**SERVE: c/o Nolan Scott Barzee
6789 South Rachael Way
Gilbert, AZ 85298**

&

NOLAN SCOTT BARZEE,

**SERVE: Office of the Secretary of the
Commonwealth
Service of Process Department
P.O. Box 2452
Richmond, VA 23218-2452**

AND

**SERVE: 6789 South Rachael Way
Gilbert, AZ 85298**

Defendants.

TESTE: _____ D.C.
CLERK OF THE
CIRCUIT COURT
LOUDOUN COUNTY, VA

2018 NOV -2 AM 9:59

FILED

COMPLAINT

The Plaintiff, Commonwealth of Virginia (Commonwealth), by, through, and at the relation of the Attorney General of Virginia, Mark R. Herring, petitions this Court to declare the

activities in which the Defendants, Freedom Walk in Tubs & Showers (Freedom) and Nolan Scott Barzee (Mr. Barzee) (Freedom and Mr. Barzee are together referred to herein as Defendants), have engaged violate the Virginia Consumer Protection Act (VCPA), Virginia Code §§ 59.1-196 through 59.1-207; violate the Virginia Home Solicitation Sales Act, Virginia Code §§ 59.1-21.1 through 59.1-21.7:1; and constitute unlicensed contracting in violation of Virginia Code § 54.1-1115(B)(i). The Plaintiff requests this Court to enjoin these violations; to restore to consumers the sums acquired from them in violation of the VCPA; to award civil penalties, expenses, and attorneys' fees to the Commonwealth; and to grant such other relief requested in this Complaint.

PARTIES

1. The Plaintiff is the Commonwealth of Virginia, by, through, and at the relation of Mark R. Herring, Attorney General of Virginia.

2. Defendant Freedom is not registered with the Virginia State Corporation Commission as a Virginia or foreign business entity. Therefore, on information and belief, it is operating as a sole proprietorship of Mr. Barzee. At all times relevant to the claims alleged here, Freedom had a principal business address of 501 E. Main Street, Unit 8, Purcellville, Virginia 20132. As alleged below, around June 2018 Freedom relocated to Arizona.

3. On information and belief, Mr. Barzee is Freedom's President and owner and a resident of Arizona. He is named here in his individual capacity because he directly violated the VCPA and because he is responsible for Freedom's VCPA violations because he individually, or together with others, directed, controlled, approved, or participated in Freedom's acts and practices that are the subject of this Complaint.

JURISDICTION AND VENUE

4. The Commonwealth brings this action under Virginia Code § 59.1-203, which authorizes the Commonwealth to bring an action to enjoin any VCPA violations.

5. The Circuit Court for the County of Loudoun has authority to entertain this action and to grant the relief requested here under Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205, and 59.1-206.

6. Venue is permissible in this Court under Virginia Code § 8.01-262(1) because Defendant Freedom's principal office or place of business was located in the Town of Purcellville, in Loudoun County. It is also permissible under Virginia Code §§ 8.01-262(3) and (4) because Defendants regularly conducted substantial business activity in Loudoun County, and because portions of the causes of action arose in Loudoun County.

7. In accordance with Virginia Code § 59.1-203(B), before commencing this action, Plaintiff gave Defendants written notice that these proceedings were contemplated and provided Defendants a reasonable opportunity to appear before the Office of the Attorney General to demonstrate that no VCPA violations had occurred, or, in the alternative, to execute an appropriate Assurance of Voluntary Compliance.

8. In June 2018, Defendants notified the Commonwealth that they have ceased business in the Commonwealth, but they have failed to show that no violations have occurred and have not executed an appropriate Assurance of Voluntary Compliance.

FACTS

9. Defendants advertise and sell walk-in bathtubs and showers and installation services.

10. Defendants' website lists locations in Arizona, Delaware, Florida, Maryland,

Pennsylvania, and Virginia.

11. In January 2018, an Air Force veteran and his wife were shopping for a walk-in bathtub for their home in Fredericksburg, Virginia. They solicited bids from multiple vendors, including the Defendants.

12. On January 17, 2018, Defendants' salesman came to their home, discussed options with them, and provided an estimate of \$10,000 to remove their existing tub and install a new "Platinum" wheelchair-accessible walk-in bathtub.

