

## Terms & Conditions of Sale

### 1. Interpretation: In these terms and conditions:

- 1.1. 'Australian Consumer Laws' means laws relating to the sale of goods and services to consumers and includes but is not limited to the *Competition and Consumer Act 2010 (Cth)* and the *National Consumer Credit Protection Act 2009 (Cth)*;
- 1.2. 'COD' means cash on delivery;
- 1.3. 'Delivery Point' means the address, agreed by the Seller, to which the Goods are to be delivered;
- 1.4. 'Goods' means goods or products and, if any, services as specified on the Order;
- 1.5. 'GST' means goods and services tax within the meaning of the GST Act;
- 1.6. 'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- 1.7. 'Event of Default' has the meaning given to it in clause 12.1 and references to the Purchaser being in default are references to the happening of an Event of Default;
- 1.8. 'PPSA' means the *Personal Property Securities Act 2009 (Cth)* as amended from time to time;
- 1.9. 'Purchaser' means the entity whose name or trading name is specified on the Order and who is the purchaser of the Goods whether directly or indirectly through an agent, which Purchaser maybe any sole trader, partnership, company, trust or other legal entity;
- 1.10. 'Order' means an order for the purchase of Goods from the Seller and includes a statement outlining the terms of the Order issued in acceptance of an order by the Seller;
- 1.11. 'Seller' means Industrial Galvanizers Corporation Pty Ltd ABN 40 000 545 415 trading as INGALEPS;
- 1.12. 'Seller's Premises' means the address from where the Goods are to be dispatched to the Purchaser, which unless otherwise stipulated on any Order for the Goods shall be the business address of the Seller listed on its official stationary or such other address as is notified by the Seller to the Purchaser from time to time;
- 1.13. 'Terms and Conditions' means this document titled Terms & Conditions of Sale;
- 1.14. the singular includes the plural and vice versa;
- 1.15. a reference to a gender includes all genders;
- 1.16. a reference to an individual includes a corporation, partnership, joint venture, association, authority, trust, state or government and any other legal entity; and
- 1.17. a reference to a clause is a clause of these Terms and Conditions.

### 2. Application

- 2.1. These Terms and Conditions apply to the sale of all Goods by the Seller to the Purchaser and are deemed included in all Orders unless otherwise stated in the Order.
- 2.2. When the Purchaser places an Order with the Seller, accepts delivery of Goods, makes any payment or complies with these Terms and Conditions the Purchaser is taken to have accepted these Terms and Conditions.
- 2.3. The Seller may update these Terms and Conditions as and when it sees fit. The updated Terms and Conditions will apply to all Orders made after notification of the updated Terms and Conditions is made, which notification need not be by notice to the Purchaser but may be made by the posting of the updated Terms and Conditions on the website of the Seller together with a notification on the home page of the website signalling that Terms and Conditions have been updated.
- 2.4. These Terms and Conditions prevail over any terms in the Purchaser's documents or any other document, including marketing or promotional material of the Seller, unless otherwise expressly agreed in writing by the Seller at the time of the making of an Order.

### 3. Seller's Quotations & Orders

- 3.1. Quotations are only valid if in writing on official stationary of the Seller.
- 3.2. A quotation is not an offer by the Seller to sell and may be withdrawn or altered by the Seller without notice.
- 3.3. Unless previously withdrawn, quotations are valid for the period stated, or when no period is stated, for thirty (30) days after the date of the quotation.
- 3.4. Notwithstanding the above, the Seller is not required to accept any Order and may decline to accept an Order on any reasons it sees fit.
- 3.5. Orders must be made via the approved form provided by the Seller (if any) unless otherwise agreed by the Seller.

### 4. Descriptions & Specifications

- 4.1. All specifications, drawings and particulars of weight and dimensions are approximate only and any deviation shall not be taken to vitiate any contract with the Seller, the validity of any Order, or form the grounds for any claim against the Seller.

