

## **AUSTRALIAN PROFESSIONAL GALVANIZING PTY LTD**

A.C.N. 119 874 485  
A.B.N. 70 119 874 485

### **TERMS AND CONDITIONS OF SALE**

1. **General** - for the purpose of these terms and conditions of sale any reference to "the Company" shall apply to Australian Professional Galvanizing Pty Ltd and its subsidiary companies.

Any order placed by a purchaser is deemed to be an order incorporating these terms and conditions notwithstanding any inconsistencies which may be introduced in the purchaser's order or acceptance unless expressly agreed to by the Company in writing.

2. **Quotations and Prices** - the prices quoted are based on estimated galvanized weight of the finished product and on the Company's estimated cost of production manufacture or supply at the time of quotation and are subject to alteration without notice to the purchaser due to any increase in the Company costs between the date of quotation and the date or dates of delivery. Unless otherwise expressly agreed by the Company in writing all goods will be charged for at the prices ruling at the date or dates of delivery. Quoted prices shall not include the cleaning of threads.

All quotations are based on the galvanizing being performed to the specification AS/4680:1999 Current Issue Galvanized Coatings.

All prices quoted are exclusive of GST which if applicable will be for the purchaser's account.

A quotation is not an offer by the Company to provide services or sell and may be withdrawn without notice, any order given in respect of a quotation is not binding on the Company until accepted by the Company in writing. Telephone orders should be confirmed in writing.

The quoted prices make no allowance for the retention by the Company of any moneys in the form of security deposits, guarantees or moneys held as a bond. If the purchaser requests a retention of this nature, the Company reserves the right to revise the price in question to cover any costs to the Company of holding such retention.

3. **Orders** - orders accepted by the Company may not be cancelled or altered in whole or part without the Company's written consent.

The Company may decline by written notice to the purchaser, any order in whole or part, at any time prior to delivery of the goods or performance of the services, in which case the Company will be under no obligation in respect of the order.

4. **Preparation of materials** - the purchaser shall ensure that on delivery to the Company, all goods the subject of the contract between the Company and the purchaser are in suitable condition for the galvanizing or other process to be undertaken by the Company, including, without limiting the generality of the foregoing, the following:

(a) **Maximum Dimensions for Single Dip Work**

The width, length or depth of any structure or member able to be single dipped shall not exceed the maximum dimensions set out below unless the contrary is specified in writing on the original quotation by the Company. Work exceeding these dimensions will be charged on a separate basis subject to examination of the job or the final drawings.

Galvanizing Kettle Dimensions      Length = 12.5m      Width = 1.6m      Depth = 2.8m

(b) **Marking Paint and Steel Surface Conditions**

Unless otherwise stated, prices quoted by the Company do not include the cost of removal of excessive oil, weld slag and unacceptable oil based marking paints and crayons or any other surface contaminant or material of whatsoever kind that cannot easily be removed by the Company standard stripping and acid cleaning process preparatory to galvanizing. Advice should be sought from the Company regarding suitable marking paints. The purchaser will be notified if any work is delivered to the Company with an unacceptable surface contaminant and an extra removal cost may be incurred by the surface contaminant and an extra removal cost may be incurred by the Company on behalf of the purchaser without notice to the purchaser.

(c) **Fabrication Assemblies**

Fabrication assemblies must be of sufficient design and steel quality to withstand temperatures used during galvanizing (up to 475°C) without distortion.

(d) **Castings**

Castings shall have been abrasive blast cleaned by the fabricator to remove all foundry sand and surface carbon.

(e) **Tubular Fabrications**

No closed sections shall be included in any tubular fabrication and vent holes of at least 25% (min. 8mm) of internal diameter shall be provided at locations agreed with the Company.

(f) **Threaded Components**

Sufficient tolerance allowance shall be made on threaded components for increased thickness due to the galvanized coating to be made.

5. **Quality Control**

(a) Galvanizing, inspection and quality control will be carried out by the Company in accordance with APG Quality Assurance Manual and AS/4680:2006 Current Issue. These standards together with the Galvanizers Association of Australia's Manual "Hot Dip Galvanizing" will serve as the sole reference material in any dispute concerning galvanizing, inspection or quality control.

