
TERMS OF TRADE

INFRASTEEL PTY LTD

1. ACCEPTANCE OF TERMS

- 1.1 Any Order Request received by Infrasteel from the Customer for the purchase or rental of Products, or the Customer's acceptance of Products supplied by Infrasteel, constitutes acceptance of these Terms on the part of the Customer, (**Acceptance**) following which these Terms will apply to and govern the purchase or rental of the Products.
- 1.2 Unless otherwise agreed, the term of these Terms commences on Acceptance and expires on the earlier of:
- (a) the termination of these Terms; or
 - (b) 5 years from the date of Acceptance of the Terms.
- 1.3 Where there is more than one Customer, those Customers are jointly and severally liable for all money payable under these Terms.
- 1.4 These Terms are irrevocable as between Infrasteel and the Customer, unless rescinded in writing or varied in accordance with these Terms or with the written consent of Infrasteel.
- 1.5 These Terms apply to any purchase or rental of the Products by the Customer from Infrasteel to the exclusion of any other terms put forward by the Customer or Infrasteel during the ordering process.
- 1.6 The Customer may not cancel or alter, in whole or in part, any Order Request provided to Infrasteel without Infrasteel's prior written consent.
- 1.7 An agent or representative of Infrasteel is not authorised to make any representation, statement, condition or agreement not expressed by Infrasteel's manager in writing, nor is Infrasteel bound by any unauthorised representation, statement, condition or agreement.
- 1.8 The Customer must give Infrasteel not less than 14 days prior written notice of any proposed change to the Customer's name or any details as previously advised to Infrasteel, including but not limited to changes to the Customer's address, contact details or business practice.
- 1.9 Unless otherwise agreed, the term of these Terms commences on the date of Acceptance.

2. ORDERING PROCESS

2.1 Request and confirmation

- (a) Following receipt of an Order Request, Infrasteel will send the Customer a credit application form. The Customer must accurately complete the credit application form and return it to Infrasteel.
- (b) In reliance upon the information set out in the credit application form, Infrasteel may issue the Customer with an Order Confirmation for the purchase or rental of Products by the Customer. The Customer is deemed to have accepted this Order Confirmation unless the Customer notifies Infrasteel to the contrary within 3 Business Days of receipt.
- (c) Following acceptance of an Order Confirmation, Infrasteel will issue the Customer with an invoice for the Purchase Price or the Rental Fee (as applicable).

2.2 Description

The Products, including any quality requirements or quality standards, are as described on the Order Confirmation relevant to those Products.

2.3 Obligation to supply or rent

- (a) Infrasteel must supply or rent the Products the subject of each Order Request to the Customer in accordance with these Terms.
- (b) These Terms do not confer upon either the Customer or Infrasteel any exclusivity in relation to the purchase or rental of the Products.

3. PURCHASE OF PRODUCTS

3.1 Application

This clause 3 applies in relation to the purchase and supply of Products by Infrasteel to the Customer.

3.2 Product Price

- (a) The Product Price is exclusive of GST and is as indicated on invoices provided by Infrasteel to the Customer for the Products.
- (b) Subject to clause 3.2(c), Infrasteel's Purchase Price will be the written quoted price by Infrasteel provided that the Customer accepts Infrasteel's written quote within 30 days after it is given.
- (c) Infrasteel may charge the Customer for any variation to scheduled works or specifications in relation to the Products and such variation will be shown as a variation on Infrasteel's invoice to the Customer. The Customer must make payment for all variations in full at the time that Products are delivered.

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3.3 Payment

- (a) The time for payment of the Product Price will be stated on the invoice, quote or any other order confirmation from Infrasteel. If a time is not stated, payment must be made (subject to clause 3.3(c)) by the Customer to Infrasteel by the later of:
 - (i) delivery of the Products at the Delivery Location; and
 - (ii) 30 days of the date of the invoice from Infrasteel.
- (b) Payment of the Product Price must be made from the Customer to Infrasteel by cash, bank cheque or electronic funds transfer or any other method approved by Infrasteel.
- (c) Notwithstanding clause 3.3(a), Infrasteel may require that the Customer pays a deposit equal to 20% (**Purchase Deposit**) of the Product Price. A Purchase Deposit must be paid within 5 Business Days of Infrasteel making a request for the same and is not refundable after Infrasteel has commenced work and incurred costs in relation to the supply of the Products to which the amount pertains.
- (d) Infrasteel is not under any obligation to commence or continue work in relation to the supply of Products (including any further deliveries of Products) unless payment of a requested Purchase Deposit been received.

3.4 Delivery of Products

- (a) Unless subsequently agreed in writing by the parties, Infrasteel will deliver or otherwise make available the Products on a 'ex works' basis to the location set out in the Order Confirmation (**Delivery Location**).
- (b) Infrasteel will give the Customer 1 days notice of the date of the delivery of the Products to the Delivery Location. The Customer must make all arrangements necessary to immediately take delivery of the Products whenever they are tendered for delivery at the Delivery Location.
- (c) The failure of Infrasteel to deliver the Products to the Customer does not entitle the Customer or Infrasteel to treat these Terms as repudiated.
- (d) Infrasteel is not liable in relation to loss or damage to Products in transit from the Delivery Location or otherwise in relation to the transportation of Products following their delivery to the Delivery Location.
- (e) The Customer is entitled to inspect the weight, quality and tolerances of the Product, including tolerances at the Delivery Location. If the Customer identifies any defects in the weight, quality or tolerances of the Products it must immediately notify a representative of Infrasteel, who is entitled to inspect the Product together with the Customer. The Customer is deemed to have inspected the weight, quality and tolerances of the Product upon taking delivery of the Products at the Delivery Location.
- (f) All Products are deemed accepted by the Customer if the Customer does not notify Infrasteel to the contrary within 7 days of those Products being delivered to the Delivery Location.

