

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

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- 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]