
 A <b>valmont</b>  COMPANY	<b>SITE PRO 1 Form</b>	
	<b>No: AR-SALES-PRO1-DOC-001</b>	<b>Rev: 1</b>
	<b>Standard Terms and Conditions of Sale</b>	
THIS DOCUMENT SUPERSEDES ( ). ALL REFERENCES TO SUPERSEDED DOCUMENTS MUST NOW BE READ AS THIS DOCUMENT NUMBER: AR-SALES-PRO1-DOC-001 V.1 PRO 1 STANDARD TERMS AND CONDITIONS OF SALE		

## Site Pro 1 – Components Division

### STANDARD TERMS AND CONDITIONS OF SALE

This document (“Document”) contains the standard terms and conditions of sale by Industrial Galvanizers Corporation Pty Ltd ABN 40 000 545 415 trading as Site Pro 1 (“Supplier”) to any purchaser (“Purchaser”) of products and services provided by the Supplier (“Product”). Any additional or different terms contained in any order or other document submitted by the Purchaser to the Supplier do not apply unless expressly agreed in writing by the Supplier. In no event shall the Supplier’s silence or failure to respond to any such additional or different terms be deemed to constitute acceptance or approval thereof. By submitting an order of Products (“Sales Order”), the Purchaser agrees that the Sales Order is subject to the terms of this Document as amended from time to time. The Supplier may amend this Document at any time by updating and adding the updated version of this Document to the Supplier’s website following which all Sales Orders shall be the subject of the updated Document.

### MODIFICATIONS, RESCISSION & CANCELLATION:

Any Sales Order may be modified or rescinded only in writing signed by duly authorized representatives of the parties. For any changes requested by the Purchaser to the specification, style, or quantity of the Product, the Purchaser shall pay the Supplier a charge equal to the actual additional cost incurred by the Supplier as a result of such change plus a reasonable percentage of such actual cost for overhead and profit. Orders may be cancelled only with the Supplier’s written consent and upon terms which will save the Supplier from loss, including all out-of-pocket costs and lost profits.

### LIMITED WARRANTY:

The Supplier warrants the Product to be free of material and workmanship defects for a period of three (3) years from the date of shipment or collection from the Supplier’s premises, but said warranty is limited to material and workmanship of Product designed and manufactured by the Supplier or its subcontractors and to the extent that it is applied in the manner and in accordance with the specification for which it is designed as advised from time to time by the Supplier.

For product manufactured or fabricated by the Supplier according to specifications or designs provided by the Purchaser or the Purchaser’s designee, the Supplier makes no warranty concerning the adequacy or sufficiency of the specifications or designs themselves.

All warranty claims alleging defects of materials or workmanship must be submitted in writing within thirty (30) days after the discovery of the defect or such claim shall be considered waived. The Supplier will not accept Product returned to them for repair or replacement, unless the Supplier is previously notified of the defect in writing and the return or correction is authorized by the Supplier in writing. Any Product deemed by the Supplier, in its sole discretion, to be defective in material or workmanship will be repaired or replaced, at the Supplier’s

option, following return to the Supplier's facility. The Supplier's obligation to repair or replace any defective Product shall not include any obligation to reimburse the Purchaser for transportation (including return to the Supplier's facility), installation, removal, unauthorized repairs, site and/or crew mobilization, manpower, equipment costs, or any other expenses that may be incurred by the Purchaser or others in relation to any Product defect.

THIS WARRANTY EXCLUDES: DAMAGE CAUSED BY IMPROPER INSTALLATION, OVERLOADING, MISUSE, ABUSE, ACCIDENT OR NEGLIGENCE. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER REMEDIES. THESE ARE THE ONLY REMEDIES OF PURCHASER FOR ANY BREACH OF WARRANTY OR ANY OTHER CLAIM. SUPPLIER'S TOTAL LIABILITY, WHETHER ON A WARRANTY CLAIM OR A CLAIM OF NEGLIGENCE, OR OTHERWISE, SHALL NOT IN ANY CASE EXCEED THE COST PAID BY PURCHASER TO SUPPLIER FOR PRODUCT. IN NO CASE SHALL THE SUPPLIER BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES. DELIVERY, FREIGHT & RISK OF LOSS.