3.5 Risk and title

- (a) All risk for the Products passes to the Customer on delivery of those Products under clause 3.4 to the Delivery Location or, if the Products are delivered to the Customer (or an agent or contractor of the Customer) at an earlier point, at that earlier point. This clause applies to the extent that it is not inconsistent with any other arrangement agreed between the Customer and Infrasteel in writing.
- (b) If any Products are damaged or destroyed before title in those Products passes to the Customer, Infrasteel is entitled, without prejudice to any of its other rights or remedies under these Terms (including the right to recover payment of the balance of the Product Price for the Products), to receive all insurance proceeds payable for the Products. This applies whether or not the Product Price has become payable under these Terms. The production of these Terms by Infrasteel is sufficient evidence of Infrasteel's right to receive the insurance proceeds without the need for any person dealing with Infrasteel to make further enquiries.
- (c) Title in Products will not pass until the Customer has paid all amounts owing for the particular Products and the Customer has met all other obligations due by the Customer to Infrasteel in relation to all contracts between Infrasteel and the Customer.
- (d) The Customer must keep the Products separate until Infrasteel receives payment and all other obligations of the Customer are met under clause 3.5(c).

3.6 Defects and warranties

- (a) The Customer must notify Infrasteel in writing (**Defect Notice**) of any:
 - (i) Minor Defect within 7 days of taking delivery of the Products; or
 - (ii) Material Defect within 7 days of becoming aware of the alleged Material Defect and during the Warranty Period.
- (b) The Customer must afford Infrasteel an opportunity to inspect all alleged defective Products as soon as practicable following the issue of a Defect Notice.
- (c) Subject to clause 3.6(d), if Infrasteel, acting reasonably, determines that the Products are subject to a Minor Defect or a Material Defect, Infrasteel's liability is limited to (at Infrasteel's discretion) either replacing the Products or repairing the Products (or paying for the same), provided that the Customer has complied with 3.6(a) and the Products are returned to

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Infrasteel in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances, within 30 days of:

- (i) in the case of a Minor Defect, the delivery date of those Products; and
 - (ii) in the case of a Material Defect, the Defect Notice is issued.
- (d) Infrasteel's obligation to take the actions in clause 3.6(c) are conditional upon the following:
- (i) Infrasteel does not have any liability to the extent that:
 - A. any damage or defect is caused, directly or indirectly, by any act or omission on the part of the Customer (including its officers, employees, contractors and agents);
 - B. Products have not been transported, stored, used or applied in accordance with any instructions by Infrasteel and otherwise with reasonable care and skill; or
 - C. the Products are not suitable for the purpose for which the Customer wishes to use them.
 - (ii) Defects or damage which are caused or relate to any of the following are excluded:
 - A. failure on the part of the Customer to properly maintain any Products;
 - B. failure on the part of the Customer to follow any instructions or guidelines provided by Infrasteel;
 - C. any use of any Products otherwise than for any application specified in any instructions or guidelines provided by Infrasteel or for their ordinary use or application;
 - D. the continued use of any Products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - E. fair wear and tear, any accident or any act of God.
 - (iii) Infrasteel will not be liable if the workmanship in relation to Products is repaired, altered or overhauled without Infrasteel's consent.
 - (iv) Infrasteel is not liable to compensate the Customer for any claim in relation to replacing or repairing the Products or in properly assessing the Customer's claim.
- (e) Infrasteel's obligations under clause 3.6(c) are limited to the original Customer. If the Customer re-sells any Products, the Customer must ensure that the terms of such sale limit Infrasteel's liability in accordance with these Terms. The Customer indemnifies Infrasteel for any loss or damage incurred by Infrasteel from any failure of the Customer to do so.
- (f) If the Customer fails to notify Infrasteel of any Minor Defect or Material Defect to any Products within the timeframes specified in clause 3.6(a), then the Customer is deemed to have accepted the Products in full.

3.7 Lien

Without limiting clause 7, Infrasteel has the following rights where Infrasteel has not received the whole of the Product Price, or the payment has been dishonoured, and such rights will continue despite the commencement of legal proceedings or judgment for the Product Price having been obtained:

- (a) a lien on the Products;
- (b) the right to retain them for the Product Price while Infrasteel is in possession of them;
- (c) a right of stopping the Products in transit whether or not delivery has been made or ownership has passed;
- (d) a right of resale; and
- (e) the right of disposal in clause 3.8.

3.8 Rights to dispose of unpaid Products

Infrasteel may dispose of the Products and may claim from the Customer the loss to Infrasteel on that disposal if the following occurs, whether the property in the Products has passed to the Customer or has remained with Infrasteel:

- (a) Infrasteel retains possession or control of the Products;
- (b) payment of the Product Price is due to Infrasteel;
- (c) Infrasteel has demanded from the Customer in writing payment of the Product Price in accordance with these Terms; and
- (d) Infrasteel has not received payment of the Product Price of the Products.

4. RENTAL OF PRODUCTS

4.1 Application

This clause 4 applies to the rental of Products by Infrasteel to the Customer.

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4.2 Rental Period

- (a) Unless otherwise agreed the Rental Period commences from the time that the Products made available by Infrasteel at the Collection Location under clause 4.4(a) and, unless otherwise specified in the Order Request or agreed between the parties in writing, expires on the earlier of 8 weeks from the commencement date and the termination of these Terms.
- (b) These Terms continue to operate and govern the rental of the Products as between Infrasteel and the Customer if:
 - (i) the Rental Period expires;
 - (ii) the Customer continues possession of the Products; and
 - (iii) Infrasteel does not notify the Customer that the Products must be returned.

4.3 Retention of title

- (a) Infrasteel retains full title to the Products notwithstanding the following:
 - (i) the Products being made available for collection by the Customer;
 - (ii) the possession and use of the Products by the Customer; and
 - (iii) any temporary attachment of the Products to any land or buildings to facilitate use of the Products.
- (b) Clause 4.3(a) is subject only to the rights of the Customer as a mere bailee of the Products with a right only to use them in accordance with these Terms.

