



## ABI INTERIORS – TRADE AND DESIGN ACCOUNTS

This document sets out the terms and conditions which apply to an ABI Trade and Design Account. It also contains information about how to place orders using the account and the relevant discounts offered under it.

Any queries regarding Trade and Design Accounts should be directed to:

[trade@abi-international.com.au](mailto:trade@abi-international.com.au)

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### Trade and Design Account

- 1.1 ABI provides Eligible Purchasers the opportunity to earn discounts on Products by applying to establish a Trade and Design Account.
- 1.2 Applications to establish a Trade and Design Account may be made by contacting [trade@abi-international.com.au](mailto:trade@abi-international.com.au).
- 1.3 Applications for a Trade and Design Account may be made by any Eligible Purchaser who:
  - (a) is a natural person over the age of 18 years; or
  - (b) is an Organisation which has the legal capacity to contract in Australia; and
  - (c) consents to the use of their Personal Information in accordance with clause 0.
- 1.4 Upon receipt of an application to set up a Trade and Design Account, ABI will notify the Eligible Purchaser as to whether or not they have been issued with a Trade and Design Account.
- 1.5 ABI has the right to accept or reject any application for a Trade and Design Account in its sole discretion.
- 1.6 Utilisation of a Trade and Design Account and Purchaser Discounts offered under it, are subject to the terms and conditions set out below. By establishing a Trade and Design Account Purchasers agree to be bound by these terms and conditions.
- 1.7 If at any point, a Purchaser wishes to discontinue their Trade and Design Account or the Purchaser does not agree to be bound by these terms and conditions, the Purchaser must cease using any Purchaser Discounts immediately and must notify ABI in writing via email to [trade@abi-international.com.au](mailto:trade@abi-international.com.au).
- 1.8 The Purchaser acknowledges and agrees that it will not permit any third party to access or use its Trade and Design Account or any associated Purchaser Discounts to purchase Products, unless in accordance with the purpose set out in clause 2.1, without the express written consent of ABI.

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### Products

- 2.1 The Purchaser acknowledges and agrees that it will only purchase Products from ABI for the purpose of incorporating the Products into the Purchaser's building, trade or design projects.
- 2.2 The Purchaser warrants that when it places an order for Products with ABI it will not apply any discount codes, offers or coupons that ABI offers to its customers, or otherwise, except as expressly contemplated by these terms and conditions.
- 2.3 To accrue an Account Balance, Purchasers must purchase Products from ABI using its unique discount code or applicable details associated with its Trade and Design Account.

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### Orders

- 3.1 The Purchaser may place an Order by:
  - (a) placing an Order through ABI's website using the Purchaser's unique discount code; or
  - (b) placing an Order by email to [trade@abi-international.com.au](mailto:trade@abi-international.com.au).

- 3.2 Provided the Purchaser complies with its obligations under these terms and conditions, ABI will supply to the Purchaser the Products at the Price discounted by the Purchaser Discount.
- 3.3 The Purchaser may elect to collect the Products directly from ABI at the Purchaser's cost.
- 3.4 Subject to clause 3.3, ABI will deliver all Products to the Purchaser's premises as notified to ABI in an Order.
- 3.5 Subject to clause 3.6, the Purchaser will pay all delivery costs.
- 3.6 Where the total cost of an Order equals \$1,000.00 or more:
- (a) before a Purchaser Discount has been applied; and
  - (b) after the cost of any Free Shipping Excluded Products has been subtracted,
- ABI will pay the delivery costs for the Order except for the cost of delivering any Free Shipping Excluded Products, which will remain the responsibility of the Purchaser.

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## Quality

- 4.1 If the Purchaser becomes aware that any Products are faulty, the Purchaser will notify ABI as soon as practicable.
- 4.2 The Purchaser acknowledges that:
- (a) the Products come with guarantees that cannot be excluded under the Australian Consumer Law (**Consumer Guarantees**) ABI is required to comply with its obligations under the Australian Consumer Law in respect of Consumer Guarantees;
  - (b) in addition to the Consumer Guarantees, ABI provides certain warranties against defects in respect of the Products (**ABI Warranties**) and the ABI Warranties are in no way intended to diminish the obligations that ABI has in respect of the Consumer Guarantees;
- 4.3 The Purchaser must process all returns, refunds and exchanges made due to an End Customer's change of mind at the Purchaser's premises and cost.

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## Payment

- 5.1 Provided that ABI complies with its obligations under these terms and conditions, the Purchaser must pay to ABI:
- (a) the Price for each Product in an Order:
    - (i) if the Product is not a Sale Product, minus the Purchaser Discount; and
    - (ii) if the Product is a Sale Product, minus the greater of the Purchaser Discount or the ABI Discount;
  - (b) the cost of delivery subject to clause 3.5,
- (**Supply Price**) for each confirmed Order in accordance with this clause 0.
- 5.2 Subject to this clause 0, the Purchaser must pay the Supply Price at the time of placing an Order.
- 5.3 ABI must provide the Purchaser with a Valid Invoice in relation to the Supply Price on receipt of payment for a confirmed order.
- 5.4 An invoice delivered under clause 5.3 must:
- (a) be a valid tax invoice for the purposes of the GST Act;
  - (b) include the number of the relevant Order;
  - (c) contain a description of the Products contained in that confirmed Order;
  - (d) outline the basis for calculation of the amount set out in the invoice.

