



Ingal Civil Products

Credit Account Application Form

Ingal Civil Products, a division of Industrial Galvanizers Corporation Pty Ltd (ABN 40 000 545 415)
PO Box 5262, Minto, NSW 2566
57-65 Airds Road, Minto, NSW, 2566

ph: **1300 4 INGAL**
fax: 02 9827 3305
email: accountsreceivable@ingalcivil.com.au

Section 1: Business Details

Section 2: Directors / Authorised Signatories

Section 3: References

Section 4: Acceptance of Terms & Conditions and Privacy Policy

Section 5: Guarantee & Indemnity Form

Section 6: Terms & Conditions of Sale

Section 7: Privacy Policy

Full financial information provided where applicable

SECTION 1: BUSINESS DETAILS

Business Name

Business Structure:

Sole Trader

Partnership

Company

Trustee

Other

ACN / ABN

Date business commenced

Trading Name

Parent Company Name

Business Address

Phone No.

Postal Address

Fax No.

Business Description

Accounts Payable Contact

Phone No.

Email Address

Fax No.

Account Requested by

Phone No.

Position

Email Address

Credit Limit Requested

Initial Order

Date of order

SECTION 2: DIRECTORS / AUTHORISED SIGNATORIES

Details of Directors, Authorised Signatories are required for acceptance of the terms and conditions, the Privacy Policy and the Deed of Indemnity (if applicable). All Directors and/or Authorised Signatories must sign the form. Please re-print / copy this section if there are more than 4 directors.

Name D.O.B.

Position

Home Address

Email

Name D.O.B.

Position

Home Address

Email

Name D.O.B.

Position

Home Address

Email

Name D.O.B.

Position

Home Address

Email

SECTION 3: REFERENCES

Please ensure you supply **FOUR** references of major suppliers who are prepared to give references and where you have a similar trading and credit limits.

Comments

Name

Phone No.

Fax No.

Email

Name

Phone No.

Fax No.

Email

Name

Phone No.

Fax No.

Email

Name

Phone No.

Fax No.

Email

SECTION 4: ACCEPTANCE OF TERMS & CONDITIONS AND PRIVACY POLICY

I/We agree that on the making of this application, I/we agree to be bound by the Terms and Conditions of trade for Ingal Civil Products attached hereto (for additional copies of the Terms and Conditions contact any Ingal Civil Products office).

I/We have read and understood the terms and conditions of trade for Ingal Civil Products attached hereto and agree that, subject to Ingal Civil Products acceptance of this application, these conditions will apply. Ingal Civil Products reserves the right to accept or reject the application in its absolute discretion.

I/We declare that the information provided on, or pursuant to, this application, is true and correct in every particular and it is upon this basis that Ingal Civil Products is to determine whether or not to grant this application.

I/We being the person(s) named as the Customer or where the Customer is a Corporation, being the directors of the Customer as specified in this application authorise Ingal Civil Products to make any enquiries (including a credit report), concerning my/our credit worthiness or as to the accuracy of the information provided in this application and consent to any credit report concerning me/us being made available to Ingal Civil Products for the purposes of assessing this application for credit and/or my/our acceptability as guarantor and authorise Ingal Civil Products to exchange or disclose information concerning my/our credit worthiness or this application from or to any person or source and acknowledge that all or some of the information may be disclosed to a credit reporting agency within the meaning of the Privacy Act 1988 as amended. I/we further authorise Ingal Civil Products to make any periodic checks that it sees fit to continue its assessment.

I/We have reviewed the Ingal Civil Products Privacy Policy.

SIGNED:

Director 1 Name

Signature _____ Date

Director 2 Name

Signature _____ Date

Director 3 Name

Signature _____ Date

Director 4 Name

Signature _____ Date

For office use only:	Reason	New Entry Update Details	State	Cust Acc No.
National Acc Name				National Acc No.
Sales Rep				Territory Code
Customer Group				Store No. (IBS only)
PL Coding			IBS DPL Code	IBS RBT Coding
Submitted by & Position (Sign & Date)				
Approved by & Position (Sign & Date per DOA)				Limit Approved

SECTION 5 – DEED OF GUARANTEE, INDEMNITY & CHARGE

This Guarantee is dated: _____

The parties are:

“Industrial Galvanizers Corporation Pty Ltd ACN 000 545 415 (trading As Ingal Civil Products)
of Level 3, Building A, 11 Talavera Road, Macquarie Park, NSW 2113
("ICP")

and

##[insert guarantor name] _____

of ##[insert address] _____
("Guarantor")

in relation to the supply or goods and materials to:

##[insert customer name] _____

of ##[insert address] _____
("Customer")

By this Guarantee:

In consideration of the Supplier agreeing at the request of the Guarantor to supply and/or to continue to supply goods to the Customer and/or not to require the immediate repayment of moneys owing to the Supplier by the Customer, the Guarantor agrees with the Supplier as follows:

1 The Guarantee

- 1.1 The Guarantor unconditionally and irrevocably guarantees to ICP the performance of all obligations of the Customer to ICP, including payment on demand of all amounts due from time to time by the Customer to ICP which now being or may in the future be indebted to ICP on any account or in any manner whatsoever.
- 1.2 The Guarantor agrees to indemnify and forever hold ICP harmless in respect of any failure by the Customer to pay any amounts referred to in clause 1.1 and perform such obligations however arising.
- 1.3 ICP may immediately recover any monies payable by the Customer to ICP from the Guarantor as a liquidated debt without first commencing proceedings or enforcing any other right against the Customer or any other person.
- 1.4 If a petition to the Court is presented by any person for the winding up of the Customer, then all money payable under the Guarantee shall be payable immediately and the Guarantor must pay any amounts disgorged by ICP to the liquidators of the Customer.
- 1.5 The Guarantor agrees that his obligations are made to ICP for the time being and to each of its successors in title without the need for any express assignment or novation.
- 1.6 Any variation to the terms of any agreement between the Customer and ICP shall not affect the obligations of the Guarantor contained in this Guarantee except that no such variation shall increase the obligations of the Guarantor over what those obligations may be under this Guarantee.