4.4 Collection of Products

- (a) Unless subsequently agreed in writing by the parties, Infrasteel will make the Products available for collection by the Customer at the location set out in the Order Confirmation (**Collection Location**) on the date agreed between the parties or otherwise nominated by Infrasteel, during ordinary business hours at the Collection Location.
- (b) The Customer must make all arrangements necessary to immediately collect and take possession of the Products whenever they are tendered for collection at the Collection Location.
- (c) The failure of Infrasteel to make the Products available for collection by the Customer does not entitle the Customer or Infrasteel to treat these Terms as repudiated.
- (d) Infrasteel is not liable in relation to loss or damage to Products in transit from the Collection Location.
- (e) All Products are deemed accepted by the Customer if the Customer does not notify Infrasteel to the contrary within 7 days of those Products being collected by the Customer.

4.5 Use of Products

- (a) The Customer must only handle, store, use and operate (as applicable) the Products:
 - (i) in accordance with all applicable Laws;
 - (ii) in accordance with instructions provided with the Products (if any) and otherwise recognised methods, industry guidelines and/or standards for goods of the same or substantially similar type (if any); and
 - (iii) if applicable, only by competent and (where appropriate) properly qualified, trained and licensed personnel.
- (b) Without limiting clause 4.5(a), the Customer must comply in all respects with the instructions and recommendations of the manufacturer or other supplier relating to the Products and to their use, in particular where any failure in compliance would limit the obligations of that person to Infrasteel or the Customer under any statute, agreement or otherwise.

4.6 Location for use

- (a) The Customer is only entitled to use the Products at the Approved Location as described on the Order Confirmation to which those Products pertain.
- (b) Except with the prior written consent of Infrasteel, the Customer must not use the Products on locations or sites where the soil and/or water (including ground water) is Contaminated.
- (c) Without limiting clause 4.6(b), if the Customer uses the Products on locations or sites where the soil and/or water (including ground water) is Contaminated, the Customer:
 - (i) must take all reasonable and necessary measures to protect and prevent damage to the Products from such Contamination (e.g. applying a protective coating, if applicable);
 - (ii) must clean the Products regularly and at the end of the Rental Period to prevent damage to the Products from such Contamination;
 - (iii) is liable to compensate Infrasteel for any damage caused to the Products as a result of such Contamination, including cleaning and repair costs; and
 - (iv) without limiting clause 12 indemnifies Infrasteel against any loss or damage to the Products caused or contributed to by the use of the Products at the Contaminated location or site.

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4.7 No fixtures

The Customer must not at any time attach or affix the Products to any land (including any structure on land) unless their use so requires and the prior written consent of Infrasteel has been obtained.

4.8 Maintenance

- (a) The Products will be at the risk and expense of the Customer from the commencement of the Rental Period until the date that the Products are returned to the possession, custody and control of Infrasteel at the Collection Location.
- (b) During the Rental Period, the Customer must:
 - (i) keep the Products in proper and working order and condition, and in good and substantial repair (fair wear and tear excepted), having regard to the ordinary use of the Products and the age and condition of the Products as at their collection by the Customer, in accordance with all maintenance instructions provided by Infrasteel (if any);
 - (ii) not alter, modify, replace or make any addition to the hired Products; and
 - (iii) not overburden the Products.
- (c) The Customer must with reasonable promptness replace all parts of the Products which may from time to time become worn out, lost, stolen, compulsorily acquired, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence.
- (d) All replacement parts referred to in clause 4.8(c) (**Replacement Parts**) will become the property of Infrasteel. For the purposes of this clause, 'parts' includes appliances, parts, instruments, accessories and other equipment of whatever nature constituting part of the Products or which may from time to time be incorporated in, or attached to, the Products.
- (e) The Customer must ensure that all Replacement Parts are free and clear of all liens and rights of others, except for rights of the Customer under these Terms. The Customer must also ensure that all Replacement Parts have a value and utility at least equal to the parts replaced, assuming such replaced parts were in the condition and repair required to be maintained by these Terms.

4.9 Ownership and dealing

- (a) The Customer must notify any person seizing or attempting to seize the Products that Infrasteel is the owner of the Products and must give immediate written notice to Infrasteel of such seizure or attempted seizure.
- (b) The Customer must not without Infrasteel's prior written consent:
 - (i) agree, attempt, offer or purport to sell, assign, sublet, lend, grant any Encumbrance in respect of, or otherwise part with or attempt to part with the personal possession of, or otherwise deal with the Products; or
 - (ii) remove, change, alter or deface any name, name plate, identification number, trademark or any other identifying mark or number on the Products, except so as to indicate any permitted replacement, alteration or addition to the same.

4.10 Rental Fee

- (a) The Rental Fee is the written quoted price provided by Infrasteel to the Customer prior to the commencement of the Rental Period or is otherwise the fee as stated on the Order Confirmation or otherwise on invoices provided by Infrasteel to the Customer for the Products.
- (b) Unless another review mechanism is agreed between the parties in writing, Infrasteel may adjust the Rental Fee at the end of a Quarter during the Rental Period (**Review Date**) by the same proportion as that by which the CPI, as last published prior to the Review Date, has increased from the CPI, as last published prior to the commencement of the Rental Period or the previous Review Date (whichever is the later), provided that the Rental Fee will not be less than the amount payable prior the relevant Review Date. The adjusted Rental Fee has affect as and from the relevant Review Date.

4.11 Payment of Rental Fee

- (a) The Rental Fee must be paid by the Customer to Infrasteel during the Rental Period within 30 days of receipt of an invoice from Infrasteel, unless otherwise stated in the Order Confirmation.
- (b) Payment of each instalment of the Rental Fee must be made from the Customer to Infrasteel by cash, electronic funds transfer or any other method approved by Infrasteel.