LABOUR REQUIRED TO REMOVE AND/OR REINSTALL ORIGINAL OR REPLACEMENT PARTS SHALL BE THE RESPONSIBILITY OF THE CUSTOMER; DAMAGE CAUSED BY IMPROPER INSTALLATION, OVERLOADING, MISUSE, ABUSE, ACCIDENT OR NEGLIGENCE.

In addition, this warranty does not cover alterations, modifications, or additions unless the change is acknowledged and accepted, in advance in writing, by the Supplier's authorized engineer.

All other warranties, conditions, liabilities or representations as to the quality or fitness of the Product or the correctness of information, advice or other services concerning the Product or otherwise (other than any rights which by law cannot be excluded, restricted or modified) are expressly excluded.

Notwithstanding the foregoing, nothing in this Document seeks to diminish any statutory warranties, including consumer warranties, applicable to the Sale Order which apply unaffected by the provisions of this Document. If the Customer is a Consumer ("**Consumer**" has the meaning defined in Section 3 of the Competition and Consumer Act 2010) the Products come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.

#### DELIVERY, FREIGHT & RISK OF LOSS:

All products are sold for delivery or pick up from the Supplier's facility. For shipment, freight charges will be prepaid and added to the invoice with all other applicable charges from said point of delivery being the responsibility of the customer, unless otherwise noted. The method of shipment will be solely determined by the Supplier, using a common carrier of the Supplier's choice. The customer assumes and will pay all charges for special services such as cartage, airfreight, express deliveries, parcel post and multiple deliveries on one order. The Purchaser accepts risk for the Product from the moment the Product leaves the Supplier's facility.

#### PRICING:

Unless otherwise stated, all prices quoted on the Supplier's website or in Sales Orders are exclusive of goods and services tax and other sales taxes. The Purchaser agrees to pay goods and services tax and other sales taxes in addition to the quoted price of the Products.

All prices and discounts are subject to change without advance notice except those shown on a specific quotation indicating the prices to be firm for thirty (30) days from the date of the quotation. For quotations accepted by the

Purchaser, the Purchaser agrees that if the contract documents or designs or the prices of raw materials change from that contained in the quotation, Supplier has a right to charge additional compensation for increased costs, including, without limitation, costs related to freight and raw materials, as well as for increased margin associated therewith.

#### RETURNS & CLAIMS FOR SHORTAGES:

All claims for shortages must be made in writing within 10 days of receipt of the Product by the Purchaser. Subject to warranty provisions, any returns are at the Supplier's discretion. Without limiting the foregoing, the Supplier will not accept returns for custom-made or special products, safety climb systems, hardware items, used safety equipment (unless defective), chimney mounts, tower mods, or other items that the Supplier determines cannot be resold, including items in quantities exceeding the Supplier's usual demand.

Standard (non-custom) Product may not be returned without the written consent of Supplier obtained within thirty (30) days after shipment. Where the Supplier accepts return of Product, return is on the following conditions: (i) all returned Product must be in excellent and merchantable condition and in the original packaging and have been stored indoors; (ii) the outbound and return freight must be pre-paid; and (iv) the return is subject to certain charges depending on current pricing and product.

#### PRODUCT SHIPPED WITH PROTECTIVE COVERING:

Product received at the point of destination with protective covering should be unwrapped immediately and inspected. Any exposure to moisture during transportation or storage may cause the wrapping materials to stain the Product. Product is wrapped for protection during shipment.

#### INSTALLATION:

The Purchaser shall be solely responsible, at its cost, for the installation and erection of the Product purchased. Although the Supplier may, in some cases, provide data, manuals, instructions, designs, drawings or specifications to aid the Purchaser with installation or start-up, THE SUPPLIER ASSUMES NO RESPONSIBILITY FOR PROPER INSTALLATION OR SUPPORT OF THE PRODUCT WHEN ERECTED AND DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO SUCH INSTALLATION OR SUPPORT, WHETHER OR NOT DATA, MANUALS, INSTRUCTIONS, DESIGNS, DRAWINGS OR SPECIFICATIONS ARE PROVIDED.

#### DELAYS:

The Supplier will deliver or ship with reasonable promptness, but shall not be liable for delays for any reason unless expressly agreed by the Supplier at the time of making of the Sales Order. In no event shall the Supplier be liable for delays beyond the Supplier's reasonable control, including, but not limited to, delays caused by acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, accidents, quarantine restrictions, mill conditions, strikes, differences with workmen, delays in transportation, shortages of cars, fuel, labour or materials.