### 5. Delivery

- 5.1. If a Delivery Point is in the Order or if sufficient delivery instructions are provided by the Purchaser within forty-eight (48) hours after notification to the Purchaser that the Goods are ready for despatch, the Goods are to be delivered to the Delivery Point and delivery will be effected when the Goods are delivered to the Delivery Point.
- 5.2. If a Delivery Point is not specified in the Order and/or sufficient delivery instructions are not provided by the Purchaser within forty-eight (48) hours after notification to the Purchaser that the Goods are ready for despatch, the Purchaser shall be deemed to have taken delivery of the Goods at the Seller's premises on expiration of the forty-eight (48) hour period.
- 5.3. If a representative, agent or employee of the Purchaser is not present and available to take delivery of the Goods at the specified Delivery Point, the Goods shall, at the discretion of the representative, employee or agent of the Seller responsible for delivering the Goods:
  - 5.3.1. be returned to the Seller's Premises, in which case delivery shall be deemed to have occurred at the Seller's premises at 5.00 pm (local time) on the date of attempted delivery; or
  - 5.3.2. be left at the specified Delivery Point, in which case delivery will be effected at such time.
- 5.4. The Seller shall not be liable for any loss or damage which may result directly or indirectly from Goods left unattended at the specified Delivery Point. Without limiting the Seller's rights under clause 5.3, the Seller may elect to and is authorised to leave Goods with a local freight agent or post office and notify the Purchaser of the requirements for collection. Delivery in this case will still be taken to have been effected at the time the Goods were originally presented for delivery at the Delivery Point.
- 5.5. The Seller reserves the right to charge for storage payable daily at commercial rates. If a Delivery Point is not in the Order and if sufficient delivery instructions are not provided by the Purchaser within forty-eight (48) hours after notification to the Purchaser that the Goods are ready for despatch or if Goods are returned to the Seller's Premises in accordance with clause 5.3 then storage charges will commence accruing from the date of deemed delivery of the Goods.
- 5.6. If the Purchaser requests the Seller to store the Goods and the Seller accepts this request (which shall be at the Seller's discretion) then the Goods will be deemed to be delivered upon the Seller notifying the Purchaser that the Goods are completed and have been placed in storage and storage charges will commence accruing at the Seller's then prevailing rates or if none exists at a reasonable rate. Storage of the Goods in such circumstances is at the Purchaser's risk.
- 5.7. Delivery dates and times made known to the Purchaser are estimates only. The Seller shall not be liable to the Purchaser for any loss or damage (including any consequential loss or damage) arising from late delivery.
- 5.8. The Purchaser shall not be relieved of any obligation to accept or pay for the Goods by reason of late delivery.
- 5.9. Where the Seller quotes delivery within a particular period that period shall commence from the date of receipt by the Seller of the Purchaser's written Order and all information and drawings necessary, in the Seller's opinion, to enable work to be commenced and proceed without interruption.
- 5.10. The Seller reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure of the Seller to deliver any instalment shall not entitle the Purchaser to cancel the balance of the Order. If the Purchaser defaults in payment on any instalment, the Seller may elect to treat the default as a breach of contract relating to each other instalment.

### 6. Invoices

- 6.1. Immediately upon the Goods being ready for delivery the Seller may invoice the Purchaser for the Goods in accordance with the terms of the Order or as otherwise quoted for the purpose of the Order, and clause 9.

### 7. Subcontracting

- 7.1. The Seller reserves the right to subcontract the production, manufacture or supply of the whole or any part of the Goods.

### 8. Performance

- 8.1. Any performance figures given by the Seller are estimates only. The Seller shall not be liable to the Purchaser for any loss or damage for failure to attain such figures unless specifically guaranteed in writing. Any such guarantee shall be subject to the recognised tolerances applicable to such figures.
- 8.2. The Purchaser assumes responsibility for the capacity and performance of Goods and materials specified by it being sufficient and suitable for its purpose.
- 8.3. Any testing and/or inspection of the Goods required by the Purchaser for the purpose of verifying performance estimates is to be conducted at the Seller's Premises or at such other location agreed by the Seller. No claim for defective workmanship, material or design can be made by the Purchaser after approved testing and inspection by or on behalf of the Purchaser.
- 8.4. All costs and expenses incurred in connection with the testing and inspection other than those specifically included in the Seller's quotation shall be borne by the Purchaser.
- 8.5. Only performance figures obtained pursuant to testing under this clause will be accepted by the Purchaser and the Seller for the purposes of any warranty or other claim by the Purchaser.

