

Interface Aust Pty Ltd
TERMS & CONDITIONS OF TRADE

1. General

- 1.1 The following terms and conditions of trade (**Terms**) govern all contracts for the sale or supply of goods or services by Interface Aust Pty Ltd ACN 000 692 026 trading as Interface (**Interface**), unless specifically modified with the express written agreement of a director of Interface.
- 1.2 These Terms shall be deemed to be incorporated into any agreement between Interface and the client and shall prevail over any terms and conditions contained in any order, offer, acceptance or other document of the client to the extent of any inconsistency. All representations, statements, terms and conditions and warranties (whether express or implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 1.3 In these Terms “**client**” means purchaser, customer, buyer, agent, principal, head contractor, contractor, or sub-contractor whether a natural person or body corporate or otherwise as the case may be.
- 1.4 In these Terms “**Interface Product**” and “**goods**” mean any goods sold or supplied by Interface.

2. Warranties of Interface Product

- 2.1 All “**First Grade Interface Product Tiles**” have a minimum 15 year warranty, commencing from the date of invoice. The benefits conferred by that warranty are in addition to all other legal rights and remedies of the client in respect of Interface Products. The client must provide proof of purchase, normally evidenced by the Interface Product invoice or other such proof acceptable to Interface. All “**Second Grade Interface Product Tiles**” do not have any warranties unless provided in writing. All proven complaints will be rectified according to the specific clauses covered by the manufacturer’s written warranties and specifications.
- 2.2 The following are not covered by any warranty:
- (a) pile crushing, shading and soiling;
 - (b) carpet damaged by cleaning chemicals and equipment, spillage or water damage;
 - (c) initial pile shedding; and
 - (d) installation by non Interface accredited third parties.
- 2.3 Claims can only be made on first grade products. No claims will be considered for Interface Product that has been cut or installed with defects visible prior to cutting or installing.
- 2.4 Interface Product must be installed by an Interface accredited installer and in accordance with instructions in Interface’s installation guide. Interface will not accept complaints arising from Installations which do not conform to the laying specifications, including the use of adhesives not compatible with the Interface Product backing system or the incorrect use of TacTiles™ glueless system or Intertac™ brand adhesive or other adhesives.
- 2.5 Interface Products and services come with guarantees that cannot be excluded under the Australian Consumer Law. Clients are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Clients are also entitled to have Interface Products repaired or replaced if they fail to be of acceptable quality and the failure does not amount to a major failure. In the case of services, including installation, Interface’s liability is limited to, at Interface’s discretion, supplying the services again or the cost of having similar services supplied again.

2.6 Without prejudice to the generality of this clause 2 and to the maximum extent permitted by law, Interface will not be liable for:

- (a) any damage to the client's reputation or goodwill;
- (b) any loss or damage suffered by the client as a result of any claim made by a third party; or
- (c) any incidental, indirect or consequential damages or loss of any nature including loss of profits that might arise as a direct or indirect result of the sale or the use of any Interface Product or as a result of Interface's non-performance or inadequate performance of its obligations or the negligence of Interface, whether based on contract, tort or any other legal basis and whether or not Interface is advised of the possibility of such damages.

2.7 Without prejudice to clause 2.6, the client agrees that Interface's aggregate liability in contract, tort (including negligence or breach of statutory duty) or caused by, resulting from, or in relation to any goods or services supplied by Interface, is limited (to the extent permitted by law) to an amount equal to the price received by Interface for the goods or services.

2.8 The warranty referred to in clause 2.1 is transferrable provided the above conditions are met by the new client.

3. Deliveries of Interface Product

3.1 Prices are Free in Store in Sydney, Melbourne, Brisbane, Adelaide, Perth, Gold Coast, Geelong, Hobart, Launceston, Canberra, Wollongong, Darwin and Newcastle. For delivery outside these areas, freight will be charged to the client. Delivery will be to the warehouse and not a building site. Client needs to ensure there is suitable semi-trailer access and a forklift to unload the pallets.

3.2 Delivery times will vary depending on location and will be delivered between 9 am and 5 pm. Every attempt will be made to meet agreed times. Where other than normal freight is required, any additional costs will be charged to the client.

