

1. Definitions

In this document the following words are defined as is set out below:

- (a) "The Customer" means the purchaser of Reface Services from Reface Industries, under these terms and conditions;
- (b) "Disc" means Compact Disc (CD), Digital Versatile Disc (DVD), DVDR, DVD ROM, Blu-ray or similar 120mm optic disc medium;
- (c) "Order Sheet" means the pro-forma document by that name, available from the Reface Industries website from time to time;
- (d) "Reface Industries" means Reface Industries Pty Ltd (ABN 28 106 335 433);
- (e) "Resurface" means to attempt to bring the play (read) side of a Disc to a playable state using Reface Services;
- (f) "Reface Services" means the removal or attempted removal of surface scratches from the optic disc medium (*substrate*) of a Disc using the reface repair processes as well as the "Service Work" (Labour, replacement parts or otherwise) undertaken by Reface Industries to improve the performance of or repair any Disc Repair Machine;
- (g) "Disc Repair Machine" refers to any unit or machine designed specifically to repair or resurface Discs, including but not limited to the VMI 3550i, VMI 2550i, VMI Hybrid, Elite 60, Skipaway, and Workmate;
- (h) "RMA Form" means the return authorization form sent to the client detailing packing instructions and the conditions set in place for Reface Industries to perform Reface Services on any given repair machine.
- (i) "Service Work" means the work done on Disc Repair Machines, including Labour and the replacement or upgrade of parts.
- (j) "Reface Product" means any good sold by Reface Industries to The Customer, including but not limited to consumables for Disc Repair Machines, Disc Repair Machines, video games and any associated accessories.

2. Application of Conditions

- 2.1 The terms and conditions set out in this document will apply to all supplies of Reface Services by Reface Industries to The Customer.
- 2.2 On each occasion on which The Customer delivers one or more Discs to Reface Industries along with or following an Order Sheet The Customer will be making a separate offer to contract with Reface Industries. Each separate Order Sheet constitutes a separate offer and potentially a separate contract.
- 2.3 On each occasion on which The Customer delivers one or more Repair Machines to Reface Industries along with, following or without an RMA Form The Customer will be making a separate offer to contract with Reface Industries. Each separate RMA Form constitutes a separate offer and potentially a separate contract.
- 2.4 A contract will be formed between The Customer and Reface Industries only if and when Reface Industries communicates to The Customer its acceptance of The Customer's offer or when Reface Industries commences the provision of Reface Services (Disc refacing services or reface Service Work) in relation to one or more Discs from the relevant batch or one or more Disc Repair Machines. That acceptance will normally be communicated by e-mail, but it may be communicated orally, or by facsimile. The contract, when formed, will consist of these terms and conditions, the Order Sheet or the RMA Form, the price schedule applicable under clause 4.3 or 4.4 and Reface Industries' acceptance of The Customer's offer.
- 2.5 The following terms and conditions will apply once Reface Industries accepts an offer made by The Customer.

3. The Services

- 3.1 Reface Industries will Resurface only the play-side of each Disc. Reface Industries will not repair any damage or malfunction to the data embodied in the Disc or the medium in which that data is embedded or the reverse (non-play side) of the Disc.
- 3.2 In the event that Reface Industries determines, prior to attempting to Resurface a particular Disc, that the Disc is unable to be Resurfaced or that Resurfacing is inadvisable, Reface Industries will not attempt to Resurface that Disc and will upon return of the Disc notify The Customer that it was not Resurfaced. Any Disc, about which The Customer is so notified, will be returned to The Customer along with any Resurfaced Discs.
- 3.3 Reface Industries will not charge The Customer for the Resurfacing of any Disc which is returned under clause 3.2 above without being Resurfaced, but The Customer will still bear the cost of transporting and insuring any such discs.
- 3.4 Reface Industries does not warrant that all scratches on a Disc will be removed. Reface Industries will Resurface any Disc that is provided to it for Resurfacing, but some Discs will be beyond complete repair and this may not be possible to assess until after Reface

Services have been provided. All warranties as to quality of service are hereby excluded to the maximum extent permissible by law. The Customer hereby acknowledges that Reface Industries is on each occasion, contracted to "Resurface" a Disc, not to "repair" that Disc.

