

Interior Decorative Coatings Pty Ltd T/A IDC Colourfield – Terms & Conditions of Trade

1. Definitions

- 1.1 "IDC" shall mean Interior Decorative Coatings Pty Ltd T/A IDC Colourfield its successors and assigns or any person acting on behalf of and with the authority of Interior Decorative Coatings Pty Ltd T/A IDC Colourfield.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by IDC to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by IDC to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by IDC to the Client.
- 1.5 "Services" shall mean all Services supplied by IDC to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between IDC and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by IDC from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by IDC shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of the terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of IDC.
- 3.4 The Client shall give IDC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by IDC as a result of the Client's failure to comply with this clause.
- 3.5 Goods are supplied by IDC only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price And Payment

- 4.1 At IDC's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by IDC to the Client in respect of Goods supplied; or
- (b) IDC's quoted Price (subject to clause 4.2) which shall be binding upon IDC provided that the Client shall accept IDC's quotation in writing within thirty (30) days.
- 4.2 IDC reserves the right to change the Price in the event of a variation to IDC's quotation.
- 4.3 At IDC's sole discretion a deposit may be required.
- 4.4 At IDC's sole discretion:
- (a) payment shall be due on completion of the Goods; or
- (b) payment shall be due before delivery of the Goods; or
- (c) payment for approved Clients shall be made by instalments in accordance with IDC's payment schedule.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and IDC.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery Of Goods

- 5.1 At IDC's sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at IDC's address; or
- (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by IDC or IDC's nominated carrier).
- 5.2 At IDC's sole discretion the costs of delivery are:
- (a) included in the Price; or
- (b) in addition to the Price; or
- (c) for the Client's account.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then IDC shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5 IDC may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.6 The failure of IDC to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 IDC shall not be liable for any loss or damage whatever due to failure by IDC to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of IDC.

6. Risk

- 6.1 If IDC retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, IDC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by IDC is sufficient evidence of IDC's rights to receive the insurance proceeds without the need for any person dealing with IDC to make further enquiries.
- 6.3 The Client acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. IDC will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 6.4 All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.
- 6.5 IDC shall be under no liability whatever for any errors or incorrect information, specifications or instructions supplied by the Client for the production of the Goods. Should the Client require alterations or additional Goods this shall be invoiced as an extra.

7. Title

- 7.1 IDC and Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid IDC all amounts owing for the particular Goods; and
- (b) the Client has met all other obligations due by the Client to IDC in respect of all contracts between IDC and the Client.
- 7.2 Receipt by IDC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then IDC's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until IDC shall have received payment and all other obligations of the Client are met; and
- (b) until such time as ownership of the Goods shall pass from IDC to the Client IDC may give notice in writing to the Client to return the Goods or any of them to IDC. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- (c) IDC shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Goods to IDC then IDC or IDC's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as IDC has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to IDC for the Goods, on trust for IDC; and
- (f) the Client shall not deal with the money of IDC in any way which may be adverse to IDC; and
- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of IDC; and
- (h) IDC can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that IDC will be the owner of the end products.

8. Defects

- 8.1 The Client shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify IDC of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford IDC an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which IDC has agreed in writing that the Client is entitled to reject, IDC's liability is limited to either (at IDC's discretion) replacing the Goods or returning the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 8.2 Goods will not be accepted for return other than in accordance with 8.1 above.

9. Warranty

- 9.1 Subject to the conditions of warranty set out in clause 9.2 IDC warrants that if any defect in any workmanship of IDC becomes apparent and is reported to IDC within twelve (12) months of the date of delivery (time being of the essence) then IDC will either (at IDC's sole discretion) replace or remedy the workmanship.
- 9.2 The conditions applicable to the warranty given by clause 9.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Client to properly maintain any Goods; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by IDC; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and IDC shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without IDC's consent.
- (c) in respect of all claims IDC shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 9.3 For Goods not manufactured by IDC, the warranty shall be the current warranty provided by the manufacturer of the Goods. IDC shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

10. Intellectual Property

- 10.1 Drawings, sketches, painting, photographs, digital images, designs or typesetting furnished by IDC, dummies, models or the like devices made or procured and manipulated by IDC and negatives, positives, blocks, engravings, stencils, dies, plates or cylinders made from IDC's original design, or from a design furnished by the Client, remain the exclusive property of IDC unless otherwise agreed upon in writing. All artwork supplied by IDC shall be subject to the Copyright Act 1968.
- 10.2 The Client warrants that all designs or instructions to IDC will not cause IDC to infringe any patent, registered design, copyright (as per the Copyright Act 1968) or trademark in the execution of the Client's order and the Client agrees to indemnify IDC against any action taken by a third party against IDC in respect of any such infringement.
- 10.3 The Client shall have no right or title to data stored by IDC on disks or any other electronic form of storage. IDC reserves the right to charge additional fees for any unauthorised use of this data by the Client.

11. Licence to Use

- 11.1 Unless expressly permitted by IDC, the Client shall not be licensed to use any associated artwork of the Goods (including, but not limited to, paintings, photographs, digital images, drawings or sketches) until payment has been made to IDC. The licence granted by IDC to the Client to use such artwork shall only be for one occasion and shall extend only to the Client, its benefit shall not be assigned to any third party without the express permission of IDC.
- 11.2 Permission by IDC to use artwork of the Goods for any purpose outside the terms of the licence shall, under normal circumstances, be granted upon payment of a further fee, to which shall be an amount mutually agreed to between both parties and must be paid in full before use of the artwork is allowed.
- 11.3 Any use of associated artwork of the Goods by the Client without the permission of IDC shall be a breach of this contract and may lead to legal action.

12. Default & Consequences of Default

- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at IDC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by IDC.
- 12.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify IDC from and against all costs and disbursements incurred by IDC in pursuing the debt including legal costs on a solicitor and own client basis and IDC's collection agency costs.
- 12.4 Without prejudice to any other remedies IDC may have, if at any time the Client is in breach of any obligation (including those relating to payment), IDC may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. IDC will not be liable to the Client for any loss or damage the Client suffers because IDC has exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.6 Without prejudice to IDC's other remedies at law IDC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to IDC shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to IDC becomes overdue, or in IDC's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
13. **Security And Charge**
- 13.1 Despite anything to the contrary contained herein or any other rights which IDC may have whatsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to IDC or IDC's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that IDC (or IDC's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met;
- (b) should IDC elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify IDC from and against all IDC's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint IDC or IDC's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

14. Cancellation

- 14.1 IDC may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice IDC shall repay to the Client any sums paid in respect of the Price. IDC shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by IDC (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Privacy Act 1988

- 15.1 The Client and/or the Guarantor/s agree for IDC to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by IDC.
- 15.2 The Client and/or the Guarantor/s agree that IDC may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 15.3 The Client consents to IDC being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by IDC for the following purposes and for other purposes as shall be agreed between the Client and IDC or required by law from time to time:
- (a) provision of Goods; and/or
- (b) marketing of Goods by IDC, its agents or distributors in relation to the Goods; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 15.5 IDC may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

16. Building and Construction Industry Security of Payments Act 1999

- 16.1 At IDC's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 16.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

17. General

- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 All disputes and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 17.3 IDC shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by IDC of these terms and conditions.
- 17.4 In the event of any breach of this contract by IDC the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 17.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by IDC.
- 17.6 IDC may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.7 The Client agrees that IDC may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which IDC notifies the Client of such change.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.9 The failure by IDC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect IDC's right to subsequently enforce that provision.