3.3 Where the client orders Interface Product which Interface must import at other than the normal sea-freight deliveries, such additional costs will be charged to the client provided there is written acceptance in advance by the client.

3.4 The delivery times made known to the client are estimates only.

3.5 Interface will not be liable for any loss, damage or delay occasioned to the client arising from late or nondelivery or late installation of the Interface Product.

3.6 There is a minimum small order fee of \$50 for orders of Interface Product less than 50 square metres or for accessory orders totaling less than \$800, excluding GST.

4. Warranties on Installation Services

4.1 The installation warranty in relation to Interface Product installed by Interface and/or an Interface approved installer is 12 months for all installation defects for workmanship from the date of practical completion of that installation.

4.2 In any other case, all installation warranties are subject to individual contract conditions between the client and the installer of the Interface Product being installed.

5. Passing of Risk and title

5.1 Risk in respect of Interface Product will pass to the client at the time of invoicing.

5.2 Title in Interface Product delivered remains with Interface until Interface has received full payment for that product and all other goods and services supplied by Interface to the client (regardless of the time at which such payment may be due).

- 5.3 If Interface agrees to deliver any Interface Product prior to payment in full by the client, the client:
- (a) must hold the Interface Product as fiduciary agent and bailee for Interface;
 - (b) must keep the Interface Product separate from its own products and goods and those of third parties in a way which allows the Interface Product to be readily identified and cross-referenced to particular invoices where reasonably possible. The client must keep records of the Interface Product owned by Interface;
 - (c) must insure the Interface Product against all usual risks to full replacement value until ownership passes to the client;
 - (d) must not pledge or allow any lien, charge or other interest to arise over the Interface Product; and
 - (e) may use or sell the Interface Product in the ordinary course of business, provided that the client will be deemed to be agent for Interface in any sale if the Interface Products are sold. The client must account to Interface for the proceeds of any such sale and must hold any proceeds in a separate bank account on trust for Interface. Any such agency will only extend to the obligation to account for proceeds and Interface will not be bound by any contract between the client and the client's purchaser.
- 5.4 The client gives Interface, its agents and servants, leave and licence, without the necessity of giving any notice, to enter at any time on and into any premises occupied by the client, in the event of a receiver, liquidator, official manager or similar person being appointed to manage the affairs of the client, to inspect, search for or remove the Interface Product.
- 5.5 If the client fails to make full payment for any Interface Product supplied by Interface, Interface is entitled to possession of those Interface Products and may recover and sell the Interface Product. The client must place the Interface Product at Interface's disposal and Interface is entitled to enter upon any premises of the client to remove those Interface Products.
- 5.6 The client consents to allow Interface reasonable access to the client's premises in order to inspect the Interface Product at anytime, or to retake possession of them in accordance with these Terms.

6. Ownership / Retention of Title of Product

- 6.1 The client acknowledges and agrees that the supply of Interface Product under these Terms:
- (a) constitutes a Security Agreement for the purposes of the PPSA; and
 - (b) creates a Security Interest in all:
 - (i) Interface Product previously supplied by the Interface to the client;
 - (ii) Interface Product that will be supplied in the future by Interface to the client; and
 - (iii) proceeds (if any) received by the client in relation to the Interface Product,and may be registered on the Register as a Purchase Money Security Interest.
- 6.2 The client undertakes to:
- (a) promptly sign any documents and provide any information (such information to be complete, accurate and up-to-date in all respects) which Interface may reasonably require to:
 - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 6.2(a)(i) or 6.2(a)(ii); and
 - (b) immediately advise Interface of any changes which may affect Interface's Security Interest.
- 6.3 "PPSA" means the *Personal Property Securities Act* (2009) and for the purposes of this clause 6, the terms 'Register', 'Purchase Money Security Interest', 'Security Agreement', 'Security Interest'

'Verification Statement', 'Financing Statement' and 'Financing Change Statement' have the meanings given to those terms under the PPSA.

6.4 Interface is not required to give any notice under the PPSA (including the notice of a Verification Statement) to the client unless the notice required by the PPSA cannot be excluded.

7. Cancellation of an Order

7.1 No order which has been placed with and accepted by Interface can be cancelled by the client except with the express written consent of Interface and on terms that the client will indemnify Interface against all losses and liabilities arising by virtue of such cancellation.