### 9. Prices

- 9.1. Unless otherwise stated, all prices quoted by the Seller are exclusive of GST.
- 9.2. Unless otherwise stated, all prices quoted are ex works. An additional charge will be included if the Purchaser requires the Seller to arrange delivery or transport of the Goods to a Delivery Point as the Seller's then prevailing rates or if none exist at a reasonable charge and the Seller shall not be obliged to make delivery of the Goods until such charge is paid, unless agreed otherwise by the Seller.
- 9.3. Prices quoted are those ruling at the date of issue of quotation and are subject to adjustment by reason of:
  - 9.3.1. any variation in the cost of labour, material and transport;
  - 9.3.2. any variation in exchange rates, customs duty, freight, insurance, shipping expenses and cartage;
  - 9.3.3. any variation in the amount of work required to produce the Goods due to a variation in specification approved by the parties;
  - 9.3.4. any other charges affecting the cost of production; and
  - 9.3.5. the Goods being delivered to premises other than the Delivery Point originally specified in the Order.
- 9.4. If work is suspended on any Order due to the Purchaser's instructions or lack of instructions, the Order price shall be increased to cover any extra expense incurred.



- 9.5. Any prices quoted apply only if all of the Goods included in the quotation are purchased. Should the Purchaser require part only, the Seller reserves the right to submit a revised quotation.
- 10. Payment**
- 10.1. A 50% deposit shall be paid to the Seller by the Purchaser on all COD transactions in cash, or by bank cheque or electronic funds transfer prior to commencement of work detailed on the Purchaser's Order. The balance is to be paid by the Purchaser to the Seller prior to delivery of the Goods.
- 10.2. Payment of all moneys due on account or COD, are required to be made by the Purchaser to the Seller's Premises or by electronic funds transfer directly to the Seller's nominated bank account.
- 10.3. If the Seller has approved a credit facility for the Order or the Purchaser's account with the Seller then, subject to contrary statement in the Order, all amounts due for payment will be paid to the Seller on **30 day terms from the date of the invoice**.
- 10.4. Time is of the essence and continuation of credit facilities is conditional on payment of the account being received by the Seller within the agreed credit terms.
- 11. Discount**
- 11.1. All discounts applied to the Purchaser's invoices are conditional on payment being received by the Seller by the due date for payment. In the event of a default by the Purchaser, all discount may be reversed and the additional charge payable by the Purchaser.
- 12. Default**
- 12.1. Each of the following is an Event of Default:
- 12.1.1. any amount payable by the Purchaser to the Seller is not paid by the due date;
- 12.1.2. the Purchaser commits any other breach of the terms of an Order or these Terms and Conditions;
- 12.1.3. any of the following events occurs in relation to the Purchaser:
- 12.1.3.1. an order is made, or an effective resolution is passed for the winding up of the Purchaser or a meeting is summoned or convened for the purpose of considering such a resolution otherwise than for the purpose of amalgamation or reconstitution or a liquidator or provisional liquidator is appointed;
- 12.1.3.2. any person appoints a receiver or receiver and manager over the whole or any part of the undertakings or assets of the Purchaser;
- 12.1.3.3. the Purchaser enters any arrangement or composition with any of its creditors or is or states it is insolvent;
- 12.1.3.4. the Purchaser is placed under administration or a meeting is summoned or other step is taken for the purpose of placing the Purchaser under administration and appointing an administrator;
- 12.1.3.5. the Purchaser is unable to pay its debts as they fall due or otherwise commits any act of bankruptcy within the meaning of the *Bankruptcy Act 1966 (Cth)*; or
- 12.1.3.6. anything analogous to the above or having substantially similar effect to any of the events specified above happens to the Purchaser under the law of any applicable jurisdiction; and/or