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## GST

- 6.1 Unless otherwise stated in this document, all amounts payable by one party to another party are inclusive of GST.
- 6.2 If GST is imposed or payable on any supply made by a party under this document, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.
- 6.3 A party's right to payment under clause 0 (Payment) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- 6.4 Expressions defined in the GST Act have the same meaning when used in this clause 0.

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## Indemnity

- 7.1 Subject to clause 7.2 the Purchaser indemnifies ABI and agrees to keep ABI indemnified against any Loss or Claim (howsoever caused) suffered or incurred by ABI arising from any breach by the Purchaser of these terms and conditions or any act or omission of the Purchaser in the performance of the Purchaser's obligations under these terms and conditions, including for any damage suffered to the Products or an End Customer's home build during any transport of the Products by the Purchaser or during installation of the Products.
- 7.2 The Purchaser will not be liable for, nor indemnify ABI as provided in clause 7.1 to the extent that any liability or claim is caused by the negligence or default of ABI.
- 7.3 Despite anything to the contrary in this document, no party to this document will be liable to any other party for Consequential Loss (whether by way of indemnity, by reason of any breach of this document, in tort or otherwise).

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## Intellectual Property

- 8.1 ABI grants to the Purchaser for the Term a non-exclusive, non-assignable, royalty free licence to use the Intellectual Property Rights for the sole purpose of the obligations under these terms and conditions and performing any other obligation under this document and for no other purpose whatsoever.
- 8.2 The Purchaser must not grant any right, licence or give any authority to any third party anywhere in the world to use ABI's Intellectual Property Rights in relation to any goods or services.

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## Conflicts

- 9.1 The Purchaser must use its reasonable endeavours to ensure that it does not enter into agreements or arrangements with third parties:
  - (a) under which the Purchaser's obligations may potentially conflict with, or may adversely affect, its duties under this document; or
  - (b) which will adversely affect its relationship with ABI,
  - (c) and will notify ABI immediately if it considers that, or that there is a real risk that, an agreement or arrangement with a third party falls within either of these categories.

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## Confidentiality

- 10.1 The Purchaser agrees, in respect of any Confidential Information:
  - (a) subject to clause 10.2, not to disclose such information to any person, without the prior written consent of ABI, unless and until:

- (i) such information becomes generally available to the public in printed publications in general circulation in Australia, through no action, default or other breach by the Purchaser; or
  - (ii) the Purchaser is required by law to make disclosure, and then only to such extent; and
- (b) to keep such documents and any other material containing or incorporating any Confidential Information, in safe custody.
- 10.2 Each party may, notwithstanding clause 10.1, disclose Confidential Information to such of its representatives who may need such information and only to the extent so needed, to enable such party to fulfil its obligations under this document.

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## Privacy

- 11.1 Each party agrees, in respect of Personal Information which it has collected for the purposes of this agreement:
- (a) to comply with the Privacy Legislation;
  - (b) to collect the Personal Information in the manner required by this agreement and as the other party may direct from time to time;
  - (c) to use the Personal Information only for the purposes of this agreement;
  - (d) not transfer the Personal Information outside Australia without the other party's prior written consent;
  - (e) where a party identifies actual or suspected unauthorised access or disclosure of Personal Information or loss of Personal Information held by the party for the purposes of this agreement (**Breach**) the party agrees:
    - (i) to immediately take any measures necessary to prevent the recurrence or continuation of the Breach and notify the other party of the Breach including:
      - (A) full details of the manner in which the Breach occurred;
      - (B) the type of information affected by the Breach; and
      - (C) any security measures applied to the Personal Information affected by the Breach;
    - (ii) to assist and cooperate with the other party in investigating any Breach;
    - (iii) to provide all information reasonably requested by the disclosing party in connection with the Breach; and
    - (iv) that the disclosing party will be the sole person responsible for making any notification of that Breach required by law, unless otherwise agreed between the parties.

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## Termination

- 12.1 ABI reserves the right to terminate a Purchaser's Trade and Design Account by providing 30 days written notice to the email address provided by the Purchaser at the time of creating its Trade and Design Account. In such circumstances, the Purchaser's eligibility to use the Purchaser Discount will continue up until the date the termination takes effect.
- 12.2 If the Purchaser fails to comply with an undertaking given under clause 1.8 or clause 0 then ABI may declare the Purchaser in default under these terms and conditions and terminate the Purchaser's Trade and Design Account.
- 12.3 ABI reserves the right to terminate a Purchaser's Trade and Design Account immediately if, in ABI's sole discretion:
- (a) a Purchaser has breached these terms and conditions;

- (b) unauthorised use of a Purchaser's Trade and Design Account or a Purchaser Discount has occurred in accordance with clause 1.8.
- 12.4 A Purchaser may terminate their Trade and Design Account at any time. Purchasers acknowledge and agree that if they choose to terminate their Trade and Design Account:
- (a) they will no longer be eligible to make use of any Purchaser Discounts; and
  - (b) their Account Balance will no longer be recorded.
- 12.5 If this document is terminated under clause 12.3:
- (a) the Purchaser indemnifies ABI against any liability or loss arising and any cost incurred (whether before or after termination of this document) in connection with the Purchaser's breach of this document and the termination of this document; and
  - (b) the Purchaser must take reasonable steps to mitigate the loss.