4.12 Security deposit

- (a) Infrasteel may require that the Customer pay a security deposit of up to 50% of the total Rental Fees to be paid during the Rental Period (**Security Deposit**) as security for the due performance by the Customer of its obligations under these Terms, including payment of the Rental Fee when due.
- (b) A Security Deposit must be paid within 5 Business Days of Infrasteel making a request for the same. Infrasteel is not under any obligation to make the Products available to the Customer unless a requested Security Deposit has been received.
- (c) Infrasteel does not hold the Security Deposit on trust for the Customer or any other person.
- (d) The Security Deposit (and any interest earned on it) may, at its sole discretion and without prejudice to any other rights or remedies that it may have, at any time during the Rental Period be applied by Infrasteel towards arrears of the Rental Fee, damages, loss or costs relating to any default or other failure of the Customer to perform its obligations under these Terms.

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- (e) If any portion of the Security Deposit is applied by Infrasteel to an amount pursuant to clause 4.12(d), Infrasteel may require the Customer to replenish the applied amount of the Security Deposit within 5 Business Days.
- (f) Infrasteel must return the balance of the Security Deposit to the Customer within 14 days of the Products being returned to Infrasteel, provided that the Customer has all amounts due to Infrasteel and is otherwise not default of its obligations under these Terms.

4.13 Damage to the Products

If, other than due to fair wear and tear, any of the Products become in any way out of order or repair, the Customer must at its expense have those Products repaired by skilled and properly qualified personnel to Infrasteel's reasonable satisfaction.

4.14 Inspection and remedy

- (a) Infrasteel is entitled to enter upon the Customer's premises (including any premises or location over controlled or occupied by the Customer) where the Products are located to:
 - (i) inspect the Products and review the Customer's compliance with these Terms at any time during the Rental Period, by giving the Customer 1 day's written notice; or
 - (ii) if the Customer fails to carry out any maintenance or repair obligations under these Terms in relation to the Products, remedy such obligation, at the Customer's cost, with or without notice.
- (b) Any failure by Infrasteel to inspect the Products during the Rental Period does not prejudice any claim it may have against the Customer.

4.15 Insurance

- (a) The Customer must effect and maintain at all times during the Rental Period the following insurances:
 - (i) insurance of the Products for their full replacement value against loss or theft, damage or destruction caused by accident, any insurable risk commonly insured against in regard to equipment of a similar nature to the Products, and such other insurable risks as Infrasteel may reasonably stipulate;
 - (ii) insurance against the Customer's and all third party risks, including liability for damage or injury of any kind to any property or person or economic loss and also against other risks to the full extent required by Law, by a policy applying for the benefit of Infrasteel and the Customer; and
 - (iii) public risk insurance relating to the Products for an indemnity (including damage to property of any person) of not less than AUD\$20,000,000 or such other amount as Infrasteel may from time to time reasonably stipulate for any one accident (to the extent that such insurance is not covered in any insurance effected by the Customer under clauses 4.15(a)(i) or (ii)).
- (b) Upon request by Infrasteel, the Customer must provide Infrasteel with a copy of any certificate of currency for the insurance obtained under clause 4.15.

4.16 Liability

- (a) Without limiting clause 12, the Customer agrees to use, operate and possess the Products at the Customer's risk.
- (b) The Customer assumes liability for, and indemnifies and will keep indemnified, Infrasteel (including its officers, employees contractor and agents) from and against, any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise (including court costs and legal fees on a solicitor-own client basis) and of whatsoever kind and nature (including claims based upon strict liability in tort):
 - (i) in relation to, or alleged to be in relation to:
 - A. any negligent act or omission, breach of contract or breach of any Law on the part of the Customer; or
 - B. the possession, use (including by reason of the use or incorporation of any invention resulting in infringements of Intellectual Property Rights), repair, maintenance, storage, or operation of the Products, and by whomsoever used or operated (except where used by Infrasteel or any person on behalf of Infrasteel); or
 - (ii) incurred by Infrasteel in respect of any loss of the Products by seizure, distress, execution or other legal process, confiscation or forfeiture of the Products.
- (c) The indemnities included in clause 4.16(b) will continue in full force and effect notwithstanding the termination of these Terms.

4.17 Return of Products

- (a) Unless otherwise agreed, the Customer must return the Products to the Collection Location by 4:00pm (WST) on the last day of the Rental Period.
- (b) The Customer may return the Products to Infrasteel on a Business Day prior to the expiry of the Rental Period, provided that:
 - (i) the Customer must give Infrasteel at least 2 Business Days' written notice of the proposed date for return delivery of the Products; and

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- (ii) the Customer remains obliged to pay the full amount of the Rental Fee notwithstanding the early return of the Products.
 - (c) The Customer is obliged to return the ire Products at the end of the Rental Period in the same condition as when the Customer received the Products from Infrasteel, subject to fair wear and tear.
- 4.18 If the Products are not returned to Infrasteel as and when required under these Terms, Infrasteel may retake possession of the Products. For that purpose, Infrasteel and its representatives may, without notice, liability or legal process, enter upon or into any premises on which the Products are located and for which the Customer has a right of access, including breaking open any gate, door or fastening and detach or dismantle the Products from any part of that location to which the Products have been affixed.