2 Guarantor's continuing liability

- 2.1 This Guarantee is a continuing guarantee, and is not discharged or prejudicially affected by any settlement of accounts, but remains in full force until a final release is given by ICP.
- 2.2 The Guarantor waives any rights he may have of first requiring ICP to proceed against or claim from the Customer, and agrees to subordinate any claim he may have against the Customer existing now or arising later (whether in respect of payment made under this Guarantee or otherwise) to any claim made by ICP.
- 2.3 The liabilities and obligations of the Guarantor under this Guarantee shall remain in force and shall not be affected despite:-
 - 2.3.1 any neglect, delay or forbearance of ICP in enforcing payment or any other obligation due under any agreement between the Customer and ICP; or

SECTION 5 – DEED OF GUARANTEE, INDEMNITY & CHARGE

- 2.3.2 the granting of time or other concession or indulgence by ICP to the Customer in relation to such enforcement; or
 - 2.3.3 any absolute or partial release of the Customer or any Guarantor or a compromise with any of them; or
 - 2.3.4 any variation in the terms of or termination of the credit terms given to the Customer by ICP or any agreement between the Customer and ICP; or
 - 2.3.5 the assignment of any agreement between the Customer and ICP; or
 - 2.3.6 the insolvency or liquidation of the Guarantor, the Customer or ICP; or
 - 2.3.7 any agreement between the Customer and ICP being wholly or partially void, voidable or unenforceable, whether by operation of law or otherwise; or
 - 2.3.8 the non-execution of this Guarantee by 1 or more of the persons named as Guarantor or the unenforceability of the Guarantee against 1 one or more of the Guarantors; or
 - 2.3.9 any other act, omission, matter or thing whatever whereby (but for this provision) the Guarantor would be exonerated either wholly or in part from this Guarantee, other than a release by deed given by ICP.
- 2.4 Without limiting clause 2.3, ICP may, in its absolute discretion, refuse further credit or supply of goods and services to the Customer without discharging or impairing the Guarantor's liability under this Guarantee.

3 Charge

As security for the Guarantor's obligations made under this Guarantee, the Guarantor charges in favour of ICP all its estate and interest in any land and/or any other assets whether tangible and/or intangible in which the Guarantor has now or may later acquire any legal and/or beneficial interest and the Guarantor agrees to execute on request of ICP a registrable mortgage in favour of ICP. ICP may register this security interest on the Personal Property Securities Register. To the extent permitted by law, the Guarantor waives the right to receive a verification statement from ICP.

4 Guarantor not to prove in liquidation or bankruptcy

Until ICP has received all money payable to it by the Customer, the Guarantor must:

- 4.1 not prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit of creditors of the Customer; and
- 4.2 hold any claim it has and any dividend it receives on trust for ICP.

5 Guarantor not to claim benefits or enforce rights

Until the Guarantor's liability under this Guarantee is discharged the Guarantor may not, without the consent of ICP:

- 5.1 claim the benefit or seek the transfer (in whole or in part) of any other guarantee, indemnity or security held or taken by ICP;
- 5.2 make a claim or enforce a right against the Customer or the estate or any of the property of the Customer (except for the benefit of ICP); or
- 5.3 raise a set off or counterclaim available to it or the Customer against ICP in reduction of its liability under this Guarantee.

6 Costs, expenses and indemnity

The Guarantor agrees to indemnify and hold harmless and to pay or reimburse ICP on demand for:

- 6.1 its costs, charges and expenses of making, enforcing and doing anything in connection with this Guarantee (including legal fees on a full indemnity basis); and
- 6.2 all taxes (except income tax) which are payable in connection with this Guarantee or any payment, receipt or other transaction contemplated by it;

Money paid to ICP by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 9 and then against other obligations under this Guarantee.

7 Privacy

- 7.1 The Guarantor agrees that ICP may collect, use and disclose personal or other information about the Guarantor in the course of and for purposes related to this Guarantee, including verifying the Guarantors identity, credit history and/or solvency, assessing the Guarantors creditworthiness, risk and/or solvency and enforcing any rights of ICP.
- 7.2 This information may be collected from, shared with or disclosed to ICP's related entities or third parties, including authorised agents, credit providers, credit reporting agencies and entities located outside Australia in countries that will vary from time to time, but may include the United States of America.
- 7.3 If the Guarantor provides incomplete or inaccurate information, ICP may refuse to grant credit to the Customer.
- 7.4 By accepting the terms and conditions of this Guarantee and not opting out of the disclosure of personal information to any of the stated third parties, the Guarantor acknowledges that ICP is not subject to the relevant provisions of the *Privacy Act 1988* (Cth), as amended from time to time,

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concerning such disclosures and it consents to the collection and disclosure of personal information under the terms of this clause 7. If the Guarantor does not consent to any of the above disclosures, the Guarantor should provide notice in writing or contact ICP’s privacy officer.

7.5 If the Guarantor requires further information about the collection, use or disclosure of personal or other information, the Guarantor should contact ICP as set out in ICP’s privacy policy, which is available at www.ingalcivil.com.au. ICP’s privacy policy contains information about how to access and seek correction of the personal information ICP holds, how to complain about a breach of the Australian Privacy Principles and how ICP handles such complaints.