- 12.1.4. any of the events in clause 12.1.3 happens in relation to a person who has provided a guarantee of the Purchaser's obligations to the Seller or such guarantor dies, or the guarantee provided by the guarantor is or becomes, in the Seller's reasonable opinion, unenforceable against the guarantor.
- 12.2. If an Event of Default occurs, the Seller may, with or without notice to the Purchaser:
- 12.2.1. suspend any credit facility or where the Purchaser has a number of accounts, suspend all credit facilities, and all amounts owing (whether due and payable or not) will become immediately due and payable;
- 12.2.2. immediately cease conducting any further work or supply Goods the subject of any Order; and
- 12.2.3. exercise any other rights afforded to the Seller under these Terms and Conditions or at law for recovery of any moneys payable to the Seller including costs, interest and any other moneys payable as a result of the default under the Order or these Terms and Conditions.
- 13. Interest**
- 13.1. Interest will be charged at the rate of 1.5% per month (calculated on daily balances) on all overdue balances until paid in full.
- 14. Costs**
- 14.1. The Purchaser will pay to the Seller all collection expenses, legal and other costs and outlays on an indemnity basis incurred as a result of any Event of Default including all costs incurred by the Seller in responding to an Event of Default and/or enforcing its rights under these Terms and Conditions or at law.
- 15. Dishonoured Cheques**
- 15.1. The Purchaser agrees to pay a dishonour fee of \$100.00 in respect of each presentation of a cheque received from the Purchaser which is not honoured upon its presentation.
- 16. Returns and Claims related to delivery**
- 16.1. All returns are at the Seller's discretion.
- 16.2. Without limiting the provisions of clause 16.1:
- 16.2.1. custom made Goods will not be considered for return or credit;
- 16.2.2. returned Goods will only be considered for credit by the Seller if returned by the Purchaser within 7 days from the date of the relevant invoice; and
- 16.2.3. returned Goods, if accepted by the Seller, may attract a restocking fee on the Goods returned by the Purchaser.
- 16.3. Claims related to delivery including but not limited to incorrect quantity and damaged Goods must be received in writing within 2 days of delivery to be considered.
- 17. Change of Ownership**
- 17.1. The Purchaser undertakes to notify the Seller, in writing within seven (7) days, of any change in the constitution or ownership of the Purchaser or the Purchaser's business, and if the Purchaser fails to notify the Seller of such change, agrees to remain liable for all transactions charged to the account of the Purchaser until new credit facilities have been approved for the new applicant. The Purchaser further agrees to immediately finalise the entire balance owing, whether due or not, and whether the new credit facility has been approved or not for the new applicant.
- 17.2. No changes to the Purchaser or the Purchaser's business affect Orders current as at the date of the change.
- 18. Cancellation**
- 18.1. No Order may be cancelled except with the consent in writing of the Seller and on terms which indemnify the Seller against losses arising from the cancellation.
- 18.2. The Seller reserves the right to cancel any Order in whole or in part and resell the Goods by notice to the Purchaser:
- 18.2.1. if an Event of Default occurs;
- 18.2.2. if the Seller considers that it is, or maybe, unable to satisfy the Order within a reasonable time or at all; or
- 18.2.3. if Goods stored pursuant to clause 5 remain uncollected or the Purchaser fails to give satisfactory instructions for the dispatch of the Goods after a period of forty-eight (48) hours from notification to the Purchaser that they are ready for collection.
- 18.3. In the event of cancellation of an Order under clause 18.2.1 or 18.2.3, the Purchaser shall be liable to indemnify the Seller for any costs and expenses incurred prior to cancellation and for reasonable cancellation charges as determined by the Seller and shall have no claim against the Seller for any damages, loss, costs or expenses whatsoever.