13. Defendants' estimate provided that Defendants would perform "demo," "electrical," "reverse plumbing," "pony wall," "upgraded extension or shelf," and "installation."

14. The homeowners agreed to purchase the bathtub and to have Defendants install it. Defendants' salesman prepared the contract on a Freedom form. According to the contract, a true and correct copy of which is attached as Exhibit 1 with the homeowner's name, address, and telephone number redacted, the \$10,000 purchase price would include installation, labor, and materials, including electrical work, reverse plumbing, the installation of a "pony" wall and a backwall shelf. The salesman told the homeowner Defendants would perform the installation.

15. Defendants' contract had two provisions limiting a buyer's right to cancel. On the front, in approximately 9-point font above the signature block, the contract provided that because the walk-in bathtubs were "custom order," all cancellations must be in writing, mailed via certified mail, and delivered before midnight of the third calendar day after the contract's execution.

16. The other cancellation provision was on the contract's flip-side in 8-point fine print. It provided the buyer could cancel within three business days from date of signing, but that all requests to cancel must be delivered before three calendar days had passed.

17. However, both contract provisions provided that the buyer was ineligible to cancel if the buyer “waived their right to a cancellation period, in writing, due to requesting [Freedom] to provide goods or services without delay.”

18. Defendants’ salesperson had the homeowners execute a waiver of their right to cancel the \$10,000 purchase. This single-page “Right to Cancel Waiver,” a true and correct copy of which is attached as Exhibit 2 with the homeowner’s name redacted, provided that the homeowners were “requesting to waive our right to this cancellation period” and that they would be “surrendering our right to refund of our deposit, and could be charged up to 33% of full contract price should we chose [sic] to cancel from this day forward.” This waiver purported to be an addendum to the original contract.

19. The homeowners paid Defendants \$10,000 by credit card, signing a credit card authorization.

20. After the homeowners signed the contract, the waiver, and a credit card authorization, the homeowners asked the salesperson how long it would take to install the bathtub. The salesperson appeared reluctant to answer, then said “four to six weeks” and walked out the door.

21. The homeowners needed the bathtub sooner than four to six weeks, and other companies had quoted them a one-week turnaround time. They also realized that Defendants’ model had an outward-swinging door, where they required an inward-swinging door.

22. The next day, on January 18, 2018, the homeowners called Defendants to cancel. Defendants’ employee who answered told them to put their cancellation in writing by fax. So on January 19, 2018, the second day after signing the contract, the homeowners cancelled the contract in writing by fax to Defendants.

23. Defendants refused to honor the cancellation. Mr. Barzee, in a telephone call to the homeowners and later in a letter written to the Commonwealth on Freedom's behalf, claimed the homeowners had waived their right to cancel by signing Freedom's waiver form. Mr. Barzee also admitted in the letter to the Commonwealth that Defendants had received the homeowner's written cancellation on January 19, 2018.

24. As of the date of this Complaint, Defendants have not refunded the homeowners' \$10,000 purchase payment, nor have they provided any goods or services to the homeowners.

25. On or about June 11, 2018, Defendants sent a letter to the Commonwealth stating that they are no longer conducting business in Virginia and that their "corporate headquarters are in Tempe, Arizona." Mr. Barzee signed the letter.

FIRST CAUSE OF ACTION

(Virginia Home Solicitation Sales Act and Virginia Consumer Protection Act)

26. The Commonwealth realleges and incorporates by reference paragraphs 1 through 25.

27. The VCPA prohibits certain acts and practices committed by a supplier in connection with a consumer transaction. Va. Code § 59.1-200(A). One prohibited act or practice is to violate any provision of the Virginia Home Solicitation Sales Act (Sales Act). Va. Code § 59.1-200(A)(19).

28. A "consumer transaction" includes "[t]he advertisement, sale, lease, license or offering for sale, lease or license, of goods or services to be used primarily for personal, family or household purposes." Va. Code § 59.1-198.

29. A "supplier" is a seller who advertises, solicits, or engages in consumer transactions. *Id.*

30. The Sales Act applies to the sale of goods or services at a “residence other than that of the seller.” Va. Code § 59.1-21.2(A).