8 Miscellaneous matters

8.1 A statement provided by or on behalf of ICP is evidence as to the amounts owed by the Guarantor pursuant to this Guarantee.

8.2 Where there is more than one Guarantor in respect of the Customer the Guarantee shall bind each of the Guarantors jointly and severally.

8.3 No amendment or variation to this Guarantee is valid unless in writing, signed by the Guarantor and ICP.

8.4 Any communication relating to this Guarantee, to be served on any person shall be delivered by hand or sent by first class post or recorded delivery or by fax or by e-mail.

It shall be deemed to have been delivered:

- 8.4.1 if delivered by hand: on the day of delivery;
- 8.4.2 if sent by post to the correct address: within 72 hours of posting;
- 8.4.3 If sent by fax to the correct number: within 24 hours;
- 8.4.4 If sent by e-mail to the address from which the receiving party has last sent e-mail, within 24 hours if no notice of non-receipt has been received by the sender.

8.5 The validity, construction and performance of this Guarantee shall be governed by the laws of the State of New South Wales. Any dispute arising in connection with this Guarantee shall be subject to the exclusive jurisdiction of the New South Wales courts.

Executed as a deed.

Signed by _____ on behalf of Industrial Galvanizers Corporation Pty Ltd Trading As Ingal Civil Products as its representative

Finance Director
Ingal Civil Products

Important: By signing this guarantee you may be required to pay the Customer’s debt to ICP. You should ensure that you read and understand its terms, and obtain independent professional advice in necessary.

SIGNED by _____)
in the presence of: _____)

Witness

##[insert further execution clauses if there is more than one Guarantor]

SECTION 6 – INGAL CIVIL PRODUCTS TRADING TERMS AND CONDITIONS OF SALE



1. Agreement

- 1.1. These terms and conditions ("**Terms**") shall apply any agreement for the sale of any and all goods and the provision of services to the Customer by Ingal Civil Products, a division of Industrial Galvanizers Corporation Pty Ltd ACN 000 545 415 ("**Supplier**") and, in the absence of any other written agreement, shall be the only terms and conditions applicable.
- 1.2. The Customer agrees to comply with and abide by these Terms.
- 1.3. Without limiting clause 1.1, all terms and conditions set out in any printed document issued by the Customer (including any purchase order) are expressly excluded.
- 1.4. These Terms have effect as amended by the Supplier from time to time in its absolute discretion. Changes take effect from the earlier of the date the Supplier informs the Buyer in writing of the change.
- 1.5. If the Customer places any orders with the Supplier after the receipt of these Terms or any variation of these Terms, the Customer will be deemed to have accepted these Terms.

2. Orders, quotes and pricing

- 2.1. Prices quoted in writing by the Supplier are valid for a period not exceeding 30 days unless otherwise stated as part of any quote or other agreement between the Supplier and Customer. The Customer should reconfirm pricing prior to confirming an order with the Supplier if outside of this validity period.
- 2.2. Where a written quotation has been given by the Supplier, the selling price is the price specified in that quotation. In any other case, the Supplier's price list shall prevail as at the date of despatch. Unless otherwise stated, the selling price is exclusive of GST.
- 2.3. All orders are subject to acceptance by the Supplier. Any acceptance of orders by the Supplier are subject to the Supplier's factory schedules, capacity, product and staff availability at the time such order is received.
- 2.4. Where the Supplier accepts an order involving import and export conditions, that acceptance shall be subject to the Customer supplying evidence to the satisfaction of the Supplier that all requisite licences and permits have been granted and that the Customer has complied with all other Government authorisations and conditions (both Australian and countries of destination). If such evidence is not provided within 30 days from the date of acceptance of an order, the order may be cancelled by the Supplier at its discretion.
- 2.5. Where special or manufactured to order products are specified in an order which is accepted by the Supplier, the estimated delivery period commences progressively from date of receipt of final "approved for construction" drawings and a customer purchase order, or signed Supplier sales order as appropriate. Any additional costs resulting from changes initiated by the Customer will be charged to the Customer.
- 2.6. Any agreement for the sale of goods or services by the Supplier is subject to the Supplier's standard manufacturing variations, tolerances and classifications.
- 2.7. No order may be cancelled except with the consent in writing of the Supplier and on terms which indemnify the Supplier against losses arising from the cancellation.
- 2.8. The Supplier shall not be obligated to ship to any country other than Australia or New Zealand, and the Customer shall not export the goods outside the country to which they were supplied without prior written consent of the Supplier.