- 19. Products and Services**
- 19.1. It is the Purchaser's responsibility to furnish the Seller with clear written instructions as to the product specifications, including but not limited to, terrain, region, sail area, what size attachments are required on poles for luminaries, control gear etc., together with clearances required. Failure on the part of the Purchaser to furnish this information will absolve the Seller from any responsibility whatsoever for rectification to poles and the costs of any such rectification shall be payable by the Purchaser. The Purchaser warrants that the information provided is correct and the Seller will not be held responsible for relying on the information provided by the Purchaser. Any period specified for delivery will not start to run until this information is received.
- 19.2. Unless otherwise stated in the Seller's quotation, "poles" means the provision of poles only and excludes any engineering design and calculations, foundations, installation and maintenance services and ancillary items, including but not limited to rag bolts, cages, concrete bases etc.
- 19.3. Unless otherwise stated in the Seller's quotation, poles will not be supplied assembled or with climbing rungs, platforms, cross arms or any non-standard fittings attached.
- 19.4. The Seller accepts no responsibility or liability for the incorrect assembly by the Purchaser (or its subcontractors) of the poles and attachments supplied by the Seller to the Purchaser.
- 19.5. The Seller accepts no responsibility or liability for the installation by the Purchaser (or its subcontractors) of poles and/or foundations supplied by the Seller to the Purchaser.
- 19.6. The Seller does not warrant the suitability or adequacy of foundations or poles ordered by the Purchaser unless otherwise agreed in writing.
- 19.7. If the Seller provides foundation design to the Purchaser, the Purchaser will be responsible for the cost of rectifying foundations not made in strict accordance with the specifications provided by the Seller to the Purchaser. The Purchaser will indemnify the Seller against any claims, liabilities or actions for loss or damage to the Seller, its directors, employees or agents arising from any cause connected in any way with the foundations, except to the extent where it is the result of negligence of the Seller in providing design and installation services.
- 19.8. If the Seller has contracted to provide installation services, the Purchaser must supply, at its own cost, suitable concrete footings with rag bolts correctly positioned in those footings to enable installation of poles. The Seller can supply rag bolts at the Purchaser's expense. Unless otherwise agreed in writing, the Purchaser is responsible for all foundations and concrete footings, including but not limited to any final cement grouting. All quotations are made on the basis that the site is suitable for the Seller's crane to operate to enable installation of poles. Unless otherwise agreed in writing, the Purchaser will be responsible for the removal of any obstructions from the site prior to installation of poles.
- 19.9. When the Seller is involved in installation or other site work, the manner in which such work is carried out shall be at the sole discretion of the Seller. The Purchaser will indemnify the Seller against any claims, liabilities or actions for loss or damage by or against the Seller, its directors, employees, agents and contractors arising from any cause connected in any way to the Seller's activities on the site.
- 20. Site Conditions**
- 20.1. All quotes inclusive of installation or site work are given on the basis that:
- 20.1.1. the site conditions are suitable for a full concrete truck to be driven to and located adjacent to any foundation position;
- 20.1.2. the Seller will not be responsible for or liable for the cost of, the removal of sand or other materials dug from the foundations or preparation at the site unless otherwise agreed in writing; and
- 20.1.3. there are no underground pipes, cables, rock high water table or other obstructions to such digging.



