

Term & Conditions of Sale Industrial Galvanizers

Industrial Galvanizers Corporation Pty Ltd
ABN 40 000 545 415



Terms & Conditions

1. Terms and Conditions Prevail

For the purpose of these terms and conditions, any reference to the "Company" shall be a reference to Industrial Galvanizers Corporation Pty Ltd ABN 40 000 545 415 and its subsidiary companies.

These terms and conditions apply to the supply of goods or services by the Company to the purchaser. These terms and conditions prevail over any terms in the purchaser's documents and represent the entire agreement between the Company and the purchaser about its subject matter, unless otherwise expressly agreed in writing by the Company.

When the purchaser places an order for goods or services with the Company, accepts delivery of goods or services, makes any payment or complies with these terms and conditions, the purchaser is taken to have accepted these terms and conditions.

2. **Quotations and Prices** - the Prices quoted are based on estimated galvanized weight of the finished product as determined by the Company 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's 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 of threaded goods which are too large for the Company's centrifuge. All quotations are based on the galvanizing being performed to the specifications AS/NZS 4680:1999. All prices are quoted exclusive of sales tax (which if applicable will be for the Purchaser's account), GST and the environmental levy (refer to clause 32). A quotation is not an offer by the Company to provide services or sell and maybe withdrawn without notice; any order given in respect of a quotation is not binding on the Company until accepted by the Company in writing.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 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 in part without the Company's written consent. The Company may decline, by written notice to the purchaser, any order if whole or in 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. Without limiting the generality of this clause, the purchaser acknowledges that the following conditions apply in relation to the condition of the goods:

(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 or any other dimensions determined by the Company from time to time unless the contrary is specified in writing in 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.

	Length	Width	Depth
Pinkenba, Qld	10.3m	1.7m	2.3m
Carole Park, Qld	12.3m	1.7m	1.8m
Townsville, Qld	9.5m	1.4m	1.7m
Hexham, NSW	13.5m	1.9m	2.0m
Girraween, NSW	12.5m	1.7m	2.2m
Port Kembla, NSW	7.1m	1.2m	1.7m
Campbellfield, VIC	12.2m	1.7m	2.4m
Launceston, TAS	5.8m	0.9m	1.2m

The maximum Dimensions are subject to change without notice and prior to delivery of goods to the Company, the Purchaser must confirm with the Company the Maximum Dimensions which apply to the relevant order.

(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's 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 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 the Industrial Galvanizers Corporation Pty. Ltd. Quality Assurance Manual and AS/NZS 4680:1999 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 trade 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 defects or faulty design features of the goods the subject of the contract, including but not limited to those described in AS/NZS 4680:2006 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** - the grade of steel and its composition must be specified to the Company at the time of request for quotation. Quotations are based on normal structural grades of plate and structural sections as covered in AS 1204-250. Silicon levels in the steel should be less than or equal to 0.04%. If higher of silicon levels are encountered the galvanized coating can be affected, becoming thicker, dull grey in colour and having reduced mechanical properties. In this event a premium may be applied for the extra zinc consumed above the normal thickness. No responsibility can or will be accepted for the appearance, or change in physical characteristics of the hot dip galvanized coating resulting from the higher silicon level.

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** - Unless other arrangements have been made prior to the commencement of work, goods must be removed by the purchaser from the company's premises within one (1) month after the purchaser is notified of the completion of the work. Goods not collected within one month from the date of notification may be subject to additional storage and handling charges without further notice to the purchaser.

10. **Terms of Payment** - net cash 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's opinion unsatisfactory.

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 8m 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 of 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 to 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 purchaser 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

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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 costs of having the services supplied again.

14. **Lien over goods** - The purchaser acknowledges that the Company has a lien over the goods and may retain possession of the goods until it has received full payment for the services and work performed by the Company. Where the Company has not received full payment for the services and works within 3 months of the date due for payment, the purchaser authorises the Company as the purchaser's agent to sell the goods and pay the proceeds to the Purchaser less any money owed to the Company.
15. **Purchaser's Acknowledgements** - 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) the high silicon content in deposits made by automatic welding processes may result in thicker coatings being formed in welded areas. These coating characteristics are beyond the control of the Company; and
 - (d) 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 prior to the Company carrying out any work on these goods. The Company shall have no liability for any loss or damage resulting from treatment of such goods under this contract.
16. **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 the 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 including, but not limited to, any breach of these terms and conditions; 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.
17. **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, 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.
18. **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 are ready for inspection. Where the purchaser requires 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, lock-out, 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.
19. **Identification of Goods** - at the time of delivery of the goods to be galvanized to the relevant site of 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 anyway whatsoever for items which the purchaser alleges have been lost by the Company or are otherwise missing.
20. **Performance and Representations** - the purchaser acknowledges that neither the Company nor any person purporting to act on its 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 in supplying 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.
21. **Instalments** - the Company reserves 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 of 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.
22. **Default In 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 thereupon 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 for by bank cheque or equivalent.
23. **Permits and Notices** - it shall be the purchaser's responsibility to obtain all necessary notices and permits and to pay all fees required by legislation, regulations or by-laws unless otherwise agreed in writing.
24. **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 or 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.
25. **Purchaser's Acknowledgment** - the purchaser acknowledges that the 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.
26. **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 orders 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 licence or rights under any intellectual property rights which is the property of the Company.
27. **Subcontracting** - the Company reserves the right to subcontract the production, manufacture or supply of the whole or any part of the goods or of any materials or service to be supplied.
28. **Notices** - Any notices required to be given to a party pursuant to these conditions of the sale shall be in writing and shall be delivered personally or sent by facsimile or post to the relevant party at its address appearing in the quotation (in the case of the Company) or in the purchaser's order or last known address. A notice given under this clause will be deemed to have been received:
 - (a) in the case of a notice delivered personally, at the time of delivery,
 - (b) in the case of a notice sent by facsimile transmission, at the time of receipt or subsequent delivery, whichever is earlier; and
 - (c) in the case of a notice sent by post to an address within Australia, on the second business day following the date of posting.
29. **Severance** - it is agreed that if any provision of these terms and conditions 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.
30. **Governing Law** - contracts shall be governed by and construed in accordance with the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which may hear appeals from those courts in respect of any proceedings in connection with this agreement. Any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof shall first be the subject of conciliation, administered by the Australian Commercial Disputes Centre Limited ("the Centre") conducted at Sydney and held in accordance with the conciliation rules of the Centre in force at the date of this contract.
31. **GST and other Taxes** - the purchaser must pay, or reimburse the company for any GST (as defined in the "A New Tax System" (Goods and Services Tax) Act 1999) that the company must pay on any supply made by it in connection with this contract. That payment must be made at the time when the purchaser is required to pay any amount in respect of that supply under this contract or upon demand by the Company. Any other tax, duty, impost or excise imposed in respect of the sale of the goods under this contract is to be paid in addition to and with the purchase price.
32. **Environmental Levy** - A fixed environmental levy will be charged on each invoice issued. This environmental levy will be charged in addition to payment for finished product and the cost of production, manufacture or supply and is intended to assist with the cost of The Company's environmental compliance & research programs.