31. The Sales Act generally provides that when goods or services are sold at a buyer’s home, the buyer has until midnight of the third business day to cancel. Va. Code § 59.1-21.3.

32. The Sales Act requires a seller to make specific written disclosures regarding a buyer’s right to cancel a sale made in a buyer’s home: the seller must disclose the buyer’s right to cancel under a “conspicuous caption” that is “in bold face type of a minimum size of ten points” that reads “BUYER’S RIGHT TO CANCEL”; the seller must give notice of the right to cancel in the exact language specified by the Sales Act or under the Federal Trade Commission’s Cooling-Off Rule (16 C.F.R. § 429.1); and the seller must provide a separate notice of cancellation form. Va. Code § 59.1-21.4(2).

33. Until a seller complies with the Sales Act’s notice requirements, the buyer may cancel the sale anytime by “notifying the seller in any manner and by any means of [the buyer’s] intention to cancel.” Va. Code § 59.1-21.4(3).

34. Even if a seller complies with the Sales Act’s notice provisions, a buyer’s notice of cancellation “need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.” Va. Code § 59.1-21.3(4). This can include giving written notice of cancellation at the address stated in the contract. Va. Code § 59.1-21.3(2). Mailed notice of cancellation is subject to the “mailbox rule”: it is given on the date when the mail is deposited in a mailbox, not when the mail is delivered or received. Va. Code § 59.1-21.3(3).

35. There is an exception to the Sales Act’s cancellation provisions if the homeowner “requests the seller to provide goods or services without delay because of an emergency.” Va.

Code § 59.1-21.3(5). However, for this exception to apply, the seller must “in good faith make[] a substantial beginning of performance of the contract before the buyer gives notice of cancellation” and the buyer must have made a written “emergency request” that expressly states the buyer understands that he is waiving his right to cancel the sale. Va. Code § 59.1-21.3(5)(a, c).

36. Unless the emergency exception requirements are met, any other waiver of modification of a buyer’s right to cancel “is void and of no effect.” Va. Code § 59.1-21.3(6). And if a seller obtains such a waiver from a buyer, the buyer’s right to cancel does not commence until the first business day “following his learning that the waiver or modification is void and of no effect.” *Id.*

37. Defendants are suppliers engaging in consumer transactions by advertising, soliciting, and engaging in the sale of bathtubs and bathtub installations to be used primarily for personal, family, or household purposes.

38. Here, Defendants violated the Sales Act in four ways.

39. First, Defendants failed to make the Sales Act’s required disclosures in violation of Virginia Code § 59.1-21.4(2): they failed to include in Freedom’s contract that was solicited, negotiated, and executed at a consumer’s residence a disclosure of the consumer’s right to cancel with the statutorily-required language, in the appropriate place on the contract, and in the appropriate font size; and they also failed to provide a separate notice of cancellation form.

40. Second, the Defendants misrepresented the consumer’s right to cancel in their contracts in violation of Virginia Code §§ 59.1-21.4(2) and 59.1-21.3. Defendants’ contract provided at some points that the consumer had three calendar days to cancel; but the Sales Act provides for three business days. It also provided that notice of cancellation was only effective if

sent by certified mail; but the Sales Act provides that any form of written expression may be sufficient. It further provided that notice of cancellation was only effective if timely delivered; but the Sales Act requires only timely mailing for mailed cancellations.

41. Third, Freedom's use of a so-called "Right to Cancel Waiver" also misrepresented the consumer's right to cancel in violation of Virginia Code § 59.1-21.3. Such a waiver is void unless the buyer requests goods or services without delay because of an emergency and says so in writing. Va. Code §59.1-21.3(5-6). Freedom's waiver was on a preprinted form of its own writing and did not state there was an actual emergency. And there was no actual emergency – this was an order for a walk-in bathtub, rather than a burst pipe repair or other emergency. *Id.* Further, on information and belief, Freedom did not in good faith make a substantial beginning of performance of the contract before the homeowner cancelled. Va. Code § 59.1-21.3(5)(a).

42. Fourth, Freedom failed to return the buyer's \$10,000 payment within 10 days of the buyer's timely written cancellation in violation of Virginia Code §§ 59.1-21.3 and 59.1-21.5.