3. Payment / Account Term

- 3.1. If the Supplier has not granted credit to the Customer, payment must be received in the Supplier's bank account before goods or services are delivered. For manufactured to order goods, the Supplier reserves the right to require receipt of payment prior to commencing the manufacturing process. No payment shall be deemed to have been received until the Supplier has received cleared funds and all payments must be made without any deduction by set-off or counterclaim.
- 3.2. In the event that the Supplier agrees to offer a credit to the Customer, all goods and/or services supplied by the Supplier to the Customer shall be paid for in full by the Customer no later than 30 days from the end of month in which the Supplier's invoice is issued to the Customer or as otherwise specified by the Supplier ("**Due Date**").
- 3.3. Where the Supplier has agreed to offer credit terms to the Customer, the Supplier reserves the right to vary the terms of payment (including the Due Date), withdraw the credit facility or vary the credit limit, and to require payment in cash in full prior to delivery or immediately for any reason, including where the credit worthiness of the Customer at the time is, in the Supplier's opinion, unsatisfactory. If the credit limit is lowered, the Customer must immediately pay to the Supplier the difference between the current debt owed to the Supplier, and the new credit limit.
- 3.4. Where the Customer fails to pay amounts owing to the Supplier by the Due Date, the Supplier may:
 - 3.4.1. defer or withhold further shipments to the Customer;
 - 3.4.2. withdraw credit facilities offered to the Customer;
 - 3.4.3. charge interest in accordance with clause 3.5;
 - 3.4.4. enforce its security interest in accordance with clause 9;
 - 3.4.5. terminate any agreement with the Customer; or
 - 3.4.6. charge the Customer all costs and expenses incurred as a result of the collection or attempted collection of any invoiced amount or other amount payable under these Terms, including but not limited to any dishonoured cheque fees, debt collection agency fees, stamp duties and solicitor's fees on an indemnity basis.
- 3.5. Interest on all outstanding moneys will accrue on a daily basis until paid at a rate of interest per annum equal to the standard interest rate charged from time to time by Australia and New Zealand Banking Group Limited on overdraft accounts for sums up to \$500,000 Australian dollars.
- 3.6. The Customer must pay the cost of any GST, stamp duty and sales, excise, value added, consumption or any other tax or imposts applicable to the relevant transaction under these Terms.

4. Delivery

- 4.1. The Supplier shall deliver to the delivery place nominated in the order placed by the Customer and accepted by the Supplier ("**Place of Delivery**"). The Customer must pay the Supplier delivery charges in accordance with the Supplier's current rates.
- 4.2. The Customer authorises the Supplier to deliver goods to the Place of Delivery and to effect delivery by leaving the goods at the Place of Delivery whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for any loss or damage to the goods occurring after delivery to the Place of Delivery.
- 4.3. The Customer will provide reasonable means of access to and from the Place of Delivery and any necessary equipment and labour to facilitate the efficient delivery and unloading of goods. Any goods which cannot be delivered by reason of the Customer's default under these Terms will be stored and handled by the Supplier at the Customer's cost and risk, such costs being payable on demand.
- 4.4. The Supplier shall not be obliged to obtain a signed receipt or other acknowledgement at the Place of Delivery. However, if a signed receipt or other acknowledgment of delivery is obtained from a person at the Place of Delivery who appears to be authorised by the Customer to sign or otherwise take delivery, then, to the extent permitted by law, such signed receipt or other acknowledgement shall be conclusive evidence of delivery, the quantity of goods delivered, the lack of defects in such goods and otherwise compliance with the order.
- 4.5. Time is not of the essence in relation to delivery and any time quoted for delivery is an estimate only. The Supplier shall not be liable for any delay in delivery of goods or services for any reason, including without limitation any strike, lockout, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility or civil commotion.
- 4.6. Freight costs (whether included in the quoted price or charged separately) are based on punctual unloading by the Customer and full trucks. The Customer will be liable for any additional costs arising from delays in unloading or incomplete loading.

5. Acceptance and Claims

- 5.1. On submitting an order the Customer acknowledges that the goods ordered and/or services requested are suitable for the intended purpose for which they have been ordered. The Supplier need not confirm the Customer's purposes and requirements for goods and services.