- 3.5 Reface Industries will endeavour to Resurface all Discs within three (3) days of accepting The Customer's offer, but will not be in any way liable to The Customer if it is for any reason unable to do so. If Reface Industries does not Resurface any Disc and make it available for collection or delivery within twenty one (21) days The Customer may cancel the relevant contract in relation to any Disc which has not yet been Resurfaced. In that event, The Customer will not be charged for Reface Services in relation to that or those discs, but The Customer will bear all costs of transportation and insurance.
- 3.6 Any Disc Repair Machine sent to Reface Industries without a return authorisation form appropriately filled out will be looked at and quoted at a time convenient for Reface Industries and may even be sent back without being analysed at all, should this happen The Customer will be charged for any associated costs including postage and handling. All Disc Repair Machines returned with RMA Forms will take precedence over those without RMA Forms.
- 3.7 Reface Industries will not perform Reface Services on Repair Machines without first quoting for the recommended Service Work. Should The Customer refuse Service Work they will still bear the cost of transporting any such Repair Machines (as outlined in the RMA Form).
- 3.8 Reface Industries will endeavour to complete any work on Disc Repair Machines as fast as possible, but makes no commitments as to how long it will take to either quote or finish Service Work on any Disc Repair Machine. Should it take longer than twenty one (21) days for The Customer to receive a quote The Customer may cancel the relevant contract in relation to said Disc Repair Machine.

4. Price and Payment

- 4.1 Reface Industries may withhold all or any Discs, Repair Machines or Reface Products belonging to The Customer which may be in the possession of Reface Industries until all sums owing by The Customer to Reface Industries have been paid in full. Reface Industries reserves the right to at any time, place The Customer on "payment in advance" terms; in which case, Reface Industries is not obliged to provide Reface Services in relation to any given order or Disc Repair Machine, until that order or associated Service Work has been paid for in full.
- 4.2 Reface Industries will charge The Customer for each Disc in respect of which it provides Reface Services. The Customer will be charged whether or not the Reface Services successfully remove all surface scratches from the optic medium of the Disc. The Customer will not be charged if the Reface Services crack or split the Disc.
- 4.3 Subject to clause 4.4, The Customer will be charged a fee per disc in respect of which Reface Services are provided. *If The Customer has negotiated a volume discount with Reface Industries, that volume discount will take precedence over the default price and will continue subject to the terms agreed by Reface Industries from time to time.*
- 4.4 If Reface Industries agrees in writing with The Customer to vary that schedule of prices, the agreed price schedule will apply, until The Customer is notified in writing by Reface Industries. For the purposes of this clause 4.4, the sending of an email (which has not returned to Reface Industries after the expiry of 24 hours from sending) will constitute proper notice.
- 4.5 Reface Industries will charge The Customer for all shipping, logistics, transport and insurance costs of delivering any Discs to The Customer, whether Reface Industries have repaired them or not.
- 4.6 In the event that The Customer approves a quote given by Reface Industries for Reface Services on The Customer's Disc Repair Machine The Customer will be invoiced for said Reface Services once they have been completed. The Disc Repair Machine will not be released until payment has been made. Should any Service Work outside of that which has been originally quoted be required, Reface Industries will not go forward with it until approval has been given from The Customer.
- 4.7 Reface Industries reserves the right to change pricing for either Reface Services or Reface Products at any time, and is not obligated to honour any outstanding quotes that The Customer may have received before the change. Although Reface Industries will endeavour to contact The Customer in relation to price changes should it affect a previous quote, Reface Industries is not obligated to do so.