7.2 Cancellation will be at the absolute discretion of Interface. Any fees and charges incurred by Interface will be passed on to the client.

7.3 There will be a minimum cancellation fee of 5% of the value of the order which the client acknowledges is a genuine pre-estimate of Interface's loss suffered as a result of the client's request to cancel an order.

8. Return of Product

8.1 Return of any Interface Product will not be accepted unless expressly authorised in writing prior to return. Returns will only be accepted if the Interface Product is returned by the client to Interface within 28 days of delivery. Any Interface Product not returned within this time will be deemed to have been accepted by the client. Returns will not be accepted for quantities below 25 square metres of Interface Product or for part cartons. A minimum re-stocking fee of \$5.00 per square metre and freight charges to Interface's warehouse (excluding GST) will apply for any returns authorised.

8.2 Returns will not be accepted for reasons including but not limited to when:

- (a) the Interface Product has been specifically manufactured or imported for the client;
- (b) the Interface Product is non-standard;
- (c) the Interface Product is of second grade;
- (d) returned cartons are damaged;
- (e) the Interface Product has been used or damaged; or
- (f) the Interface Product is of mixed dye-lots.

8.3 Any Interface Product returned to Interface under this clause 8 must be in the original product packaging supplied by Interface and accompanied with a copy of the original tax invoice issued by Interface in respect of the Interface Product.

9. Storage and Inventory Costs

9.1 All Interface Product will be dispatched in accordance with the date specified on the Interface order confirmation. Any change to delivery and subsequent storage of Interface Product will be at the absolute discretion of Interface. Should any product be stored beyond one month from the initially requested delivery date, Interface will levy storage and administration fees. These fees will be based on actual costs incurred, with a guaranteed minimum charge of \$100 plus GST for each pallet or its storage equivalent per month.

9.2 Interface in its absolute discretion may cancel any orders in circumstances where Interface Product has not been taken within 4 weeks and the client will be liable for any costs and expenses incurred by Interface arising from such cancellation including the cancellation fee in clause 7.3.

10. Credit Account Terms

10.1 Invoicing of Interface Product

Interface will issue invoices to clients within two 2 working days following the dispatch of the Interface Product or delivery.

10.2 Invoicing of Supply and Installation Projects

Interface will issue invoices, progress claims or payment claims which may include all or partial completion of project works to clients in accordance with individual contract requirements or during the month in which the project is completed. Progress claims are generally invoiced/claimed by the 25th day of the month or as soon as practicable at the discretion of Interface.

10.3 Payment of Invoices

Credit Sales

Unless otherwise agreed in writing **payment terms are net 30 days from statement date.**

Cash Sales

For:

- (a) items in stock the full payment (100%) is required before the Interface Products are despatched;
- (b) locally made to order items a 50% deposit is required before manufacture will commence. The remaining 50% is to be paid before the Interface Products are despatched: and
- (c) imported items full payment (100%) is required before Interface will place the overseas order.

10.4 Claims

Any claims in respect of any products or services supplied by Interface must be made in writing within 28 days of receipt of the product or provision of the service or they will be deemed due and payable in full.

10.5 Legal

Without prejudice to any other right or remedy any client applying for and receiving credit from Interface (**Credit Account Client**) must indemnify Interface against any costs, fees, charges and disbursements charged by any legal representative, mercantile agent or otherwise, engaged by Interface for the purpose of the collection or recovery of moneys due and payable by the Credit Account Client to Interface on a full indemnity basis (including all legal costs and expenses on a solicitor and own client basis).

10.6 Interest on outstanding amounts

The Credit Account Client must pay to Interface interest on any invoiced amounts as may be from time to time outstanding at the per annum percentage rate prescribed by section 101 of the *Civil Procedure Act 2005* (NSW) calculated on a daily basis in respect of such outstanding amounts. The outstanding amounts, together with all interest will be payable by and recoverable forthwith from the Credit Account Client. The Credit Account Client acknowledges that the amounts payable under this clause 10.6 and 10.7 are a genuine pre-estimate of Interface's loss suffered as a result of the client's failure to pay the invoiced amounts when due.

10.7 Default Administration Fee

The Credit Account Client must pay to Interface an administration fee of \$50.00 excluding GST on the occurrence of every event of default.