43. The Sales Act violations constitute VCPA violations. *See* Va. Code §§ 59.1-200(A)(19) and 59.1-21.7:1.

44. Defendants have willfully engaged in these acts and practices in violation of the VCPA.

45. At least one individual consumer has suffered losses as a result of these VCPA violations.

SECOND CAUSE OF ACTION

(Unlicensed Contracting and Virginia Consumer Protection Act)

46. The Commonwealth realleges and incorporates by reference paragraphs 1 through 45.

47. Unlicensed contracting is also a prohibited act or practice under the VCPA. Va. Code § 59.1-200(A)(46), Va. Code § 54.1-1115(B)(i).

48. As defined in Virginia Code § 54.1-1100, a contractor is a person who offers or contracts to perform or manage, in whole or in part, the construction, removal, repair or improvement of any building owned by another person or any other improvements to such real property.

49. Here, Defendants have engaged in unlicensed contracting by offering to and contracting to undertake work that requires a valid contractor's license, including removing a homeowner's existing bathtub from the plumbing fixtures to which it is attached, installing a pony wall in the homeowner's bathroom, reversing the plumbing, performing electrical work, performing demolition, and installing a bathtub, including affixing it to the existing plumbing. These acts constitute construction, removal, or improvement of a building owned by another person.

50. Defendants, through their website, advertise and offer to perform contracting work. The website advertises bathroom remodelings, which constitute the construction, removal, repair, or improvements of a building. It also highlights its installation services: for instance, the website states, "[w]hen we install your new shower, we take out your old shower down to the studs, and customize the install of your new shower for a perfect fit." It also states that Freedom can perform bathtub installations in an "Easy One Day Installation Process." On that easy installation webpage it displays pictures of installation schematics, pictures of installers performing tub installations, and testimonials about Freedom's installation work.

51. Defendants do not have and have not had any license to engage in contracting in Virginia.

52. Defendants did not substantially perform the contract described in paragraphs 13 to 25 above in good faith.

53. Defendants' contract is therefore unenforceable under Virginia Code § 54.1-1115(C), which provides that an unlicensed contractor's construction contract is unenforceable unless the unlicensed contractor gives substantial performance in good faith and does not have actual knowledge that a license was required for the work.

54. Defendants have willfully engaged in these acts and practices in violation of the VCPA.

55. At least one individual consumer has suffered losses as a result of these VCPA violations.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, the Commonwealth of Virginia, prays that this Court:

A. Preliminarily and permanently enjoin Defendants and their officers, employees, agents, successors, and assigns from violating the VCPA under Virginia Code § 59.1-203;

B. Grant judgment against Defendants and award to the Commonwealth all sums necessary to restore to any consumers the money or property acquired from them by Defendants in connection with VCPA violations under Virginia Code § 59.1-205;

C. Enter any additional orders or decrees as may be necessary to restore to any consumers the money or property acquired from them by Defendants in connection with VCPA violations under Virginia Code § 59.1-205;

D. Grant judgment against Defendants and award to the Commonwealth civil penalties of up to \$2,500 per violation for each willful violation of the VCPA under Virginia Code § 59.1-206(A), the exact number of violations to be proven at trial;

E. Grant judgment against Defendants and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000 per violation of the VCPA, and attorneys' fees pursuant to Virginia Code § 59.1-206(C); and

F. Grant such other and further relief as the Court deems equitable and proper.

**COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL**

By: 

Geoffrey L. Ward

Mark R. Herring
Attorney General

Cynthia E. Hudson
Chief Deputy Attorney General

Samuel T. Towell
Deputy Attorney General

Richard S. Schweiker, Jr.
Senior Assistant Attorney General and Chief
Consumer Protection Section

Geoffrey L. Ward. (VSB # 89818)
Assistant Attorney General

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Freedom Bathrooms/Walk in Tubs
 501 E. Main Street, Unit B • Purcellville, VA 20132
 P.O. Box 1640 • Queen Creek, AZ 85142
 Phone (866) 363-9099
 Fax: (540) 338-5954