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## General

- 13.1 ABI reserves the right to amend these terms and conditions at any time. Alterations will be notified to Purchasers via the email address provided by the Purchaser at the time of creating its Trade and Design Account. Alterations will take effect 30 days from the date that ABI notifies Purchasers of the change.
- 13.2 If anything in this document is unenforceable, illegal or void then it is severed and the rest of this document remains in force, unless the severance would change the underlying principal commercial purpose or effect of this document.
- 13.3 Except where this agreement expressly states otherwise, it does not create a relationship of employment, trust, agency, fiduciary or partnership between the parties.

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## Governing law and jurisdiction

- 14.1 The laws of Queensland govern this document.
- 14.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland.

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## Defined terms

In this document unless the contrary intention appears:

**ABI** means ABI Interiors Pty Ltd (ABN 22 612 741 385)

**ABI Discount** means a discount that ABI applies to the Price of any Products when selling directly to its own customers, at its discretion from time to time.

**ABI Trade Discount Structure Document** means the document describing offered Purchaser Discounts as notified to approved Purchasers and updated by ABI from time to time.

**Account Balance** means the cumulative total recommended retail price of Products purchased by the Purchaser from ABI since the opening of its Trade and Design Account.

**Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Claim** means any claim or cause of action in contract, tort, under statute or otherwise.

**Confidential Information** means these terms and conditions, the ABI Trade Discount Structure Document and any information (regardless of form) disclosed or otherwise made available by the disclosing party to the recipient party, for, or in connection with this document, including information which:

- (a) is marked as being proprietary or confidential to the disclosing party;
- (b) in the circumstances surrounding disclosure, or because of the nature of the information, ought in good faith be treated as confidential;

whether the information was:

- (c) disclosed or created before, or after the date of this document; or
- (d) disclosed as a result of discussions between the parties concerning or arising out of this document.

**Consequential Loss** means any indirect or consequential loss, damage, liability, cost or expense (including but not limited to loss of profits, loss of revenue, interruption of business or loss of use) arising out of, or in connection with this document whether arising in contract or tort (including negligence) or under any statute or otherwise.

**End Customer** means a third party who purchases Products from the Purchaser.

**Eligible Purchaser** means any person or Organisation who:

- (a) has an ABN;
- (b) purchases Products directly from ABI;
- (c) purchases Products for the purpose of selling the Products instore or incorporating the Products into their building, trade or design projects and
- (d) is not contracted with ABI under any of ABI's Reseller, Affiliate or Trade (Display Home) programs.

**Free Shipping Excluded Products** means:

- (a) vanities;
- (b) mirrors;
- (c) tiles;
- (d) mosaics;
- (e) toilets; and
- (f) baths.

**GST** has the meaning given in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

**Intellectual Property Rights** means:

- (a) ABI's trademark;
- (b) copyright in ABI's training and marketing materials including the Media Catalogue.

**Loss** includes any damage, loss, cost, Claim, liability or expense.

**Media Catalogue** means ABI's approved images for use on social media.

**Order** means a purchase order for Products placed by the Purchaser.

**Organisation** means an entity which carries on business in Australia, including but not limited to companies, partnerships, sole traders and trusts.

**Personal Information** has the meaning given in the Privacy Act.

**Price** means the price at which ABI sells a Product before any ABI Discount is applied, including GST, as determined by ABI and notified to the Purchaser from time to time by ABI.

**Privacy Act** means the *Privacy Act 1988* (Cth) as amended from time to time.

**Privacy Legislation** means the Privacy Act and other legislation regarding privacy in force from time to time that is applicable to the parties.

**Products** means ABI's current and future bathroom products as specified on the Website, but excludes colour samples.



**Purchaser** means an Eligible Purchaser who has applied for, and has been approved by ABI to hold a Trade and Design Account.

**Purchaser Discount** means the discounts offered by ABI to the Purchaser based on the Purchaser's Account Balance and described in the ABI Trade Discount Structure Document as updated by ABI from time to time.

**Sale Products** means any Products to which ABI has applied an ABI Discount.

**Supply Price** means the price calculated in accordance with clause 5.1.

**Trade and Design Account** means an account held by a Purchaser with ABI entitling the Purchaser to a Purchaser Discount and tracking the Purchaser's Account Balance.

**Website** means ABI's website accessible at <https://www.abiinteriors.com.au/>.

**Valid Invoice** means a tax invoice that complies with clause 5.4.