SECTION 6 – INGAL CIVIL PRODUCTS TRADING TERMS AND CONDITIONS OF SALE

- 5.2. Within 48 hours of delivery or collection or 24 hours after the Customer learns of the facts giving rise to a claim (whichever first occurs), the Customer must notify the Supplier in writing of any defect or claim regarding goods or services provided by the Supplier, with full details of the claim, in the absence of which, the Customer to the extent permitted by law is deemed to agree that the goods and services conform those ordered.
- 5.3. The Supplier will not be liable for any claims of damages in respect of goods which, at the date of the claim or at any time prior to settlement of the claim, have been incorporated into any other goods or product or affixed to land.
- 6. Indemnity**
- 6.1. The Customer indemnifies the Supplier against all losses, costs, expenses and liabilities incurred by the Supplier (including legal costs on an indemnity basis) and other expenses incurred by the Supplier in connection with any claim, demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal) in connection with any breach of these Terms by the Customer.
- 7. Warranties and liability**
- 7.1. To the maximum extent permitted by law, the Supplier disclaims and excludes all other terms, representations, warranties, conditions, statutory guarantees and obligations (whether express, statutory or implied), apart from those contained in any compliance statement issued by the Supplier to the Customer.
- 7.2. In relation to any condition, warranty, representation or statutory guarantee implied or provided by law that cannot be lawfully excluded, to the maximum extent permitted by law, the liability of the Supplier is limited to (at the discretion of the Supplier):
- 7.2.1. in the case of a supply of goods by the Supplier, the replacement of the goods, the supply of equivalent goods, the repair of the goods or the payment of the cost of replacing the goods, acquiring equivalent goods or repairing the goods; or
- 7.2.2. in the case of a supply of services by the Supplier, the resupply of equivalent services or the payment of the cost of having those services resupplied.
- 7.3. To the maximum extent permitted by law, the Supplier shall not be liable to the Customer in any circumstances for any indirect, economic, special or consequential loss or damage, or in any event for any loss of revenue, loss of production or loss of profit.
- 8. Return of Stock Items**
- 8.1. Without limiting the Customer's rights in respect of defective goods or services, the Customer may only return supplied goods to the Supplier in accordance with this clause 8. To the extent permitted by law or these Terms, the Supplier is not obliged to authorise or accept the return goods other than in accordance with this clause.
- 8.2. Goods may be returned for credit to the Customer's account if all of the following conditions are satisfied:
- 8.2.1. prior agreement has been reached with an authorised officer of the Supplier;
- 8.2.2. the goods are ordinarily sold by the Supplier as standard stock items;
- 8.2.3. the goods are returned within fourteen (14) days of the date of delivery of the goods;
- 8.2.4. the goods are returned undamaged, unused and in good and saleable condition;
- 8.2.5. the original invoice number and Supplier order number must accompany all goods returned to the Supplier; and
- 8.2.6. the goods are not manufactured to order goods.
- 8.3. Goods accepted for credit by the Supplier under this clause 8 will attract a charge (the amount of which shall be at the discretion of the Supplier but not less than 10% of the Supplier list price for those goods) to cover restocking and repacking charges. Such charges shall be deducted from the amount of credit allowed.
- 9. Property and Risk**
- 9.1. A term that is used in italics in this clause 9 has the same meaning as in the *Personal Property Securities Act 2009* (Cth) ("**PPSA**").
- 9.2. Legal and equitable title in the goods shall not pass to the Customer until the purchase price for the goods and any related services has been paid in full to the Supplier by the Customer. Sole risk in the goods and the risk of any loss or damage to or deterioration of the goods, however caused, shall pass to the Customer immediately upon dispatch of the goods from the Supplier's premises.
- 9.3. Until such time as the title passes in accordance with paragraph 9.2 above the Customer shall hold the goods as bailee for the Supplier on the terms set out below.
- 9.4. The Customer shall store the goods separately from other goods in the Customer's possession in a manner which clearly identifies those goods as the property of the Supplier.
- 9.5. Pending transfer of title the Customer grants to the Supplier a *security interest* in either every payment to the Customer for the goods or the portion of every payment for the manufactured product that relates to the goods (both as *proceeds* of the goods and as *original collateral*) and the Customer must not: (i) sell the goods or use the goods in a manufacturing or construction process, other than (subject to clause 9.6 below) in the ordinary course of its business; or (ii) sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to the Customer as a result of the use, manufacture or resale of the goods.
- 9.6. If the Customer sells, or agrees to sell, the goods or any manufactured products in the ordinary course of the Customer's business before title to the goods passes to the Customer, then:
- 9.6.1. the Customer must keep separate records in relation to the proceeds of the sale of any goods which have not been paid for, bank the proceeds of any such sale into a separate account on trust for the Supplier and immediately remit such funds to the credit of Supplier; and
- 9.6.2. if any goods are unused in a manufacturing process or mixed with other materials, the Customer shall record the value of the goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product immediately remit that amount from the proceeds of sale to the Supplier.
- 9.7. The Customer must immediately cease selling the goods or using the goods in a manufacturing or construction process upon any of the following events occurring:
- 9.7.1. the Customer, being a natural person, commits an act of bankruptcy or is declared insolvent;
- 9.7.2. where the Customer is a corporation, proceedings are commenced to wind up the Customer, the Customer becomes an externally administered body corporate, steps are taken towards making the Customer an externally administered body corporate, a controller (as defined in section 9 of the *Corporations Act*) is appointed over the Customer's undertaking or property or any part thereof the Customer, or the Customer is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act*;
- 9.7.3. the Customer enters into some arrangement or assignment for the benefit of its creditors;
- 9.7.4. the Customer disposes of or parts with possession of the goods otherwise than as expressly authorised by these Terms; or
- 9.7.5. the Customer, in the opinion of the Supplier, is in breach of any of these Terms.
- 9.8. If any event refers to in clause 9.7 occurs, or the Customer does not pay for any goods and any related services by the Due Date, the Supplier or its agents are hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the goods are stored at such premises) and use reasonable force to take possession of the goods without liability for the tort or trespass, negligence or payment of any compensation to the Customer whatsoever.
- 9.9. The Customer acknowledges and agrees that:
- 9.9.1. clauses 9.1 to 9.8 create a *security interest* in all present and after acquired goods and any *proceeds* as security for the Customer's obligations to the Supplier;
- 9.9.2. the Supplier is a *secured party* in relation to the goods and any *proceeds* of the goods, and is entitled to register its interest as a *security interest*, and if applicable, a *purchase money security interest*;
- 9.9.3. the Customer must take all steps requested by the Supplier to ensure that the Supplier's *security interests* are enforceable and perfected (including providing all reasonable assistance in registering the *security interest* on the *register*);