This agreement is entered into on this date 4/17/18 between [Redacted]
 hereinafter referred to as "Customer" and Freedom Bathrooms hereinafter referred to as Freedom Tubs.
 Address: [Redacted] Phone: [Redacted]
 City: FREDERICKVILLE State: VA Zip Code: [Redacted]

WALK IN TUB & SHOWER MODELS

- Platinum:** Air & Water Massage Jets, Built-In Heater, Chromatherapy, Aromatherapy, Pillow
- Gold:** Air & Water Massage Jets, Built-In Heater
- Silver:** Air Massage Jets Only
- Silver:** Water Massage Jets Only
- Bronze:** Soaker Tub (No Jets)
- Wheelchair:** Accessible No Threshold Shower
- Low Threshold Shower**

* All Tubs come with standard features: ADA Seats, Textured Floors, Hand Held Shower, Life Time Warranty, 1 Large Grab Bar, Quick Drain Plumbing, Triple Gel Coat Finish

Additional Specifications: REVERSE PLUMBING
PONY WALL, BACKWALL SHELF
TRAIL IN FULL -

LIFETIME WARRANTY -
LABOR + MATERIAL

ITEM INCLUDED

Walk-In Tub Right Left
 Model Size 3'-5"
 Walk-In Shower Right Left Center
 Safety Grab Bar 1, 2'
 Electrical
 Door Enlargement Replacement (\$300 Extra)
 Shower Rail (\$250 Extra)
 New Surround (\$1000 Extra)
 Toilet (\$400 Extra)
 Heated Seat (\$700 Extra)
 Yes include heating panel
 No include heating panel
 Finish Color: White Cream

TOTAL AMOUNT \$ 12,000
 Down Payment \$ 2,000
 Balance \$ 10,000

Dimensions and Specifications:

Water Heater Size 40 Gallons

Wall Removal Yes No

Type of Wall Concrete

Weight Bearing Yes No

PAYMENT

Payment Method: MasterCard Visa Check Finance Cash

The Customer understands he/she/they is/are responsible for, in addition to the prices delineated herein: (1) Opening size changes; (2) Interior painting/staining; (3) wallpapering; (4) Hidden drywall damage repair; (5) Sub-floor wood/decking repair; (6) Termite/infestation damage repair; (7) And/or hidden plumbing damage repair; (8) The Seller strongly recommends that the Customer have in place a 60 gallon water heater. The Seller will not be responsible for any hot water shortage.

NOTE TO CUSTOMER, This is a CUSTOM ORDER. All products are produced in our manufacturing facilities to customer specifications, and fabricated to support individual customer needs. Should this contract be cancelled the following statements apply: All cancellations must be in writing, no exceptions. In no instance will a verbal cancellation, or a cancellation by a third party be valid. ALL Requests to cancel must be mailed to FWIT via certified mail, and delivered before midnight of the 3rd calendar day (5th or 7th calendar day in Maryland Only- see age requirements on reverse side). Should Buyer waive their right to a cancellation period, in writing, due to requesting the FWIT to provide goods or services on expedited timeline; or a Buyer's cancellation request is received after midnight on your final day of the cancellation period, said cancellation will result in a restocking fee. Our custom restocking fee is 33% of your contracted sales price. This restocking fee will not be waived under the terms and conditions herein.

[Signature] 4/17/18 Date
 Freedom Tubs
 [Redacted Signature] 04/17/18
 Customer

EXHIBIT
 1

WALK-IN TUB & SHOWER MODELS

- Platinum:** Air & Water Massage Jets, Built-In Heater, Chromatherapy, Aromatherapy, Pillow
- Gold:** Air & Water Massage Jets, Built-In Heater
- Silver:** Air Massage Jets Only
- Silver:** Water Massage Jets Only
- Bronze:** Soaker Tub (No Jets)
- Wheelchair:** Accessible No Threshold Shower
- Low threshold Shower**

* All Tubs come with standard features: ADA Seats, Textured Floors, Hand Held Shower, Life Time Warranty, 1 Large Grab Bar, Quick Drain Plumbing, Triple Gel Coat Finish

