

## Terms and Conditions of Purchase

### 1. Definitions

“**APG**” means the entity specified in this Contract procuring the Goods and/or Services, comprises all divisions within Australian Professional Galvanizing Pty Ltd, including AIM (Australian Infrastructure Management);  
“**Contract**” means the legally binding contract or transaction as agreed between the APG and the Seller on the terms and conditions of the documentation for the provision of the Goods and/or Services;  
“**Seller**” means the entity specified in this Contract from whom the Goods and/or Services are being procured;  
“**Goods and Services**” means any material, plant item, equipment and/or services specified in the Purchase Order;  
“**Intellectual Property Rights**” includes all copyright, Trademark, design, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time, whether created before, on or after the commencement of this Contract;  
“**Notice**” means notice in writing which may be given by personal delivery, pre-paid postage or facsimile to APG’s or the Contractor’s business address or registered office, or by email to APG’s or the Contractor’s published email address;  
“**Purchase Order**” the document used to authorise and specify the Goods and/or Services by APG and forms the basis of this Contract;

### 2. Seller Terms & Conditions

Unless specifically agreed to in writing prior to delivery of the Goods, the Sellers terms and conditions of sale (whether written or verbal) do not form part of this agreement to provide Goods under the Contract.

### 3. Provision of Goods and/or Services

3.1 The Seller shall deliver the Goods and/or provide the Services at or by the time specified in the Purchase Order, and, if not specified, within a reasonable time having regard to normal commercial practice.  
3.2 The Seller must ensure that the Goods and/or Services comply with:  
(a) the terms of this Contract;  
(b) applicable legislation; and  
(c) any applicable Australian/New Zealand Standard including any that may be introduced or varied during this Contract, which govern the provision of Goods and/or Services.  
3.3 The Seller warrants that all Goods will be fit for purpose.  
3.4 Risk and title in the Goods (free of all encumbrances and interests) will pass to APG upon delivery.  
3.5 The Seller must ensure that any manufacturer’s or supplier’s warranty that applies to the Goods and/or Services will be transferred to APG, at no cost to APG.  
3.6 The Seller indemnifies APG and its officers and employees from and against any claim which may be brought against or made upon or incurred by any of them in connection with any:  
(a) negligent or unlawful act or omission of the Seller, its officers or employees;  
(b) breach of this Contract by the Seller;  
(c) contravention of any legislative requirements by the Seller, its officers or employees; or  
(d) infringement by the Seller, its officers and employees of the Intellectual Property Rights of any third-party, except to the extent the claim is due to the negligent or unlawful act or omission by APG, its officers or employees.

### 4. Payment

4.1 APG will not be liable to reimburse the Seller for expenses other than the Approved Expenses, unless the Seller has obtained APG’s prior written approval.  
4.2 APG is not obliged to pay the Seller for any part of the Goods and/or Services until the:  
(a) Seller has provided APG with an invoice;  
(b) Seller has delivered/provided the Goods and/or Services as specified in the Purchase Order, and in accordance with any mutually agreed milestones.  
4.3 The Seller must promptly supply or supply again, any part of the Goods and/or promptly perform or perform again, any part of the Services, certified by APG as not having been supplied and/or performed in accordance with this Contract.  
4.4 Unless otherwise agreed between APG and the Seller, APG will make payment within 30 days of the end of the month in which delivery/provision of the Goods and/or Services occurred, subject to clauses 4.2(a), 4.2(b) and 4.3 being satisfied.

### 5. Variation

This Contract will only be varied by written agreement between APG and the Seller. APG and Seller shall act reasonably in deciding whether to agree to a variation, as requested by the other Party.

### 6. Insurance

The Seller warrants that it will hold and maintain for the duration of this Contract any insurances as specified in the Purchase Order and/or that is required by applicable government legislation and such insurances are taken out with an insurer that is authorised and licensed to operate in Australia. If requested by APG, the Seller must provide evidence of the applicable insurances to the satisfaction of APG.

### 7. Licensing Requirements

The Seller warrants that it will hold and maintain all requisite licenses, permits, permissions and/or authorities necessary for the provision of the Goods and/or Services.

### 8. Breach and Termination

8.1 Without limiting Clause 8.3, where the Seller commits any substantial breach of this Contract, APG may by notice, require the Seller to show cause by the date specified in the notice, why APG should not terminate this Contract.  
8.2 If the Seller fails to show reasonable cause by the date specified by APG, the APG shall have the power upon notice to the Seller to terminate this Contract and the Seller will not be entitled to any compensation for any Goods and/or Services not yet delivered or provided. The Seller must cease to manufacture any Goods, upon receipt of a cancellation notice, and mitigate its costs. APG will be obliged to pay any expenditure reasonably incurred prior to cancellation which is directly attributable to placing the Purchase Order and not otherwise recouped by the Seller for such Goods and/or Services. Upon such payment, title of incomplete Goods shall pass to APG.  
8.3 APG may immediately terminate this Contract by notice to the Seller if:  
(a) the Seller breaches any part of Clauses 6 and 7;  
(b) the Seller:  
(i) becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation;  
(ii) has a receiver or a receiver or manager appointed or a mortgagee goes into possession of any of its assets or becomes subject to any form of external administration;  
(iii) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors;  
(iv) is wound up, voluntarily or involuntarily; or  
(c) the Seller indicates that it is unable or unwilling to complete this Contract.

### 9. Assignment and Subcontracting

The Seller is not permitted to assign its interest in this Contract or subcontract the provision of any Goods and/or Services pursuant to this Contract, without the prior written consent of APG.

### 10. Severability

If any provision of this Contract is void or unenforceable, the provision shall be severed from the Contract to the extent it is void or unenforceable without affecting the validity of enforceability of the rest of the Contract.

### 11. Governing Law

This Contract is governed by and construed in accordance with the laws of Queensland and APG and the Seller submit to the non-exclusive jurisdiction of the courts of Queensland.