- 20.2. When work of any kind is carried out by the Seller or contractor of the Seller on the premises of the Purchaser or its agents or customers unless the Purchaser notifies the Seller in writing prior to commencement of such work of any hazards or perils attaching to or imported into such premises, or to the buildings, machinery, plant or materials thereon or the nature or methods of the work being done or from any other cause whatsoever the Seller shall not be liable for any loss or damage occasioned to the Purchaser, its directors, employees or agents arising from any cause connected in any way with any such hazards or perils.
- 21. Force Majeure**
- 21.1. The Seller shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in, or delayed in manufacturing, obtaining or delivering the Goods by normal route or means or delivery through any circumstances beyond its reasonable control, including, but not limited to, strikes, lock-outs, accidents, war, fire, flood, explosion, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery, shortage or unavailability of raw materials from normal source of supply, act of God or any order or direction of any local, State or Federal Government, Government authority or instrumentality.
- 22. Intellectual Property Rights**
- 22.1. The Purchaser warrants that any design instruction furnished to the Seller shall not be such as will cause the Seller to infringe any patent, registered design, trademark or copyright or involve the unauthorised disclosure of confidential information in the execution of the Purchaser's Order. The Purchaser agrees to indemnify and hold harmless the Seller and each of its directors, employees and agents against any infringement or threatened infringement or allegation of unauthorised use of patents, trademarks, registered designs, copyright or confidential information arising out of the manufacture or use of the Goods.
- 22.2. Copies of drawings, plans, specifications and any other written or printed matter submitted to the Purchaser shall remain the property of the Seller and the information contained in such documents shall be treated as strictly confidential and shall not be used to the advantage of the Purchaser or the detriment of the Seller. The sale and purchase of the Goods does not confer on the Purchaser any licence or rights under any patents, registered designs, trademarks, copyright or confidential information which is the property of the Seller. The Seller shall be under no obligation to disclose the methods or techniques used in production.
- 23. GST and Other Taxes**
- 23.1. The Purchaser must pay or reimburse the Seller for any GST that the Seller must pay on any taxable supply (within the meaning of the GST Act) made to the Purchaser at the time. Payment must be made at the same time as the Purchaser is required to pay the sum of the taxable supply unless otherwise agreed by the Seller.
- 23.2. Any other tax, duty, impost or excise imposed in respect of the sale of the Goods under any Order is also to be paid in addition to and with the purchase price stated in any Order.
- 24. Limitation of Liability and Indemnity**
- 24.1. This clause 24 is subject to the provisions of clause 24.7.
- 24.2. All warranties, conditions, liabilities or representations as to the quality or fitness of the Goods or the correctness of information, advice or other services concerning the Goods or otherwise (other than any rights which by law cannot be excluded, restricted or modified) are expressly excluded.
- 24.3. To the fullest extent permitted by law, the liability of the Seller, its directors, employees or agents for breach of any of the non-excludable rights referred to in clause 24.2 or any express warranty is limited at the Seller's option to:
- 24.3.1. in the case of physical Goods, any one or more of the following:
- 24.3.1.1. the replacement of the Goods or the supply of equivalent Goods;
- 24.3.1.2. the repair of the Goods;
- 24.3.1.3. the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
- 24.3.1.4. the payment of the cost of having the Goods repaired; and
- 24.3.2. in the case of services:
- 24.3.2.1. the supplying of the services again; or
- 24.3.2.2. the payment of the cost of having the services supplied again.
- 24.4. The Seller shall not be liable for any loss or damage (including any consequential loss or damage) of any kind howsoever arising even if due to the negligence of the Seller, its directors, employees or agents.
- 24.5. Without limitation to the generality of any other clause in these Terms and Conditions and notwithstanding any inconsistent term and condition or anything to the contrary contained in any documentation of the Purchaser relating to the supply of the Goods (including an Order), the Seller shall not be liable to the Purchaser for any loss or damage of any kind whatsoever (including without limitation, any liquidated damages) in relation to the Seller ceasing work on Orders of the Purchaser or holding the work of the Purchaser until payment of the subject Order is received or while the Purchaser is in default of these Terms and Conditions for any reason.
- 24.6. The Purchaser indemnifies the Seller from and holds it harmless against all liabilities, losses, damages, costs or expenses directly or indirectly incurred or suffered by the Seller as a result of compliance or adherence by the Seller with any instructions of the Purchaser in relation to the Goods and from and against all actions, proceedings, claim or demands made against the Seller as a result of such compliance or adherence, or arising from any of the following:
- 24.6.1. as a result of the Purchaser's failure to:
- 24.6.1.1. take reasonable precaution 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 Seller may become liable; or