Additional Specifications _____

Tank
Acrylic
TRID IN FLOOR _____

LIFETIME WARRANTY _____

LARGE + WHEELCHAIR _____

ITEM

INCLUDED

- Walk-In Tub Right Left _____
- Model/Size 355
- Walk-In Shower Right _____ Left _____ Center _____
- Safety Grab Bar 1 (2)
- Electrical
- Door Enlargement/Replacement (\$300 Extra) _____
- Shower Rail (\$250 Extra) _____
- New Surround (\$1000 Extra) _____
- Toilet (\$300 Extra) _____
- Heated Seat (\$750 Extra)
- Yes include in my order
- No, I decline heated seats _____
- Product Color: White Cream _____

TOTAL AMOUNT	\$ <u>10,000</u>
Discounts/Savings	-\$ <u>INCLUDED</u>
Discount Total	\$ <u>INCLUDED</u>
Deposit <u>1000</u>	\$ _____
BALANCE	\$ <u>9000</u>

Dimensions and Specifications:

Water Heater Size _____ gallons

Dimensions:

Exterior Doors 36

Interior Doors _____

Tub Space 66 x 46

Tub Ordered _____

Window (floor to window) _____

Wall Removal Yes _____ No

Type of Wall _____

Weight Bearing Yes _____ No

PAYMENT

Payment Method: MasterCard _____ Visa Check _____ Finance _____ Cash _____

The Customer understands he/she/they is/are responsible for, in addition to the prices delineated herein: (1) Opening size changes; (2) Interior painting/staining; (3) wallpapering; (4) Hidden drywall damage repair; (5) Sub-floor wood/decking repair; (6) Termite/infestation damage repair; (7) And/or hidden plumbing damage repair; (8) The Seller strongly recommends that the Customer have in place a 60 gallon water heater. The Seller will not be responsible for any hot water shortage.

NOTE TO CUSTOMER, This is a CUSTOM ORDER. All products are produced in our manufacturing facilities to customer specifications, and fabricated to support individual customer needs. Should this contract be cancelled the following statements apply: All cancellations must be in writing, no exceptions. In no instance will a verbal cancellation, or a cancellation by a third party be valid. ALL Requests to cancel must be mailed to FWIT via certified mail, and delivered before midnight of the 3rd calendar day (5th or 7th calendar day in Maryland Only- see age requirements on reverse side). Should Buyer waive their right to a cancellation period, in writing, due to requesting the FWIT to provide goods or services on expedited timeline; or a Buyer's cancellation request is received after midnight on your final day of the cancellation period, said cancellation will result in a restocking fee. Our custom restocking fee is 33% of your contracted sales price. This restocking fee will not be waived under the terms described above. By signing this agreement I acknowledge and understand the terms and conditions herein.

[Signature]
Freedom Tubs _____ Date 1/7/10

(12)
Customer _____

Customer _____

Terms and Conditions

The parties hereto covenant and agree to as follows:

1. The Buyer represents and warrants to Freedom Walk In Tubs Inc. (FWIT from here forward) that he or she is the registered owner of the land and premises as described in the Job Address. The Buyer further represents and warrants to FWIT that he has the ability to "authorize" the Specifications and work to be completed on the land and premises described in the Job Address. The Buyer agrees, and is solely responsible, to ensure that the Specification in this agreement do not contravene any building covenants, building code requirements, homeowner/condominium association requirements or any other third party encumbrance holder registered on the title to the job address on this agreement. If FWIT is held responsible for contravening any of the foregoing requirements then FWIT shall use all available legal means necessary to add the buyer as a necessary third party in any legal, or quasi-legal action, and to ultimately hold the Buyer Responsible.
2. FWIT will only discuss matters of the agreed upon contract for the Job Address with the legal signer of this contract. No third party, not listed on this binding document, will be given access to this account. No information will be given to any third party including, but not limited to: spouse, ex-spouse, caregiver, home aide, friend, associate, or any family member (including but not limited to: parent, sibling, adult child, sister, brother, niece, nephew, etc.) Buyer hereby acknowledges that to discuss this contract with any third party will not be permitted under any circumstance as it is a matter of customer confidentiality.
3. In the event that the Buyer shall sell, or otherwise dispose of, commit an act of bankruptcy, allow a judgement and/or lien to be registered against the land and premises, described as the Job Address herein, the unpaid balance shall immediately become due and payable.
4. FWIT shall not be responsible for damages or delay due to strike, fire, accident, unforeseen issues at the Job Address, or any other cause beyond control.
5. This agreement does not include any additional work other than specified by contract contents. Any, and all, work to be completed is detailed herein, and any adjustment to this contract will result in an addendum being generated, and needing to be signed and resubmitted to FWIT prior to services being rendered. Any additional work will be assessed an additional cost. Buyer hereby agrees that any charge associated with an addendum to the Job Address will be added on to the original Total Contract Price, and will be included in the balance owed upon completion of installation.
6. The Buyer acknowledges that, by signing this agreement, FWIT will incur costs in anticipation of performance on their obligations here under the exact amount of such costs being extremely difficult and impracticable to determine with any degree of certainty. Therefore, in the event the buyer breaches this agreement, the Buyer agrees to pay FWIT Thirty-Three Percent (33%) of the Total Contract Price as a custom order restocking fee. The parties agree that this charge represents a fair and reasonable estimate of the costs that FWIT will incur, before commencing their performance of their obligations under this agreement. After FWIT Authorized and Partnering Installer (Contractor from here forward) has commenced actual installation of the Specifications, the Buyer agrees to be responsible for actual damages, incurred to FWIT, and partnering Contractor, including but not limited to the Total Contract Price as the result of the Buyer's default or breach. Acceptance of any charge shall not constitute a waiver of the Buyer's default with respect to other amounts due, nor prevent FWIT and/or Contractor from exercising any of the other legal rights and remedies available to the Contractor.
7. This Agreement shall become binding forthwith upon acceptance by FWIT weather in writing or by commencing performance hereunder and upon such acceptance this written agreement shall constitute the entire agreement and shall be binding upon parties hereto. No other covenants, agreements, or promises (written or verbal), or otherwise shall be deemed to form part of this agreement (except by agreed upon addendum addition as needed).
8. If any specification, term and/or condition of this agreement is determined to be invalid, or unenforceable those unenforceable/invalid Specifications, Terms and/or Conditions shall be deemed to be severable from the remainder of this agreement, and shall not cause the invalidity or unenforceability of the remainder of this Agreement. Buyer understands and agrees that FWIT reserves the right to accept or reject this agreement, subject to paragraph five (5) above.
9. Buyer agrees to allow both FWIT and the Contractor access to the Job Address to complete the specifications in this agreement. Buyer further agrees that if he or she files a formal complaint with state agency, with FWIT, or with the Contractor, the Buyer shall allow FWIT and the Contractor every opportunity to remedy the complaint. No third party will be authorized in this complaint process until FWIT and/or the Contractor has had the opportunity to effectively assess and implement any repairs necessary to remedy Buyer complaint. Pictures and/or video of complaint may be requested by FWIT and/or Contractor. It is the responsibility of the Buyer to provide evidence of any damages to support complaint in a timely manner. Complaints must be filed, including but not limited to evidence, written notice, and contact with FWIT and/or Contractor within 15 days of your installation being completed. Not granting access to the Job property, or denying communication with FWIT and/or Contractor or representatives, to remedy complaint, will deem your complaint invalid. Refusal of access or remedy will constitute an immediate dismissal of liability regarding FWIT and/or partnering Contractor.
10. Buyer authorizes FWIT to obtain or exchange any personal and/or credit information with agent towards establishing or verifying the Buyer's financial status.
11. Buyer understands that the Total Contract Price is due and payable, in full, immediately upon completion of the specifications of this agreement. Buyer understands there is no cooling off period, and no mailing period for funds to be received. FWIT authorizes partnering Contractor to acquire remaining balance owed immediately upon completion of installation. Payment is to be gathered prior to leaving job. The only exception is if the Total Contract Price has been financed through a third-party lending institution, in which case, the Buyer agrees to sign all necessary papers and provide any and all stipulations required by such lending institution immediately on request. If the Buyer refuses to sign paperwork, or provide stipulations then interest shall accrue, at a rate of 1.5 percent per month, upon the Contractor completing the Specifications, and will be added to the Total Contract Price remaining due and unpaid. Additionally, should the Buyer not provide full payment, and sign delivery and acceptance documents immediately following installation, FWIT reserves the right to charge the customer 5% of the Total Contract Price per day, in addition to the Total Contract Price, as a penalty for not paying in full as agreed. In the case of cancelled checks/cancelled payments, there will be a \$75 charge for each cancellation or alteration of payment assessed in addition to the penalty, and Total Contract Price due and unpaid. In addition, any bank fees assessed to FWIT will be charged to the Buyer regarding their cancelled payment.
12. A delinquency charge of 10% per month may be added to the portion of the Total Contract Price that remains unpaid after the first 10 days, and each month thereafter.
13. Any controversy of claim arising out of, or relating to, this contract or the breach thereof, shall be settled by arbitration and judgement. The award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Buyer's Right to Cancel