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- 9.9.4. the Supplier may search the *register* at any time for any information about the Customer;
- 9.9.5. for the purposes of section 115 of the PPSA, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA do not apply to these Terms; and
- 9.9.6. the Supplier is not obliged to give any notice, document or information under the PPSA unless it cannot be lawfully excluded, including but not limited to a copy of the *verification statement* or *financing change statement* relating to the *security interest* under these Terms.
- 9.10. If the Supplier already has a *perfected security interest* in goods previously supplied to the Customer, together with their proceeds, that *security interest* continues in relation to those goods and the goods supplied or to be supplied under these Terms.
- 10. Change of Control**
- 10.1. The Customer must provide notice in writing to the Supplier of any change in the person with effective control over the Customer when compared to immediately before the initial acceptance of these Terms (ignoring any amendments or updates), as a result of changes to the membership or beneficial ownership (whether over the shares, business or assets) of the Customer ("**Change of Control**").
- 10.2. If, without the prior written consent of the Supplier, the Customer undergoes a Change of Control, the Supplier may, in its absolute discretion:
- 10.2.1. withdraw or vary credit facilities offered to the Customer; or
- 10.2.2. terminate any agreement with the Customer.
- 11. Sub-Contracting**
- 11.1. The Supplier reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the goods or any of the materials or services supplied to the Customer.
- 12. Notices**
- 12.1. Any notice to be given by the Customer to the Supplier shall be delivered to a director of the Supplier in writing. Notice to be given to the Customer by the Supplier may be delivered personally, by email, or sent to the Customer's last known address and, unless the contrary is proved, shall be taken as delivered on the second business day following posting. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post or after four hours if sent by email.
- 13. Misuse of Account**
- 13.1. The Customer will ensure no unauthorised persons use the Customer's account. If the Customer's business is sold the Customer will immediately notify the Supplier and close the account to prevent misuse and will remain liable for the account until written notification of change of ownership of the business has been received by the Supplier (subject to clause 10).
- 14. Personal Information**
- 14.1. The Customer, to the extent they are an individual, agrees that the Supplier may collect, use and disclose personal information (as defined in the *Privacy Act 1988* (Cth), as amended from time to time ("**Privacy Act**") about the Customer in the course of and for purposes related to these Terms, including verifying the Customer's identity, credit history and/or solvency, assessing the Customer's creditworthiness, risk and/or solvency and enforcing any rights of the Customer. This personal information may be collected from, shared with or disclosed to the Supplier's related entities or third parties, including authorised agents, credit providers, credit reporting agencies and entities located outside Australia in countries that will vary from time to time, but may include the United States of America.
- 14.2. If the Customer provides incomplete or inaccurate information, the Supplier may refuse to provide goods and services or grant credit to the Customer.
- 14.3. By accepting these Terms and not opting out of the disclosure of personal information to any of the stated third parties, the Customer acknowledges that the Supplier is not subject to the relevant provisions of the Privacy Act, concerning such disclosures and it consents to the collection and disclosure of personal information under the terms of this clause 14. If the Customer, to the extent they are an individual, does not consent to any of the above disclosures, please provide notice in writing or contact the Supplier's privacy officer.
- 14.4. If the Customer, being an individual, requires further information about the collection, use or disclosure of personal or other information, the Customer should contact the Supplier at set out in the Supplier's privacy policy, which is available at www.ingalcivil.com.au. The Supplier's privacy policy contains information about how to access and seek correction of the personal information the Supplier holds, how to complain about a breach of the Australian Privacy Principles and how the Supplier handles such complaints.
- 14.5. The Customer acknowledges and agrees that its disclosure of personal information to the Supplier is subject to the Privacy Act. The Customer warrants that it will only disclose personal information about its employees or other individuals to the Supplier for a purpose related to these Terms or the provision of goods and services by the Supplier to the Customer, provided the Customer has made all disclosures and obtained any consents required under the Privacy Act (including consent to disclosure of personal information to third parties), and provided to do so would not otherwise breach the Privacy Act.
- 15. Credit Information**
- 15.1. This clause 14 will only apply where these Terms are attached to an application for account/credit terms ("**Application**").
- 15.2. The Customer acknowledges that the information provided in the Application is the basis for the evaluation by the Supplier of the financial standing and credit worthiness of the Customer and:
- 15.2.1. warrants that the information provided in the Application is true and correct;
- 15.2.2. authorises the Supplier to make such enquiries and receive such information about the Customer or its credit arrangements from other credit providers mentioned in the Application, including credit eligibility information and information about the Customer's credit worthiness, credit standing, credit history or credit capacity, to the extent that the Supplier is allowed to receive such information under the Privacy Act;
- 15.2.3. acknowledges that the Supplier in accordance with the Privacy Act, may keep certain items of personal information, including an opinion, about the Customer's credit application on a credit information file and that such information may be given to a credit reporting body;
- 15.2.4. in accordance with the Privacy Act, consents to the Supplier obtaining from a business which provides information about the commercial credit worthiness of persons, information concerning the Customer's commercial activities or commercial credit worthiness and using such information for the purpose of assessing the Application,
- 15.2.5. agrees that the above authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided or sought by the Customer from the Supplier.
- 16. General provisions**
- 16.1. Where there is more than one Customer, these Terms shall bind each of the Customers jointly and severally as well as their respective successors and assigns.
- 16.2. These Terms are governed by and shall be constructed in accordance with the laws of the State of New South Wales, Australia. The parties hereby submit to the exclusive jurisdiction of the courts of New South Wales.
- 16.3. The headings used in these Terms do not form part of the agreement but are intended only to aid its interpretation.
- 16.4. Failure of either party to enforce any right hereunder shall not waive any right in respect of other or future occurrences.
- 16.5. The Supplier may assign these Terms by providing notice to the Customer. The Customer may not assign these Terms without the prior written consent of the Supplier.
- 16.6. If the Customer is a trustee, then it enters into each agreement with the Supplier in its personal capacity and in its capacity as trustee. The Customer must ensure that it has the power under the trust deed to perform its obligations under the agreement, and has a right to be indemnified out of the assets of the trust in relation to its obligations and liabilities under the trust deed.

SECTION 7 - INGAL CIVIL PRODUCTS PRIVACY POLICY

Introduction

Industrial Galvanizers Corporation Pty Ltd ACN 000 545 415 (trading as Ingal Civil Products) ('**ICP**') is bound by the *Privacy Act 1988* (Cth), as amended from time to time ('**Privacy Act**') and the 13 *Australian Privacy Principles* ('**APPs**') contained in the Privacy Act, which set clear standards for the collection, access, storage, use and disclosure of the personal information we obtain as part of ICP's businesses operations. In the course of ICP's business in Australia, there may be circumstances where ICP collects personal information and this ICP Privacy Policy ('**Policy**') has been developed to ensure that such information is handled respectfully, sensitively, securely and in compliance with the APPs. ICP is committed to complying with the Privacy Act in relation to all personal information it collects.