- 24.6.1.2. otherwise comply with any laws, rules, standards or regulations applicable in relation to the Goods or the installation or use of the Goods;
- 24.6.2. as a result of any other negligence or other breach of duty by the Purchaser; or
- 24.6.3. as a result of any compliance or adherence by the Seller with any instruction of the Purchaser in relation to the Goods or their use or manner of fabrication, installation, maintenance or servicing.
- 24.7. In relation to the sale of Goods to a consumer within the meaning of the Australian Consumer Laws, the Seller acknowledges the sale of the Goods may be the subject of certain guarantees and nothing in these Terms and Conditions shall restrict or diminish the Purchaser's rights under the Australian Consumer Laws.
- 25. Risk**
- 25.1. Risk in the Goods shall pass to the Purchaser on the earlier of:
- 25.1.1. dispatch of the Goods from the Seller's Premises for the purpose of delivery; or
- 25.1.2. when the Goods are deemed delivered under clause 5.2; or
- 25.1.3. when the Seller gives notice to the Purchaser that the Goods are completed and have been placed in storage under clause 5.6.1.
- Changes to deemed delivery times resulting from the application of clauses 5.3, 5.4 and 5.6.2 or the making of subsequent arrangements regarding delivery or collection do not affect the time of passing of risk.
- 25.2. The Seller shall not be liable for any loss or deterioration of, or damage to, the Goods from the time when the Goods are put on the vehicle of a carrier notwithstanding that freight may be arranged or the carrier engaged by the Seller.
- 25.3. The Purchaser must effect and maintain adequate insurance of the Goods in the name of the Purchaser and the Seller for their respective rights and interests for all times at which the Goods are at the risk of the Purchaser until payment of the Order in full is received by the Seller.
- 26. Title**
- 26.1. The Seller retains full title to the Goods until the Seller receives payment in full for the Goods and all other amounts owed by the Purchaser to the Seller under the terms of the subject Order or as otherwise required under these Terms and Conditions in so far as it relates to the subject Order.
- 26.2. Until all such moneys have been paid:
- 26.2.1. the Seller shall have a general lien in respect of all sums due from the Purchaser upon all Goods and any other property held by the Seller including property of the Purchaser upon which work has been done or is being done or which has been supplied for the purpose of conducting work by the Seller and, if the Purchaser is in breach of the agreed terms and conditions, upon expiry of seven (7) days written notice to the Purchaser, the Seller may sell such Goods by auction or private treaty and apply the proceeds towards the satisfaction of any sums due to the Seller, including all costs incurred in exercising the lien and right of sale, including storage and selling costs; and
- 26.2.2. the Seller has the right to call for or recover possession of any Goods (for which purpose the Seller's employees or agents may enter onto the Purchaser's premises) that it has supplied to the Purchaser and which remain unpaid for and the Purchaser must deliver up the Goods if so directed by the Seller.
- 26.3. In respect of Goods which the Purchaser has received and remain unpaid:
- 26.3.1. agrees that the relationship between the Purchaser and the Seller shall be fiduciary and the Purchaser must keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to the Seller;
- 26.3.2. must not resell, encumber or dispose of the Goods;
- 26.3.3. must not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to the Seller in their original state;
- 26.3.4. agrees that if, in breach of this clause, the Goods are incorporated with Goods of the Purchaser, the resultant product shall become and be deemed to be the sole property of the Seller. If the Goods are incorporated in any way with the property of a party other than the Purchaser, the resultant product shall become and be deemed to be owned in common by the Seller with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Purchaser of the incorporated materials; and
- 26.3.5. will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Purchaser) in breach of this clause in trust for the Seller and must pay the proceeds into a separate fiduciary account to be held in trust for the Seller until accounted for to the Seller at the demand of the Seller.
- 27. Charging Clause**
- 27.1. To secure payment of all moneys which are or may become payable by the Purchaser to the Seller under this Agreement the Purchaser (or where the Purchaser is comprised of two or more persons then each person jointly and severally) hereby charges with the due payment of all of those moneys all of the Purchaser's interest in all property owned by the Purchaser including real property wherever located both present and future and the Purchaser consents to the Seller lodging a security including a financing statement under the PPSA or a caveat or caveats over such property to protect its interest.
- 27.2. Upon demand by the Seller, the Purchaser agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Seller to further secure the Purchaser's indebtedness to the Seller.
- 27.3. Should the Purchaser fail within a reasonable time of such demand to execute such mortgage or other instrument then the Purchaser appoints irrevocably the credit manager or a duly authorised officer of the Seller to be the Purchaser's lawful attorney to execute any such mortgage or other instrument.
- 28. PPSA**
- 28.1. In this clause 28, words and phrases defined in the PPSA have the same meaning as defined in the PPSA.
- 28.2. It is the intention of the parties by clause 26 that there is created for the benefit of the Seller a Purchase Money Security Interest in all unpaid Goods.