5. INTELLECTUAL PROPERTY PROTECTIONS

5.1 Intellectual Property Rights

- (a) All Intellectual Property Rights in relation to Infrasteel Background IP remain vested in Infrasteel.
- (b) All Intellectual Property Rights in the Contract IP vest in Infrasteel upon creation of those rights.
- (c) The Customer assigns to Infrasteel all Intellectual Property Rights (including future copyright) in the Contract IP upon the creation of those rights and, to the extent that any Intellectual Property Rights are not created at the time of creation of the Contract IP, upon the later creation of those rights.
- (d) In relation to any Intellectual Property Rights of Infrasteel, the Customer must:
 - (i) not use or exploit any such Intellectual Property Rights other than as expressly permitted by Infrasteel in writing; and
 - (ii) not do any act or omit to do any act, nor assist any other person to do or omit to do anything, which may:
 - A. prejudice an application for registration of any such Intellectual Property Rights which are registrable in any jurisdiction;
 - B. invalidate or oppose the registration of any such Intellectual Property Rights which are registered in any jurisdiction; or
 - C. file any application for registration of any such Intellectual Property Rights in any jurisdiction.

5.2 Infringement

- (a) Infrasteel is not liable for any claim of infringement of Intellectual Property Rights except bona fide infringement of third party rights by Products manufactured by Infrasteel in the form in which Infrasteel supplies such Products to the Customer, without regard to their use by the Customer (**Third Party Claim**).
- (b) If the Customer notifies Infrasteel promptly of any Third Party Claim of infringement and, if Infrasteel so requests, the Customer authorises Infrasteel to defend or settle any dispute or action involving such claim, Infrasteel will indemnify the Customer against the reasonable expenses of any such dispute or action and will satisfy any judgments or settlement to which Infrasteel acquiesces, but only to an amount not exceeding the price paid to Infrasteel for the allegedly infringing Products.
- (c) If the Customer is by injunction prohibited from further use of allegedly infringing Products, Infrasteel may procure for the Customer the right to use the Products, replace them with non-infringing Products, or remove them and refund the Product Price for those Products.
- (d) The Customer's rights and remedies for a Third Party Claim are limited to those under this clause 5.2. Infrasteel will not be liable for any damages whatsoever suffered by reason of any infringement claimed, except as proved in this clause.

5.3 Survival

This clause 5 survives the termination of any contract between the Customer and Infrasteel.

6. CONFIDENTIALITY

6.1 Subject to clause 6.2, the Customer must at all times:

- (a) hold in strict confidence all Confidential Information;
- (b) not disclose or permit or cause the Confidential Information to be disclosed to any person other than any of the Customer's employees who require that Confidential Information for the purposes of ordering, receiving and applying (for their ordinary use) the Products (**Approved Purpose**);
- (c) not make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from that Confidential Information) except and solely to the extent necessary for the Approved Purpose; and
- (d) ensure that any permitted person to whom the Customer passes any of the Confidential Information (unless disclosed under 6.2(b)) acknowledges and complies with the confidentiality obligations under this clause 6 as if that person were the Customer.

6.2 The obligations in clause 6.1 do not apply to the Customer to the extent that:

- (a) Infrasteel has provided its prior written consent to the use or disclosure of the Confidential Information in a manner that would, but for the consent, be contrary to clause 6.1;

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- (b) disclosure of the relevant Confidential Information is required to comply with any Law or order of a court, arbitrator or government body; and
 - (c) disclosure of the relevant Confidential Information made to any legal counsel, accountant, insurance advisor, bank or other professional adviser in relation to the Customer's affairs provided that the professional adviser is bound by an obligation or confidentiality in regards to the information disclosed.
- 6.3 The Customer agrees that damages may not be an adequate remedy for breach of this clause 6 and that Infrasteel will be entitled to equitable relief, including temporary and permanent injunctive relief without the obligation of posting a bond (cash or otherwise), in the event of actual or threatened unauthorised disclosure or use of Confidential Information in breach of this clause 6.
- 6.4 The obligations under this clause 6 survive the termination of any contract between the Customer and Infrasteel.

7. SECURITY INTERESTS

- 7.1 Possession of Products is transferred to the Customer by Infrasteel on the basis that Infrasteel retains a purchase money security interest (pursuant to the PPSA) in the Products, proceeds of the Products and any other goods with which the Products are commingled.
- 7.2 The Customer:
- (a) must promptly do anything Infrasteel requires to ensure that any security interest arising under these Terms is a perfected security interest and has priority over all other security interests;
 - (b) undertakes not to register a financing change statement or make an amendment demand pursuant to section 178 of the PPSA in respect of such registration;
 - (c) agrees that the following provisions of the PPSA will not apply and the Customer will not have any rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 121(4); section 125; sections 129(2) and (3); section 132; section 142; and section 143;
 - (d) agrees to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and will not authorise the disclosure of such information except in accordance with section 275(7) of the PPSA;
 - (e) waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement;
 - (f) agrees that Infrasteel is required to give a notice under the PPSA only if the notice is obligatory and the giving of the notice cannot be excluded under the PPSA, and the Customer waives any rights to receive any notices unless they are required to be given and cannot be excluded; and
 - (g) agrees to notify Infrasteel in writing of any change to the Customer's details within 5 days from the date of such change.
- 7.3 The parties agree that these Terms constitute a security agreement for the purposes of the PPSA and, without prejudice to Infrasteel's rights under the PPSA:
- (a) Until the time when ownership of the Products passes from Infrasteel to the Customer, Infrasteel may give notice in writing to the Customer to return the Products to Infrasteel. Upon that notice being given, the rights of the Customer to obtain ownership or any other interest in the Products will cease.
 - (b) If the Customer fails to return the Products to Infrasteel, then Infrasteel or Infrasteel's agent as the invitee of the Customer, may enter land and premises owned, occupied, leased or otherwise used by the Customer, or any premises where the Products are situated and take possession of the Products without being responsible for any damage caused by that entry.
 - (c) The Customer is a bailee only of the Products and until the time when Infrasteel receives payment in full for the Products, the Customer must hold any proceeds from the sale or disposal of the Products on trust for Infrasteel.
- 7.4 The Customer must not charge the Products in any way nor grant or otherwise give any interest (including a security interest) in the Products while they remain the property of Infrasteel.
- 7.5 Infrasteel may require payment of the Product Price or the balance of the Product Price for the Products due together with any other amounts due from the Customer to Infrasteel, and Infrasteel may take any lawful steps to require payment of the amounts due and the Product Price.