5. Risk

- 5.1 Any Disc that The Customer delivers to Reface Industries is at The Customer's risk until Reface Industries delivers to The Customer an acceptance of The Customer's Order Sheet under clause 2.4. If Reface Industries does not accept The Customer's Order Sheet The Customer will make The Customer's own arrangements for collection of the relevant Discs. Any Discs not collected within three (3) months of Reface Industries rejecting The Customer's Order Sheet, will become the property of Reface Industries and may be dealt with by Reface Industries at its absolute discretion.
- 5.2 If Reface Industries loses a Disc whilst the Disc is within its care and custody, its liability to The Customer will be limited to an amount equal to The Customer's cost of purchasing that Disc, or the cost of replacing the Disc, whichever is the lesser. Payment will be made once The Customer has provided written proof of purchase. Reface Industries will under no circumstances be liable for any loss of business, profits or other direct or consequential loss The Customer may suffer.
- 5.3 Reface Industries will not be in any way liable to The Customer for any Disc which is damaged or destroyed during the provision of Reface Services. The Customer accepts that visual inspection of a Disc will not always disclose inherent or latent defects and there is therefore a risk of damage whenever a Disc is put through Reface Services.
- 5.4 Reface Industries' risk in a Disc or Disc Repair Machine will revert to The Customer upon delivery of the Disc or Disc Repair Machine to The Customer or the courier or transport company engaged by The Customer or Reface Industries to deliver the Disc to The Customer. Reface Industries will be in no way liable to The Customer for the late delivery, non-delivery or short delivery of any Product, Disc, Disc Repair Machine or bundle of Discs.

6. Reface Disc Repair Machine Warranties

- 6.1 Every new Disc Repair Machine supplied by Reface Industries is covered by a one (1) year labour and parts warranty. In addition, we will cover delivery in both directions for any fault materialising in the first three (3) months of purchase. Your warranty applies to any issue occurring from a failure of parts. Any damage caused by misuse or from using non-genuine consumables is not covered by warranty and would be chargeable at our standard rate.
- 6.2 Reconditioned machines are covered by a six (6) month labour and parts warranty. Shipping in both directions is covered for the first six (6) weeks.
- 6.3 Reface Industries currently has a no returns policy, and thus does not have a money back guarantee. Reface Industries will attempt to fix any issues The Customer identifies as quickly as possible and will provide a replacement machine only when we deem it necessary.
- 6.4 Any returned Disc Repair Machine must have a RMA Form attached, and be packaged according to the guidelines stated in the RMA Form. Any Repair Machine returned to Reface Industries without being packaged correctly will have warranty voided and will be treated as low priority.

7. Miscellaneous

- 7.1 Governing Law
This document shall be governed by, and construed in accordance with, the laws of the State of Western Australia and the applicable laws of the Commonwealth of Australia in force from time to time, and the Parties agree to submit to the non-exclusive jurisdiction of their courts.
- 7.2 Force Majeure.
If the performance of this agreement, or of any obligation hereunder is prevented, restricted or interfered with by reason of fire, explosion, breakdown, strike, labour dispute, accident, lack of transportation, epidemic, cyclone, flood, earthquake, drought or lack of raw materials, power or supplies or war, revolution, civil commotion, acts of God, blockade or embargo or any law, order, proclamation, decree or requirement of any government or any authority or representative thereof or any other acts whatsoever beyond the reasonable control of a party hereto, then:
- (a) The party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference; and
 - (b) The other party shall likewise be excused from performance of its obligations to the extent such obligations relate to the performance so prevented, restricted or interfered with, PROVIDED THAT the party so affected shall use its best efforts to avoid and to remove such causes of non-performance and both parties shall continue performance hereunder with the utmost dispatch whenever such causes are removed.
- 7.3 Trust or Corporate Customer
If The Customer is a trust, company, joint venture, or other incorporated body or a partnership including such bodies, then in consideration for Reface Industries' agreement to enter into each contract formed between Reface Industries' and The Customer the person signing these terms and conditions on behalf of The Customer ("the Surety") hereby agrees to be jointly and severally liable to Reface Industries for any and all debts which are or may become owing by The Customer to Reface Industries from time to time, including but not limited to any debt which may arise out of or in relation to the insolvency of The Customer. This guarantee will be a principal obligation between the Surety and Reface Industries and may be enforced by Reface Industries without first having recourse to The Customer.
- 7.4 Surety's Acknowledgments
I acknowledge that I expect to receive a commercial benefit from Reface Industries' agreeing to supply the goods to The Customer and that I have satisfied myself that I understand the full nature and effect of my liability to you under these terms and conditions and each contract that may arise which incorporates them. I confirm that Reface Industries has recommended to me that I obtain independent legal advice before providing the guarantee set out in clause 6.3 and that I have had ample opportunity to do so.