Buyer may cancel this transaction without any obligation within three (3) business days from the date of signing this agreement. Please see Cancellation Notification Documents. **Five or seven (5 or 7) day cancellation window in Maryland ONLY. Dependent on age of Customer**

All cancellations must be in writing, no exceptions. In no instance will a verbal cancellation, or a cancellation by a third party be valid. ALL Requests to cancel must be mailed to FWIT via certified mail, and delivered before midnight of the 3rd calendar day. (Maryland Only: Seniors under 65 years of age can cancel until midnight on the 5th calendar day, while seniors over the age of 65 can cancel until midnight of the 7th calendar day) However, Buyer is ineligible to cancel this contract with no penalty, should they waive their right to a cancellation period, in writing, due to requesting the FWIT to provide goods or services without delay and:

1. The Contractor in good faith makes a substantial beginning of performance of the Agreement; and
2. In the case of goods, the goods cannot be returned to FWIT in substantially as good condition as when received by the Buyer

If Buyer cancels, any property traded in, any payments made by buyer under the contract of sale, and any negotiable instrument executed by you will be returned within fifteen (15) Business Days following receipt by FWIT of your valid cancellation notice. Any valid cancellation notice must be received within the cancellation window above, and noted on your Notice of Cancellation form (Maryland Only). Any cancellation delivered/received after the cancellation window, will result in FWIT keeping Buyer's deposit/or thirty-three percent (33%) of your Total Contract Price; whichever amount is greater and necessary to cover costs already accrued.

If Buyer is to cancel, you must make available to the Contractor at your residence, in substantially as good condition as when received, any goods delivered to you under this Agreement, or you, if you wish, comply with the instruction of FWIT regarding the return shipment of the goods at FWIT's expense and risk.

Should the buyer make goods available to FWIT, and FWIT does not pick them up within thirty (30) business days of the date of your cancellation notice, buyer may retain or dispose of the goods without further obligation or notification. If Buyer fails to make goods available to FWIT and/or the partnering Contractor, or if Buyer agrees to return the goods to FWIT and fail to do so, then Buyer will remain liable for performance of all obligations implied by this Agreement.

Any/all Cancellation Notifications will need to be received in writing via certified mail, delivered within three (3) business days; or five (5) to seven (7) business days in Maryland ONLY- from the date of your Agreement being signed. There will be no exceptions to this stipulation.

Freedom Walk-In Tubs & Showers
P.O. Box 1640
Queen Creek, AZ 85142



RIGHT TO CANCEL WAIVER

I/We, _____, acknowledge that in our state (VA) seniors are guaranteed a right to cancel period of 3 days / 7 days (please circle appropriate time).

I/We, are legal requesting to waive our right to this cancellation period. It is understood that Freedom Walk In Tubs will order product, and move forward with preparing our job and completing installation.

It is further understood that I/We will be surrendering our right to refund of our deposit, and could be charged up to 33% of full contract price should we chose to cancel from this date forward.

I/We knowingly surrender our consumer right to a cancellation period and will not deny payment upon completion of project.

I/We acknowledge that this will serve as an addendum to our original sales contract, and in no way voids or alters any portion of that agreement.

① Customer Signature 1: _____ 01/17/18

Customer Signature 2: _____

Date Signed: 1/17/18

Sales Representative: _____

Date Signed: 1/17/18