8. GST AND DUTIES

- 8.1 All amounts payable by the Customer to Infrasteel and all other references to monetary amounts under these Terms are exclusive of GST, unless expressly stated otherwise. The Customer must pay to Infrasteel an additional amount equal to the GST liability on a supply or transaction to which GST applies. Unless otherwise agreed in writing, the GST amount under this clause 8.1 must be paid within 30 days of Infrasteel issuing to the Customer a tax invoice for the supply or transaction to which the GST liability applies.
- 8.2 The Customer is responsible for compliance with, and payment of the following applicable after the point at which Products are delivered:
- (a) all applicable taxes or tariffs imposed, claimed, levied or assessed by, or payable to, any applicable government bodies or agencies in relation to the import or export of goods and/or services;
 - (b) all taxes imposed by, or payable to, any applicable government bodies or agencies in relation to the production or manufacture of goods applicable to the supply under these Terms; and

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(c) all other applicable import and export Laws of any jurisdiction relating to the supply of the Products to the Customer.

9. DEFAULT & CONSEQUENCES OF DEFAULT

9.1 Interest at the rate of 10% per annum (calculated daily and compounding monthly) accrues, and must be paid by the Customer to Infrasteel, on overdue amounts owed by the Customer, from the date when payment becomes due until the earlier of payment or judgment.

9.2 If the Customer defaults in payment of any invoice when due, the Customer indemnifies Infrasteel from and against all Infrasteel's costs and disbursements on a solicitor and own client basis, in addition to all of Infrasteel's nominee's costs of collection. The Customer's indemnity to Infrasteel extends to administrative, collection and solicitor fees (on a solicitor and own client basis) that are incurred by Infrasteel or will be incurred by Infrasteel in preserving and/or enforcing its rights under the PPSA.

9.3 Without prejudice to any other remedies Infrasteel may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Infrasteel may suspend or terminate the supply of Products to the Customer and any of its other obligations under these Terms. Infrasteel will not be liable to the Customer for any loss or damage the Customer suffers because Infrasteel exercised its rights under this clause 9.3.

9.4 In the event that:

- (a) any money payable to Infrasteel becomes overdue, or in Infrasteel's opinion the Customer will be unable to meet its payments as and when they fall due;
- (b) the Customer 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, receiver and manager, liquidator (provisional or otherwise), administrator, bankruptcy trustee or similar person is appointed in relation to the Customer or any asset of the Customer;

then without prejudice to Infrasteel's other remedies at Law or under these Terms:

- (d) Infrasteel will be entitled to cancel all or any part of any order of the Customer for Products which remains unperformed in addition to and without prejudice to any other remedies; and
- (e) all amounts owing to Infrasteel will, whether or not due for payment, immediately become due and payable.

10. TERMINATION

10.1 Termination by Infrasteel

- (a) Infrasteel may terminate these Terms, or may cancel delivery or collection of Products, by giving written notice to the Customer:
 - (i) at its discretion and for its convenience by giving 14 days written notice to the Customer;
 - (ii) if the Customer is in breach of these Terms and fails to remedy the breach within 7 days of the written notice; or
 - (iii) immediately where an Insolvency Event occurs.
- (b) If Infrasteel terminates these Terms for its convenience:
 - (i) Infrasteel's sole liability is limited to:
 - A. if any Product (or part of a Product) the subject of a Order Request has not yet been delivered to the Delivery Location – the Product Price under each Order Request; or
 - B. if the Product (or part of a Product) the subject of a Order Request has been delivered to the Delivery Location – nil; and
 - (ii) the Customer is not entitled to any loss or damage, arising from such termination, including loss of profit, costs of other products or materials it has ordered or the cost of any work executed prior to the termination date.

10.2 Termination by Customer

- (a) The Customer may terminate these Terms on giving 28 days' written notice to Infrasteel:
 - (i) if Infrasteel has failed to comply with clause 2.3(a) (giving details of the non compliance) and Infrasteel fails to remedy the breach within 28 days of written notice requesting the same; or
 - (ii) where an Insolvency Event occurs in relation to Infrasteel and Infrasteel fails to remedy the Insolvency Event within 21 days of the written notice requesting the same.
- (b) If the Customer terminates these Terms, Infrasteel's sole liability is limited to the amounts set out in 10.1(b)(i)A or 10.1(b)(i)B and the Customer shall not be entitled to any loss or damage, arising from such termination, including loss of profit, costs of other products or materials it has ordered or the cost of any work executed prior to the termination date.

10.3 Termination without prejudice

Termination of these Terms does not affect the rights of a party unless expressly stated otherwise in this clause 10.

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11. FORCE MAJEURE

- 11.1 Neither party is liable for failure to perform any obligations under these Terms during the time and to the extent that such performance is prevented, wholly or substantially, by a Force Majeure Event.
- 11.2 Either party may terminate the contract or other engagement between the parties by written notice to the other party if a Force Majeure Event has continued for more than 30 days. Neither party is liable to the other for any loss or damage suffered by the other party as a result of a Force Majeure Event or either party's exercise of the termination rights under this clause.