(b) Any inspection or test agreed upon prior to acceptance of the goods by the purchaser must unless otherwise agreed be carried out at the Company's works. In the event of any specialised inspection being required or special tests prescribed by the purchaser, the cost shall be to the purchaser's account. In the case of any such inspection the Company accepts no responsibility for any defects in the goods or services which are identified once the goods in question have left the Company's site.

(c) Attention will be given by the Company to loading procedures to prevent transport damage; however, no responsibility will be accepted for any damage incurred during transport from the Company's site to the purchaser's location.

(d) Any defects in the galvanized work caused by inherent faulty design features, such as described in AS/NZS ISO 9002:1994 Current Issue Appendix C shall not be the responsibility of the Company.

6. **Instructions by the Purchaser** - the purchaser shall indemnify the Company from and hold it harmless against all losses, expenses or liability whatsoever (including any special or consequential loss or damage) of or incurred by the Company as a result of compliance or adherence by the Company with any instruction of the purchaser in relation to the goods or services.

7. **Steel Composition** - Quotations and / or acceptance of steel by the Company are based on the steel chemistry being suitable for hot dip galvanizing. For information on suitable chemistry refer to the Galvanizing Association of Australia's advisory note - Steel Chemistry for Galvanizing. For steel chemistry that falls outside the recommendations, the galvanizing coating may be affected adversely. No responsibility can or will be accepted for the defects or failure to meet standards of the galvanizing coating produced. Effects of adverse chemistry include - but not limited to - thin coatings, thick coatings, cracking/flaking coating and dull appearance. Any cost to rectify the coating or modify the process to accommodate adverse steel chemistry are to be born by the client.

8. **Design Requirements** - the Company requests access to drawings at the design or detailing stage so that any drawing changes that are required to allow for proper galvanizing can be suggested. However, the Company reserves the right at any stage to refuse to galvanize any section that in its opinion may be subject to unavoidable damage or present unacceptable safety hazards within the galvanizing process.

9. **Completed Work** - following notification to the purchaser that galvanizing is completed, it is expected that the work will be removed promptly from the Company's premises unless other arrangements have been made prior to the commencement of work. Work not collected within one month from date of notification may be subject to additional storage and handling charges without further notice to the purchaser.

**10. Terms of Trade** – terms of trade are as follows:

**(a) Trading Terms**

Other than cash payments, trading terms are thirty (30) days from date of invoice, but the Company reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery should the credit worthiness of the purchaser at any time become in the Company opinion unsatisfactory.

**(b) Credit Cards**

Fees will apply for payment by credit card.

**(c) Outstanding Accounts**

The Company reserves the right to charge interest on amounts still owing after the due date. Interest would be charged at the ATO's general interest charge rate (located on the ATO website) plus 2%.

**(d) Default Payment**

The Company will treat any default by the purchaser in payment of any monies due to the Company on any account as a breach of these terms and conditions. The Company will, at its option, cease work on the relevant order and all other orders placed by the purchaser and hold all the purchaser's works until the due payment or payments are made. Recurring payment default will lead to the purchaser's account with the Company being closed and any further order placed by the purchaser will only be processed when prepaid by bank cheque or equivalent.

**(e) Ownership of Goods**

Under the Qld *Uncollected Goods Act (1967)* APG is entitled to sell goods if not collected after six months of being ready for collection.

**11. Claims** - any claim by the purchaser for short or wrongful delivery of the goods **MUST BE NOTIFIED TO THE COMPANY IN WRITING WITHIN 14 DAYS** after delivery of the goods to the purchaser and any claim which the purchaser does not notify within the aforesaid time (time being of the essence) shall be deemed to have been absolutely waived.

**12. Description** - any description of the goods is given by way of identification only and the use of such description shall not constitute the contract a sale by description.