About the ICP Privacy Policy

This Policy sets out the broad controls which ICP has adopted to govern the way it collects and uses personal information, the circumstances in which it might disclose personal information to third parties, how persons can access their personal information held by ICP and what they can do if they are unhappy with ICP's treatment of their personal information.

This Policy applies to any individuals in respect of whom ICP currently holds, or may in the future collect, personal information.

What information does the ICP Privacy Policy apply to?

In this Policy:

- "Personal information" means information or an opinion about an identified individual or an individual who is reasonably identifiable, whether true or not, and whether recorded in a material form or not.
- "Sensitive information" means information or an opinion about a person's racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, or health, genetic or biometric information. Sensitive information is a subset of personal information.

What information is not personal information?

Information where ICP has removed any reference to a person, so that the person cannot be reasonably identifiable from the information, is not personal information. ICP may use this information for its own purposes and commercial gain. For example, the fact that a certain number of users aged 30-35 have accessed a ICP website is not personal information.

What kinds of personal information does ICP collect?

The kinds of personal information collected and held by ICP includes (depending on the circumstances) names, addresses, telephone numbers, email addresses, details about a person's work experience and other qualifications, date of birth, age, gender, marital status, driver's licence details, bank account details, credit card details, financial information, photographs and video footage.

ICP may also collect information about people from their access to the ICP website for statistical purposes. This information is usually anonymous and ICP does not use it to identify individuals. However, due to the nature of internet protocols, such information might contain details that identify individuals, such as their IP address, internet service provider, directing web page and activity on our website.

How and when does ICP collect personal information?

ICP collects personal information in a variety of ways in the course of conducting its businesses, including:

- providing goods and services and related information to customers, entering agreements with customers, and administering customer accounts;
- receiving order forms or credit applications from customers or potential customers;
- engaging suppliers, contractors and other personnel;
- responding to telephone or in-person questions regarding our products, services, accounts and our business;
- mail correspondence, emails or other electronic means;
- interacting with people via our websites;
- conducting trade promotions and competitions; and
- security video surveillance at ICP sites.

Where reasonable and practicable, ICP will collect personal information directly from the person and inform the person that this is being done. However in some circumstances, it is necessary for ICP to collect personal information through third party service providers or agents, from a source of publicly available information (e.g. a telephone book), from an employer (e.g. where a contractor provides personal information about its staff), or from other third parties (including credit reporting bodies, the Australian Securities & Investments Commission and land title offices) in relation to credit checks, property searches and company extracts.

At or soon after the time when ICP collects personal information, ICP will take reasonable steps to ensure that the person is aware of which ICP company has undertaken the collection, the purpose(s) of the collection, the main consequences (if any) if the information is not collected, the types of organisation (if any) to which the information may be disclosed (including those located

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overseas), any law that required the particular information to be collected, and the fact that this Policy contains details on access, correction and complaints.

If ICP receives personal information that ICP has not requested (unsolicited information) and ICP determines that ICP could not have collected that information under the APPs if ICP had requested it, then ICP will destroy or de-identify the information if it is lawful and reasonable to do so.

Where practicable, you may deal with ICP anonymously or by pseudonym.

Collection of sensitive information

ICP will not collect sensitive information unless the person to whom it relates consents to the collection and the information is reasonably necessary for one or more of ICP's functions or activities, except where the collection is required or authorised by law, is necessary to prevent or lessen a serious and imminent threat to the person's (or another person's) life or health or is necessary in relation to legal proceedings (current, anticipated or potential), or another permitted exception in the Privacy Act applies.

Purposes of collection and use of personal information

The use to which we can put personal information depends on the reason for which it was collected.

ICP generally uses your personal information to provide its products and services to customers. ICP may also use personal information to:

- process transactions and administer accounts;
- address and resolve queries, claims or complaints;
- assess creditworthiness (for example, obtaining credit history information) or undertake other (ongoing) checks/reviews;
- advise customers of developments or changes to our products and/or services;
- market, advertise or otherwise promote ICP's products and/or services;
- seek participation (on a voluntary basis) in advertising campaigns, events, launches, customer testimonials and focus groups;
- undertake market research in relation to ICP's products and services;
- improve ICP's website, products and services; and
- operate its business and comply with legal obligations.

Use of personal information for direct marketing

If ICP intends to engage in direct marketing using or disclosing a person's personal information which was collected from someone other than that person or ICP collected that information directly from you but you would not reasonably expect us to use or disclose the information for such purposes, then we must first obtain your consent, unless an exception applies.

In circumstances where direct marketing is permitted under the Privacy Act, ICP will use an opt-out procedure in all our marketing communications. Similarly, all subsequent direct marketing you receive from us will include an opt-out procedure. A person may at any time request ICP not to use their personal information for sending direct marketing material to that person.

Please note that we will also comply with other laws that are relevant to marketing, including the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and the *Competition and Consumer Act 2010* (Cth).

Disclosure of personal information

ICP respects the privacy of personal information and we will take reasonable steps to keep personal information it collects strictly confidential.

Generally, ICP will only disclose personal information for the primary purpose for which it was collected (e.g. the delivery of goods to the person) and for any related secondary purpose that ICP could reasonably be expected to use the personal information or that is related to that primary purpose, with consent or as permitted by the Act or the APPs.

Disclosure to third parties

ICP will disclose personal information to third parties in circumstances where the disclosure could be reasonably expected. Where such a disclosure is necessary, ICP will use reasonable endeavours to require that the third party undertake to treat the personal information in accordance with the APPs.