12. DISCLAIMER AND INDEMNITY

- 12.1 Subject to any express provisions of these Terms and to the extent permitted by Law:
- (a) the Customer disclaims any right to rescind or cancel these Terms or to sue for damages or to claim restitution in relation to any misrepresentation made to the Customer by any employee, agent or representative of Infrasteel, and the Customer acknowledges that the Customer relies solely upon the Customer's own skill and judgment and that Infrasteel is not bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which is personal to the Customer and not capable of assignment to any subsequent Customer of the Products; and
 - (b) the Customer acknowledges and agrees that Infrasteel does not make any warranty, representation or other stipulation about the effectiveness, fitness for purpose or otherwise of the Products.
- 12.2 The Customer indemnifies Infrasteel and Infrasteel's officers, employees, agents and representatives from and against all liabilities, losses, damages, costs and expenses (including consequential and indirect loss or damage) incurred or suffered by Infrasteel, and from and against all actions, proceedings, claims and demands made against Infrasteel:
- (a) caused (wholly or in part) by an act or omission on the part of the Customer or its officers employees, agents or representatives in relation to these Terms, including without limitation any failure on the part of the Customer to follow Infrasteel's instructions for use in relation to Products;
 - (b) for any breach of the Terms or any negligent act or omission by the Customer or its officers employees, agents or representatives;
 - (c) for any other damage to the property of Infrasteel or a third party, including any environmental damage; or
 - (d) for any injury or death of any person, to the extent such loss, expense, liability or proceeding is caused by the Customer or its officers employees, agents or representatives act or omission in relation to these Terms.

13. WARRANTIES AND MANDATORY PROVISIONS

- 13.1 Any term, condition, guarantee or warranty which would otherwise be implied into these Terms is excluded to the maximum extent permitted by Law.
- 13.2 Nothing in these Terms is intended to, or will, have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts.
- 13.3 The liability of Infrasteel for any breach of any mandatory term, condition, guarantee or warranty expressly stated or implied into these Terms by statute is, to the extent permitted by Law, limited at the discretion of Infrasteel, to any one or more of the following:
- (a) where the breach relates to the supply of goods:
 - (i) the replacement of the goods or the supply of equivalent goods, or payment for the same; or
 - (ii) the repair of such goods, or payment for the same; and
 - (b) where the breach relates to the provision of services, the performance of the services again or payment for the same.

14. PRIVACY ACT

The Customer agrees that personal information (as that term is defined in the *Privacy Act 1988* (Cth)) provided may be used and retained by Infrasteel for the following purposes and for other purposes as agreed between the Customer and Infrasteel or required by Law from time to time:

- (a) provision of Products;
- (b) marketing of Products by Infrasteel, its agents or distributors in relation to the Products;
- (c) analysing, verifying and checking the Customer's credit, payment and status in relation to provision of Products;
- (d) processing of any payment instructions, direct debit facilities or credit facilities requested by the Customer; and
- (e) enabling the daily operation of the Customer's account and the collection of amounts outstanding in the Customer's account in relation to the Products.

15. GENERAL

- 15.1 These Terms (including any contract between Infrasteel and the Customer in relation to the supply or hire of Products) are governed by the Laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia and the Federal Circuit Court of Australia (as applicable).

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- 15.2 If any provision of these Terms is invalid, void, illegal or unenforceable, then that provision is to be ignored in the interpretation of these Terms such that the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 15.3 Infrasteel is not under any liability whatsoever to the Customer for any indirect, special or consequential loss or expense (including loss of profit) suffered by the Customer relating to a breach of these Terms by Infrasteel.
- 15.4 The remedy of the Customer in relation to any cause of action that the Customer may have against Infrasteel is limited to damages. Infrasteel's maximum liability per Order Request is limited to the Product Price for all Products supplied to the Customer under that Order Request.
- 15.5 The Customer does not have any right to set-off against the Product Price any amounts due or claimed to be due from Infrasteel.
- 15.6 Infrasteel may license or sub-contract all or any part of its rights and obligations provided it has first obtained the Customer's written consent.
- 15.7 Neither party is liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party, provided that the party in default takes reasonable steps to mitigate any loss or damage arising as a result.
- 15.8 Notices under these Terms must be in writing, in English and delivered by registered post to the other parties registered office. A notice is deemed to have been delivered by registered post, in two (2) Business Days if sent within Australia and in 5 Business Days if sent by air mail from one country to another.
- 15.9 Infrasteel:
- (a) acts in its own right and as agent for and on behalf of each of its Related Bodies Corporate;
 - (b) holds the benefit of these Terms as trustee for each of Infrasteel's Related Bodies Corporate; and
 - (c) may enforce these Terms on behalf of and for the benefit of each of Infrasteel's Related Bodies Corporate.

16. INTERPRETATION

- 16.1 The following words have the meaning given to them below when used in these Terms:

Approved Location means, in relation to Products which are hired by the Customer from Infrasteel, the location or site specified in an Order Confirmation at which the Customer is permitted to store, handle, use and apply the Products.

Business Day means a day other than a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales.

Collection Location means, in relation to Products which are hired by the Customer from Infrasteel, the site, premises or other location at which Infrasteel will make the Products available for collection by the Customer as stated in the relevant Order Confirmation.

Confidential Information means, other than to the extent that it constitutes Excluded Information, all records, documents or other information, in whatever form, which relate to the business, affairs or activities of Infrasteel (including a Related Body Corporate of Infrasteel) or that is marked by or behalf of Infrasteel as being confidential or is of a confidential nature, including methods of operation, Intellectual Property Rights, customer lists, products, prices, fees, costs, technology, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialised information or proprietary matters.

Contaminated in relation to land, air or water means the presence in, on or under that land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land, air or water in the same locality being a presence that presents a risk of harm to human health or any other aspect of the environment.

Contract IP means all Intellectual Property Rights created, discovered, developed, derived or that otherwise come into existence in relation to performance of a contract between the Customer and Infrasteel or otherwise in relation to the supply of the Products by one or both of the Customer and Infrasteel, including any Intellectual Property Rights developed or derived from Infrasteel Background IP.

CPI means the Consumer Price Index (All Groups) published by the Australian Bureau of Statistics.

Customer means a person who orders or otherwise requests goods or services from Infrasteel and any other person acting on behalf of and with the authority of the first-mentioned person.

Delivery Location has the meaning in clause 3.4(a).

Encumbrance means a security interest within the meaning given to that term in the PPSA or any other security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements).