**13. Implied Terms** - it is hereby acknowledged by the Company that under applicable, State, Territory and Commonwealth law, certain conditions and warranties may be implied in the contract between the Company and the purchaser and rights and remedies conferred upon the purchaser and other parties in relation to goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable rights"). The limitations below are subject to these Non-excludable Rights. Subject to the above, the Company disclaims all conditions and warranties expressed or implied and rights or remedies conferred upon the purchase or other parties, by statute the common law equity trade custom or usage or otherwise howsoever and all such conditions and warranties and all such rights and remedies are hereby expressly excluded other than any Non-excludable Rights. Where so permitted the liability of the Company for a breach of a Non-excludable Right is limited at the Company's option in the case of goods, to the replacement or repair of the goods or the supply of equivalent goods or the cost of replacing or repairing the goods or of acquiring equivalent goods and in the case of services to the supplying of the services again or the payment of the cost of having the services supplied.

The company gives notice to the purchaser and the purchaser acknowledges that:

- (a) for safety reasons, high strength bolts must not be welded to galvanized structures for use as high strength studs;
- (b) high strength, low alloy steels, particularly those containing silicon, can, when galvanized, produce brittle coatings which are thicker and different in colour to normal coatings;
- (c) any goods which are of a high tensile or other non-standard nature may not be suitable for galvanizing and the purchaser shall notify the Company of any such characteristic. The Company shall have no liability for any loss resulting from a failure by the purchaser to give such notice.

**14. Indemnity** - subject to clause 13, the purchaser shall indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company and from and against all actions, proceedings, claims or demands made against the Company arising from any of the following:

- (a) as a result of the purchaser's failure to:
  - (i) ensure that any safety markings on the goods are adequately displayed;
  - (ii) comply with any legislation as to the labelling or marking of goods;
  - (iii) take any other reasonable precautions either to bring to the attention of any potential users of the goods any dangers associated with goods, or to detect any matters in relation to which the Company may become liable, including, without limitation, liability under Part VA of the Trade Practices Act; or
  - (iv) otherwise comply with any laws, rules, standards or regulations applicable in relation to the goods or the use of goods;
- (b) as a result of any other negligence or other breach of duty by the purchaser; or
- (c) as a result of any compliance or adherence by the Company with any instructions of the purchaser in relation to the goods or their manner of fabrication.

**15. Indirect Loss** - subject to clause 13 in no event shall the company be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the purchaser (including any loss or damage arising from or caused or contributed to by negligence of the Company, its servants or agents) nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the purchaser as user as a result of a breach by the Company of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.

**16. Delivery** - unless otherwise expressly agreed by the Company in writing the goods will be available ex-works. Delivery shall be deemed to occur when the purchaser is notified that the goods are available for collection at the Company's works or, where inspection is required by the purchaser when the Company notifies the purchaser that the goods to be forwarded at the purchaser's cost it must instruct the Company accordingly. Any time quoted for delivery is an estimate only and the Company shall not be liable for any loss or damage howsoever arising as a result or consequence of any failure to deliver or delay in delivering (arising from any circumstances of whatsoever nature including in particular but without limiting the generality of the foregoing fire flood explosion strike lockout or other industrial act or dispute or the break down of or accident to plant or incomplete loading of goods unavailability or shortage of raw materials, labour power supplies or transport facilities or failure or inability to obtain licenses or act of God or any order or direction of any Local, State or Federal Government or Government authority or instrumentality). If the Company determines that it is or may be unable to deliver within a reasonable time or at all the contract may be cancelled by the Company. In the event of cancellation the purchaser shall have no claim against the Company for any damage loss cost or expense whatsoever. The purchaser shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.

**17. Identification of Goods** - at the time of delivery of the goods to be galvanized to the relevant site if the Company the purchaser shall supply a complete list of such items to the Company. If such a list is not received the Company shall not be liable in any way whatsoever for items which the purchaser alleges to have been lost by the Company or otherwise are missing.

**18. Performance and Representations** - the purchaser acknowledges that neither the Company nor any person purporting to act on it's behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the goods for any particular purpose or any other matter. In particular, the purchaser acknowledges that it does not rely on the skill and judgement of the Company to supply goods which are fit for a particular purpose and that it will ensure that any goods supplied to it by the Company are in accordance with its order.

**19. Instalments** - the Company reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure of the Company to deliver any instalment shall not entitle the purchaser to cancel the balance of the order. In the event if the purchaser making default in respect of any instalment, the Company may elect to treat the default as a breach of contract relating to each other instalment.