- 28.3. It is the intention of the parties by clause 27 that there is created for the benefit of the Seller a general security interest in all present and after acquired property of the Purchaser.
- 28.4. The Purchaser agrees that the Seller may register a financing statement of its Purchase Money Security Interest, its general security interest and any other security interest in the Goods created by these Terms & Conditions on the Personal Property Securities Register and the Purchaser waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by the Seller in respect of any personal property of the Purchaser.
- 28.5. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Purchaser or place an obligation on the Seller, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that the Seller otherwise agrees in writing.
- 29. Credit Limit**
- 29.1. Where the Seller has approved a credit facility for the Purchaser:
- 29.1.1. any credit limit is solely for the benefit of Seller; and
- 29.1.2. the obligations of the Purchaser under this Agreement remain unchanged if the credit limit is exceeded or not specified at any time.
- 30. Privacy**
- 30.1. The Seller abides by its obligations with respect to privacy. The Purchaser and its guarantors, if any, may view the Seller's privacy policies (APP Privacy Policy and Credit Reporting Privacy Policy) at [www.ingaleps.com.au](http://www.ingaleps.com.au).
- 30.2. The Purchaser and its guarantors, if any, understand that the personal information given herein or in any Order, credit application or other document, is to be used by the Seller for the purposes of assessing the Purchaser's credit worthiness. The Purchaser and its guarantors, if any, confirms that the information given by the Purchaser is accurate and complete. Furthermore, the Purchaser and its guarantors, if any, agrees to provide updated information, as and when further information is requested by the Seller for the purpose of reviewing the credit history of the account, updating the Seller's credit file on the Purchaser and its guarantors, if any, and/or reviewing credit limits.
- 31. Waiver**
- 31.1. Failure by the Seller to insist upon strict performance of any term, warranty or condition of these conditions of sale shall not be deemed a waiver of any rights the Seller may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.
- 32. Notices**
- 32.1. Any notices required or authorised to be given or served upon a party pursuant to these conditions of sale shall be in writing and shall be delivered personally or sent by email, facsimile or post to the relevant party at its address as appearing in the Order or its last known address.
- 32.2. A notice given or served in accordance with clause 32.1 shall be deemed to have been received:
- 32.2.1. in the case of a notice delivered personally, at the time of delivery;
- 32.2.2. in the case of a notice sent by facsimile transmission, at the time stated on a successful transmission report printed by the sender's facsimile machine;
- 32.2.3. in the case of a notice sent by post to an address within Australia, on the third (3<sup>rd</sup>) day following the day of posting; and
- 32.2.4. in the case of a notice sent by post to an address outside Australia, on the seventh (7<sup>th</sup>) day following the day of posting; and
- 32.2.5. in the case of a notice sent by email, at the time of email transmission stated on the sender's email unless the sender is subsequently becomes aware that transmission was impaired.
- 32.3. The Purchaser and the Seller consent to contracts being made and communications being sent by email transmission for the purpose of the *Electronic Transactions (Queensland) Act 2001*.
- 33. Severability**
- 33.1. Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction is to be read down for the purpose of the jurisdiction, if possible, so as to be valid and enforceable as is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 34. Seller's Rights**
- 34.1. The rights and remedies of the Seller under these Terms and Conditions shall be in addition to, and shall not derogate from any other rights or remedies to which it may be entitled by separate contract or by law.
- 35. Applicable Law**
- 35.1. These Terms and Conditions, any Orders and the contracts resulting from the making of Orders shall be subject to and interpreted in accordance with the laws in the State of Queensland. In the event that legal proceedings are commenced, the parties agree to these proceedings being heard in a court of competent jurisdiction in the locality of the Seller's Premises, and if that locality is outside of Queensland then in Brisbane, Australia.
- 36. Entire Agreement**
- 36.1. These Terms and Conditions, together with any Order, contain the entire agreement between the parties and any other terms, whether express or implied, are excluded here from and any variations, cancellations or additions to these Terms and Conditions shall not be of any force or effect unless expressly agreed to in writing and signed by the parties or their duly authorised signatories.