IN ANY SUCH EVENT, THE SUPPLIER SHALL HAVE SUCH ADDITIONAL TIME WITHIN WHICH TO PERFORM AS MAY BE REASONABLE AND NECESSARY UNDER THE CIRCUMSTANCES, AND THE SUPPLIER SHALL NOT BE LIABLE TO PURCHASER FOR ANY DAMAGES ARISING FROM SUCH DELAYS, LOSS OF USE OR FOR OTHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND WHATSOEVER. IN NO EVENT SHALL THE SUPPLIER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LABOUR RESULTING FROM FAILURE OR DELAY IN DELIVERY.

#### TERMS, INVOICES, PAYMENT, LATE CHARGE and TAXES:

Payment terms are COD unless credit terms are approved. Credit terms are NET thirty (30) days from the date of the Supplier's invoice, unless otherwise specified and approved in advance in writing from the Supplier's credit department. Invoices will be rendered upon delivery of each order to Purchaser. All payments shall be made to the "remit to" location as stated on the Supplier's invoice.

The Supplier reserves the right to invoice, and the Purchaser agrees to pay for, any or all Product ready for shipment, together with expenses, costs, and losses associated therewith, whenever shipment is delayed pursuant to Purchaser's written instructions or for other reasons beyond Supplier's control including storage charges for Product left uncollected. Invoices for anchor bolts shipped in advance of the structures may be billed at the time of such anchor bolt shipment. A monthly late charge of 1.5% of the invoice amount or \$50, whichever is greater, will accrue and be payable on all overdue amounts. Any tax or other charge imposed by law on the sale of Product or the performance of services shall be paid by the Purchaser, unless the law specifically provides that such payment must be absorbed by the Supplier.

The Purchaser shall inform the Supplier, in advance in writing, of such taxes or other charges that the law provides are to be paid by the Supplier.

#### TITLE AND SECURITY:

Notwithstanding the assumption of risk by the Purchaser, the Supplier retains full title in the Product until the Supplier receives payment in full for the Product and all other amounts owed to the Supplier under the subject Sales Order. Until such monies have been paid:

- (a) the Supplier shall have a general lien in respect of all sums due from the Purchaser upon all Product and any other property held by the Supplier 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 Supplier 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 Supplier may sell such Product by auction or private treaty and apply the proceeds towards the satisfaction of any sums due to the Supplier, including all costs incurred in exercising the lien and right of sale, including storage and selling costs;
- (b) the Supplier has the right to call for or recover possession of any Product (for which purpose the Supplier'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 Product if so directed by the Supplier.

In respect of Product which the Purchaser has received and remain unpaid:

- (a) agrees that the relationship between the Purchaser and the Supplier shall be fiduciary and the Purchaser must keep the Product safely, securely and separately stored and marked in a manner which clearly indicates that they belong to the Supplier;
- (b) must not resell, encumber or dispose of the Product;
- (c) must not mix the Product with or attach them to other materials or otherwise make them unable to be returned to the Supplier in their original state;
- (d) agrees that if, in breach of this clause, the Product are incorporated with Product of the Purchaser, the resultant product shall become and be deemed to be the sole property of the Supplier. If the Product 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 Supplier 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

- (e) will hold any proceeds, as that term is defined in the Personal Property Security Act 2009 (Cth) ("PPSA"), of any resale, disposal or other dealing with the Product or any product incorporating the Product (including sale or supply to a party other than the Purchaser) in breach of this clause in trust for the Supplier and must pay the proceeds into a separate fiduciary account to be held in trust for the Supplier until accounted for to the Supplier at the demand of the Supplier.

To secure payment of all moneys which are or may become payable by the Purchaser to the Supplier 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 Supplier lodging a security including a financing statement under the PPSA or a caveat or caveats over such property to protect its interest.

Upon demand by the Supplier, the Purchaser agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure the Purchaser's indebtedness to the Supplier.

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 Supplier to be the Purchaser's lawful attorney to execute any such mortgage or other instrument.