**20. Warranty** – the Company's warranty commitments are as follows:

**(a) Australian Standard**

Warranty will be in accordance with the Australian Standard AS/NZS ISO9001:2008 "Quality Systems for Production & Installation". In the event of a warranty claim, the Company will investigate and determine, in its discretion, whether the goods are defective.

**(b) Warranty Liability**

The liability of the Company under this warranty clause is limited as detailed in clause 21 below. All other costs, including cartage and installation, must be paid by the purchaser.

**(c) Work Under \$40,000**

The Company acknowledges that goods subject to an order for less than \$40,000 may come with guarantees that cannot be excluded under the Australian Consumer Law. The Company acknowledges the purchaser's entitlements under the Australian Consumer Law; however, any defect claim will be assessed in accordance with clause 20(a).

21. **Warranty Liability** – to the maximum extent permitted by law, the liability of the Company, howsoever arising under a contract, is limited, at the Company's option, to:

- (a) the replacement or repair of the goods;
- (b) the supply of equivalent goods; or
- (c) the cost of replacing or repairing the goods or of acquiring equivalent goods.

22. **Permits and Notices** -it shall be the purchaser's responsibility to obtain all necessary notices and permits to pay all fees required by legislation, regulations or by-laws unless otherwise agreed in writing.

23. **Waiver** - failure by the Company to insist upon strict performance of any term, warranty or condition of the contract shall not be deemed as a waiver thereof of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

24. **Purchaser's Acknowledgment** - the purchaser acknowledges that goods are not of a kind ordinarily acquired for private use or consumption and that the purchaser is not acquiring the goods for the purpose of re-supply but for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods.

25. **Intellectual Property Rights** -the purchaser warrants that any design or instruction furnished to the Company shall not be such as will cause the Company to infringe any intellectual property rights ( including patents, registered designs, trade marks, copyright confidential information and the like) in the execution of the purchaser's order and the purchaser agrees to indemnify the Company against any infringement or unauthorised use of intellectual property rights arising out of the manufacture or use of the goods and it is specifically agreed that the sale and purchase of the goods does not confer on the purchaser any license or rights under any intellectual property rights which is the property of the Company.

26. **Subcontracting** -the Company reserves the right to subcontract the production manufacture or supply of the whole or any part of the goods or any materials or services to be supplied.

27. **Notices** - any notice given by the purchaser to the Company shall be sent to the Company's address. no notice shall be deemed to have been given until it is actually received at such address.

28. **Severance** - it is agreed that if any provision of these terms and condition should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

29. **Governing law** - contracts shall be governed by and construed in accordance with the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts which may hear appeals from those courts in respect of any proceedings in connection with this agreement.

**30. PPSA**

- (a) Defined terms used in this clause 30 have the same meaning as given to them in the PPSA.
- (b) The Company and purchaser acknowledge that a contract constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of the Company over the goods supplied to the purchaser, as Grantor, pursuant to a contract, and over the Proceeds, including any sale monies or an account for such monies and insurance monies.
- (c) The goods supplied or to be supplied under a contract fall within the PPSA classification of "other goods" acquired by the purchaser pursuant to these Conditions.
- (d) The purchaser acknowledges that the Seller, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to the purchaser, as Grantor, under a contract on the PPSA Register as Collateral.
- (e) The purchaser waives its right to any of the following under the PPSA:
  - i. receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the purchaser, as Grantor, to the Company;
  - ii. receive notice of removal of an Accession under section 95;
  - iii. receive notice of an intention to seize Collateral under section 123;
  - iv. receive notice of disposal of Collateral under section 130;
  - v. receive a Statement of Account if there is no disposal under section 130 (4);
  - vi. receive notice of retention of Collateral under section 143;
  - vii. redeem the Collateral under section 142;
  - viii. reinstate the Security Agreement under section 143;
  - ix. object to the purchase of the Collateral by the Secured Party under section 129;
  - x. receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- (f) The purchaser agrees that, to the extent permitted by law, nothing in sections 130 to 143 of the PPSA will apply to, or the Security under, these conditions.