

ITL AQUASEAL CONDITIONS OF SALE

1. **Interpretation:** In these Terms of Sale (“Terms”): (i) “we”, “us”, and “our” means Infrastructure Technologies (Australia) Pty Limited ACN 106 302 452, Level 12, 90 Arthur Street, North Sydney NSW 2060 (ITL) or its nominee; (ii) “you” and “your” the **Customer** (iii) “products” means the products we supply to you; (iv) “including” and similar words do not imply any limitation.
2. **Application:** These Terms apply to the supply of products to you and, unless otherwise agreed in writing by us, prevail over any terms in any purchase order or other document or form submitted by you. These Terms, any quotation issued to you by us, and any specific terms of a **purchase** order or other document that are either consistent with these Terms or expressly accepted by us in writing, constitute the entire contract between us for the supply of products (“Contract”), and supersede all prior agreements and understandings between us, whether written or oral, relating to the subject matter in question.
3. **Acceptance of Orders:** Orders received by us are not valid until accepted by us in writing. Orders are subject to our then published minimum quantity or other requirements. Orders, once accepted by us, may only be cancelled with our prior written approval (which may be given or withheld in our sole discretion) and you will pay us any amounts invoiced by us for work done, and materials used and other costs relating to that cancellation.
4. **Delivery:** Where a delivery date is agreed or specified for any products, that date is an ex-works date and is an estimate only. Orders will not be processed until any payment that is due at the time of order is paid in full. We will use reasonable endeavours to deliver the products by any agreed date, or where no delivery date is agreed, in accordance with our then published lead times (if any). Any failure to deliver or defective delivery by us will not entitle you to cancel the Contract. Unless specified differently in writing, all sales are FOB at our nominated shipping point. We reserve the right to make delivery in instalments, all such instalments to be separately invoiced and paid for when due per invoice.
5. **Risk and Ownership**
 - 5.1 The products will be at your risk from the time of despatch from our premises (i.e. during transit). It is your responsibility to arrange insurance against any loss or damage to the products during transit.
 - 5.2 Title to the products will remain with us until all amounts owing to us for those products are paid in full. Until title to any products passes you will hold those products as our bailee and hold any cash proceeds from the sale of those products on trust for us in a separate account.

6. **Price and Payments**

6.1 Unless otherwise specified in a written quotation we provide to you or in a written contract between the parties: such prices will be subject to change from time to time without notice; payment will be made as to 50% at the time of order and the final 50% upon delivery to your designated location; payment will be made in Australian dollars, without deduction, withhold or set-off. All payments must be made by you and will not be subject to, or conditional on, any payments from a third party or any other matter. If you default in making any payment to us when due, we may, at our option and without prejudice to our other lawful remedies: defer delivery; cancel or suspend any outstanding order, credit terms or the Contract; and/or, charge interest on the overdue amount at 3% above the overdraft lending rate used by our bankers.

7. **Taxes and Other Charges:** Any use tax, sales tax, excise tax, duty, inspection or testing fee, or any other tax, fee or charge imposed by any governmental authority, on or measured by the arrangements or payments between us, will be paid by you in addition to the prices quoted or invoiced. If we are required to pay any such tax, fee or charge, you will reimburse us for the amount we have paid or provide us at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

8. **Our Warranty**

8.1 We warrant to you, our direct customer, that the products will conform substantially to the description of such products in the documentation relating to the products as supplied by us. This warranty does not apply unless you notify us of a discrepancy in the products within 10 days of your receipt of such products or if we determine, in our sole discretion, that you have altered or misused the products or have failed to use, handle or store them in accordance with our instructions. All other warranties in relation to the products, whether express or implied (including any implied warranty of merchantability or fitness for any particular purpose), are excluded.

8.2 Our sole and exclusive liability and your exclusive remedy with respect to products proved to our satisfaction to be in breach of our warranty will be the replacement of such products free of charge, upon the return of such products to our premises in accordance with our instructions, although in our sole discretion we may provide a credit or refund the invoiced value of the products. In no event will we be liable (whether in contract, negligence, strict liability in tort or otherwise) for (a) any indirect, special, incidental, consequential or exemplary damages or any loss of profits (whether direct or indirect), even if we had notice of the possibility of such damages or losses; or (b) any loss, damage or claim whatsoever that arises from or is caused by a failure of the distributor, a customer or any other person to follow any instructions issued us in relation to the safety, handling, storage and use of the products (including any application rates and techniques, and testing procedures in relation to the use of the products).

9. **Your Warranty**

You warrant to us that you will, properly test, use, store, handle and ship the Products in accordance with the practices of a reasonable person who is suitably qualified and experienced in handling material like the products, and in compliance with all applicable instructions from us and in compliance with all applicable national, state, provincial and local laws and regulations.

10. **Indemnity**

You will indemnify and hold us harmless against all losses, damages and expenses (including legal fees) that we may incur as a result of any claim (whether in contract, tort, including negligence, or otherwise) by you or your officers, agents, employees or customers, whether direct or indirect, in connection with the use or resale of any products, or by reason of your breach of or failure to perform any of your obligations under these Terms, except to the extent caused by a breach by us of the express warranty in paragraph 8.1.

11. **General**

If any part of these Terms is held to be illegal, void or unenforceable, the remaining parts of the Terms will remain in full force. The Terms are governed by and will be construed in accordance with Australian law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from, and will not apply to, these Terms. If we fail to exercise any right or remedy available to us, this will not prejudice our right to later exercise that or any other right or remedy.