Excluded Information means any records, documents or other information to the extent that such information:

- (a) becomes publicly available (except if it is in the public domain by reason of the failure of a party to perform and observe its obligations under these Terms);
- (b) is acquired from a third party entitled to disclose it on a non-confidential basis; or

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(c) is independently developed without use of Confidential Information.

Force Majeure Event means an event beyond either party's reasonable control which, by exercise of reasonable diligence and precautions, could not have been prevented or reasonably foreseen by Infrasteel, including any:

- (a) act of God, unusually severe weather (including a cyclone/hurricane), earthquake, fire, subsidence, land slide, mud slide, wash-out, explosion, radioactive contamination or natural disaster;
- (b) terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot;
- (c) industrial dispute of any kind, strike, lock-out, ban, limitation or other industrial disturbances;
- (d) any failure, delay or suspension by any third party supplier of the supply in whole or in part of fuel, electricity, equipment, machinery, infrastructure (including telecommunications or internet infrastructure and systems) or materials to Infrasteel provided that Infrasteel has acted in a timely manner in endeavouring to secure the same (which does not require Infrasteel, to secure the same if the alternative supply is only available to Infrasteel at a materially increased or additional cost to it); or
- (e) adverse application of any Law or enforcement actions of any court or Government Agency.

GST means the tax levied under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Infrasteel means Infrasteel Pty Ltd (ACN 617 168 117) and its successors and assigns.

Insolvency Event means:

- (a) if the Customer 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
- (b) a receiver, receiver and manager, liquidator (provisional or otherwise), administrator, bankruptcy trustee or similar person is appointed in relation to the Customer or any asset of the Customer.

Intellectual Property Rights means all rights and interests throughout the world vesting or otherwise in relation to industrial or intellectual property protectable under Law, whether registered, unregistered or registrable, and whether now existing or that come into existence in the future, including:

- (a) any patent, trade mark, copyright (including future copyright), moral right, design, plant breeder's rights, circuit layout rights or any other corresponding property or right under the Laws of any jurisdiction;
- (b) rights in respect of an invention, discovery, trade secret, know-how, concept, idea, methodology, information (including, where applicable, Confidential Information), data, algorithm or formula; any right to apply for grant or registration of intellectual property or intellectual property rights; and
- (c) all renewals and extensions and all similar or equivalent rights or forms of protection in relation to intellectual property or intellectual property rights.

Law means any constitutional provision, treaty, decree, convention, statute, act, code, regulation, rule, order, ordinance, proclamation, subordinate legislation, by-law, judgment, rule of common law or equity, rule, ruling or guideline made by a competent entity exercising jurisdiction in the relevant matter or any government or government agency.

Material Defects are defects that substantially impact upon the use, operation or performance of the Product. The following are not considered to be Material Defects:

- (a) small or within sector, usual or technically unavoidable deviations and differences in quality, colour, size or degree of finish to the Product; or
- (b) any deviations in quality or standards that are not part of those expressly agreed upon in writing.

Minor Defects are visible defects that do not effect the use, operation or performance of the Product.

Order Confirmation means a quote, invoice or any other confirmation of an Order Request provided by Infrasteel to the Customer.

Order Request means an order issued by or on behalf of Customer to Infrasteel to purchase or to hire (as the case may be) Products.

PPSA means the Personal Property Securities Act 2009 (Cth).

Purchase Price means the purchase price for the Products purchased by the Customer, as determined by Infrasteel under clause 3.2.

Products means any goods, products, accessories or consumables (as applicable) sold, licensed or otherwise supplied, or the subject of an order or other request for supply, by Infrasteel to the Customer.

Infrasteel Background IP means any and all Intellectual Property Rights of Infrasteel (or licensed to Infrasteel by a third party) which are in existence before the date on which the Customer first engaged Infrasteel to supply Products or which come into existence after that date, other than in relation to the supply of Products.

Rental Fee means the rent for the Products rented by the Customer, as determined by Infrasteel under clause 4.10.

Rental Period means, in relation to Products which are hired by the Customer from Infrasteel, the term for which the Products are to be hired by the Customer as stated in the Order Confirmation for those Products.

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Terms means these Terms and Conditions.

Warranty Period means the period of 12 months from the date Products are delivered, as the case may be, or such other period specified in invoice, quote or any other order confirmation from Infrasteel.

16.2 In these Terms:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes any gender;
- (d) the words "includes" and "including" are not words of limitation;
- (e) a reference to a statute includes its subordinate legislation, proclamations, ordinances and a modification, replacement or re-enactment of the same;
- (f) a reference to person, includes a reference to:
 - (i) an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity;
 - (ii) if the person is an individual, the person's personal representatives and assigns; and
 - (iii) if the person is not an individual, the person's successors and assigns;
- (g) an agreement, representation or term of these Terms in favour of or on the part of two or more people, benefits or binds them jointly and severally;
- (h) a reference to currency is to the Australian currency;
- (i) a reference to time is to Australian Eastern Standard Time in Brisbane, Queensland;
- (j) if the date on which an act, matter or thing must be done or take place is not a Business Day, then that act, matter or thing must be done or take place on the next Business Day;
- (k) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event;
- (l) a provision in these Terms must not be construed adversely to a party solely on the ground that the party was responsible for the preparing these Terms or that provision;
- (m) a reference to "writing" or "written" includes any electronic transmission or communication by facsimile;
- (n) a reference to a right includes a benefit, remedy, discretion or power;
- (o) the terms **Related Bodies Corporate** has the meaning given to those terms in the *Corporations Act 2001* (Cth); and
- (p) the phrase "in relation to" has the widest possible import and encompasses the phrases "in connection with", "in respect of", "arising out of" and "resulting from".

I confirm I have read, understood and agree to these Terms of Trade.

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Customer Name

.....

Name of authorised representative of Customer

.....

Signature

.....

Date