10.8 Governing Law

All applications and agreements for a credit account with Interface (**Credit Account**) and all contracts for the sale or supply of goods or services by Interface are governed by and construed in accordance with the laws of the State of New South Wales, Australia. The parties irrevocably submit to the jurisdiction of the courts and tribunals of that state.

10.9 Stop Supply / Withdrawal of Credit Facility

Credit will be extended and may be withdrawn at the sole and absolute discretion of Interface at any time without prior notice.

10.10 Security Documents

An application for a Credit Account may require additional security documents, guarantees or indemnities to be given in support of the application. This request will be at the sole and absolute discretion of Interface. The style or type of security requested may vary at the sole and absolute discretion of Interface dependant on the entity type and circumstances prevailing.

11. Acceptance of Quotation

Upon acceptance by the client of an official quotation, a written purchase order or contract confirmation must be sent to enable the product specified to be ordered or manufactured. Quotations are valid for a period of 90 days from date of issue, unless otherwise stated at the absolute discretion of Interface. Any quotation provided by Interface is a mere invitation to treat and is not a contractual offer. Acceptance of an order from a submitted quote is subject to final approval from Interface. Any purchase orders outstanding for more than 6 months are subject to review including, without limitation, in relation to price. The client must not disclose any quotation or accompanying documentation to any third party without Interface's prior written consent. Any documentation which accompanies a quotation is preliminary information only and is in no case to be considered as a warranty regarding the quality of the relevant goods or services to be supplied by Interface.

12. Order Confirmation

All orders by way of a purchase order or contract must be confirmed in writing (mail, fax or email). Until written confirmation is received, no goods will be ordered, manufactured, deliveries will not be dispatched and works will not commence on site. Client service will provide confirmation of receipt of order in the form of an order acknowledgement and despatch date.

13. Goods and Services Tax (GST)

If goods and services tax (**GST**) is imposed on any supply or service made by Interface, the client will be liable to pay an amount equivalent to the GST charge.

14. Force Majeure

Interface will not be liable for any delay in performing or non-performance of any of its obligations under these terms and conditions due to strikes, acts of God, fires, explosion, flood, riot, lockouts, injunction, interruption of transportation, accidents, inability to obtain supplies, war, government action or other circumstances beyond its reasonable control.

15. Change in Ownership of Credit Account Entity

15.1 Credit Account clients must notify Interface in writing, of any change in the constitution or structure of the client, the sale of the business operated by the client, change in control (as defined in the *Corporations Act 2001* (Cth)) of the client or change in legal or beneficial ownership of the client (each a **Change Event**) and agree that he, she or it will continue to be liable to Interface for any sums outstanding on the account opened for, by or on behalf of the client until:

- (a) written notice is received from the client that a Change Event has occurred; and
- (b) the account has been closed and full payment of moneys owing are received by Interface.

15.2 Should any Change Event occur, Interface may at its sole and absolute discretion terminate the client's Credit Account facility and all amounts outstanding will become due and payable forthwith.

16. Retention

Unless expressly stated in writing, by way of individual contract, payment retention will not be applicable or accepted by Interface.

17. Intellectual Property

All current and future intellectual property (rights) in, of and/or related to the products are owned by and will remain with Interface. This includes, but is not limited to estimates, designs, drawings, production processes, trademarks, and images. The principle of exhaustion remains unaffected.

The client indemnifies Interface against any claim against Interface for any breach of a registered design, letters patent, trade mark or any copyright or other similar matter or thing arising from the use by the client of the Interface Product whether the client modifies or otherwise deals with the Interface Product or not.

18. Authority

18.1 The client expressly warrants that it has authority to accept these Terms and enter into any agreement with Interface whether in its own right or on behalf of another.

18.2 In circumstances where the client accepts these Terms or enters into an agreement with Interface purportedly with the authority and on behalf of another and the client does not have such authority, the client will be liable for any amounts due under these Terms or other agreement (as the case may be) and will fully indemnify Interface.

19. Exclusions

Interface is not and will not be bound by or liable for any agreement, contract or otherwise entered into by the client with a third party and the client agrees to fully indemnify Interface in respect of any alleged or adjudged liability arising from such agreement, contract or otherwise.