These third parties may include services providers, contractors, banks, professional advisers, courts, tribunals, regulatory authorities, other companies and individuals for the purpose of:

- complying with obligations under any contract with a customer, or as required by law;
- enabling those third parties to perform services on ICP's behalf, such as deliveries, addressing queries or complaints, sending correspondence, providing updated ASIC and/or property searches and processing payments; and
- recovering debts where a customer fail to pay for products.

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These third parties will have access to personal information as required to perform these services, but ICP will not authorise them to use that personal information for any other purpose.

ICP may also disclose personal information to its related entities and business partners, such as auditors, financial services or insurance companies, in order for them to offer products and services to those individuals, or credit reporting agencies, in order for them to produce credit reports.

Otherwise, ICP will only disclose personal information to third parties without the consent of the person to whom it relates if the disclosure is:

- necessary to protect or enforce ICP's legal rights or interests or to defend any claims;
- necessary to prevent or lessen a serious threat to a person's health or safety;
- required or authorised by law; or
- permitted by another exception in the Privacy Act.

You have the right to tell us that you do not wish us to send information to you other than for the primary purpose for which we collect your personal information. We will always attempt to ensure our disclosure of personal information to other organisations is carried out in a manner which does not personally identify individuals.

Under no circumstances will ICP sell personal information without the consent of the person to whom it relates.

Cross border disclosures

ICP is a wholly owned subsidiary of Valmont Industries, Inc ("**VI Inc**"). As part of its normal operations, ICP may disclose personal information to VI Inc or other related Valmont group company operating in Australia or overseas in countries that may vary from time to time, but includes the United States of America and Singapore, subject to the provisions of the Privacy Act. In such circumstances, the related company will only use the personal information for the same purposes for which ICP is authorised to use the personal information.

Where ICP discloses personal information outside Australia, it will take such steps as are reasonable in the circumstances to ensure the overseas recipient does not breach the Privacy Act or APPs. Where reasonably practicable, ICP will first seek consent to such cross-border disclosure. Please note that where consent to such cross-border disclosure is provided, ICP will be exempt from the requirements of the Privacy Act in relation to such disclosed information. Where it is not reasonably practicable for ICP to obtain consent we will otherwise comply with the requirements of the Act.

Information Security

Personal information collected by ICP is held in a variety of formats, including hard copy format and on ICP's computer systems.

ICP will take all reasonable steps to ensure that all personal information held by ICP is secure from any unauthorised access or disclosure. However, ICP does not guarantee that personal information cannot be accessed by an unauthorised person (e.g. a hacker) or that unauthorised disclosures will not occur.

ICP will take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for the purposes for which ICP is authorised to use it.

Accessing and correcting personal information

ICP will take reasonable steps to ensure the accuracy and completeness of the personal information we hold. However, if a person believes that any personal information that we hold about them is inaccurate or out of date, then they should contact ICP in writing using the contact details listed on the ICP website.

A person may request to access, correct or update personal information about them held by ICP. Such a request must be made in writing to the address below.

ICP will grant a person access to their personal information as soon as possible, subject to the circumstances of the request.

A request to access personal information may be rejected if:

- the request is unreasonable or the Privacy Act or APPs permit or require ICP to decline that request;
- the request is frivolous or vexatious;
- providing access would have an unreasonable impact on the privacy of another person;
- providing access would pose a serious and imminent threat to the life or health of any person;
- providing access would prejudice ICP's legal rights; or
- there are other legal grounds to deny the request.

Generally, access to or correction of personal information will be provided free of charge, however ICP may charge a fee for reasonable costs incurred in giving access to an individual's personal information. The fee (if any) will be disclosed prior to it being levied.

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Complaints

If a person wishes to complain about a breach by ICP of this Policy, the APPs, the Credit Reporting Code or other breach of privacy a complaint may be lodged in writing by post or by email to the address set out below.

ICP takes all complaints seriously and any further action after our initial response to you will vary depending on the nature of your complaint. However, receipt complaints will be acknowledged and ICP will endeavour to deal with complaints and provide a response within 30 days of receipt of the complaint. Where a matter requires a more detailed investigation it may take longer to resolve. ICP will provide progress updates if this is the case and may seek further information. ICP may refuse to investigate and deal with a complaint if it is considered to be vexatious. If a person is dissatisfied with the outcome of their complaint, they may seek further internal review by an officer of ICP who was not previously involved in the complaint.

If a person is still dissatisfied with the outcome of their complaint, they may take the complaint to an external dispute resolution provider (in the case of a complaint in relation to credit-related personal information) that applies to ICP and/or the Office of the Australian Information Commissioner for resolution.

Changes to the ICP Privacy Policy

From time to time it may be necessary for us to review and revise our privacy policy. ICP reserves the right to change this Policy at any time. We will notify you about changes to this privacy policy by posting an updated version on our website www.ingalcivil.com.au.

Additional information regarding Credit Information

This Policy also applies in relation to ICP's collection and use of credit information of individuals, in connection with commercial credit provided by ICP.

The types of credit information that ICP collects and uses for the purpose of assessing an application for commercial credit and administering a commercial account include:

- names, addresses and other contact details of account holders and guarantors (both prospective and current);
- bank account details;
- driver's licence details;
- financial information; and
- information on the assets held by an individual.

Such information is collected from the relevant individual and from credit reporting bodies, as well as from publicly available information. ICP uses the information collected to create an internal credit assessment report.

ICP may disclose credit information to credit reporting bodies as required to maintain internal credit assessment activities.

Our Contact Details

Managing Director

Ingall Civil Products

57-65 Airs Road, Minto NSW 2566

Phone: 1300 4 INGAL or +61 2 9827 3333 | Facsimile: +61 2 9827 3300 |

Internet: www.ingalcivil.com.au