#### DEFAULT OF PURCHASER:

In the event that (i) Purchaser fails to pay any invoice when due; (ii) Purchaser breaches the terms of this Document, any Sales Order or any other contract with the Supplier or any of its affiliated companies; or (iii) the Purchaser becomes insolvent within the meaning of the Bankruptcy Act 1966 (Cth) or the Corporations Act 2001 (Cth) or the Supplier otherwise determines, acting reasonably, that the Purchaser's financial strength becomes unsatisfactory to make payment of any Sales Order, the Purchaser shall thereby be in default, and the Supplier reserves the right, in its sole discretion, to do any one or more of the following:

- (a) cancel any Sales Order and any work in progress, shipments, and pending orders without further notice;
- (b) declare all sums owing from the Purchaser to the Supplier to be due and payable;
- (c) require payment in advance of performance, in cleared funds;
- (d) foreclose any security interest;
- (e) require other security satisfactory to Supplier.

The Purchaser shall be liable to the Supplier for any and all damages, whether direct, indirect, consequential, special or any other kind of damages, caused by or arising out of any breach of this Document or any Sales Order, provided that the exercise of any rights under this contract shall not bar the Supplier from exercising any other rights under any other applicable law. The Purchaser waives any applicable statutory exemptions and shall pay all expenses incurred by the Supplier in the collection of the amounts due under this Document, including legal fees.

#### PPSA:

In this section, words and phrases defined in the PPSA have the same meaning as defined in the PPSA.

It is the intention of the parties by this Document that there is created for the benefit of the Supplier a Purchase Money Security Interest in all unpaid Product. It is the intention of the parties by this Document that there is

created for the benefit of the Supplier a general security interest in all present and after acquired property of the Purchaser.

The Purchaser agrees that the Supplier may register a financing statement of its Purchase Money Security Interest, its general security interest and any other security interest in the Product created by this Document 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 Supplier in respect of any personal property of the Purchaser. 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 Supplier, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that the Supplier otherwise agrees in writing.

#### INTELLECTUAL PROPERTY RIGHTS

The Purchaser warrants that any design instruction furnished to the Supplier shall not be such as will cause the Supplier to infringe any patent, registered design, trademark or copyright or involve the unauthorised disclosure of confidential information in the execution of the Purchaser's Sales Order.

Copies of drawings, plans, specifications and any other written or printed matter submitted to the Purchaser shall remain the property of the Supplier 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 Supplier. The sale and purchase of the Products 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 Supplier. The Supplier shall be under no obligation to disclose the methods or techniques used in production.

#### LIABILITY, INDEMNIFICATION & GOVERNING LAW:

To the fullest extent permitted by law, the liability of the Supplier, its directors, employees or agents for breach of any of the non-excludable rights of the Purchaser in respect of any warranty or other liability of the Supplier to the Purchaser in relation to the Products is limited to:

- (a) in the case of physical goods, any one or more of the following:
  - (i) replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the costs of replacing the goods or of acquiring equivalent goods; or
- (b) in the case of services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

The Supplier 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 Supplier, its directors, employees or agents.

Without limitation to the generality of any other clause in this Document 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 Products (including a Sales Order), the Supplier 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 Supplier ceasing work on Sales Orders of the Purchaser or holding the work of the Purchaser until payment of the subject

Sales Order is received or while the Purchaser is in default of the terms of a Sales Order or this Document for any reason.

To the extent permissible by law, the Purchaser shall indemnify and hold the Supplier harmless from all expenses (including legal fees), claims, demands, suits, judgments, actions, costs, and liabilities (including without limitation those alleging the Supplier's own negligence) which may arise from, relate to, or be connected with:

- (a) the Purchaser's possession, installation, erection, start-up, use, maintenance, operation, removal, or resale of the Product described herein and any manuals, instructions, designs, drawings or specifications related thereto including but not limited to:
  - (a) the Purchaser failing to take reasonable precaution either to bring to the attention of any potential users of the Products any dangers associated with Products, or to detect any matters in relation to which the Supplier may become liable;
  - (b) the Purchaser failing to comply with any laws, rules, standard or regulations applicable in relation to the Products or the installation or use of the Products;
  - (c) any other negligence or other breach of duty by the Purchaser;
- (b) any breach by the Purchaser of the terms of this Document or any Sales Order;
- (c) any compliance or adherence by the Supplier with any instruction of the Purchaser in relation to the Products or their use or manner of fabrication, installation, maintenance or servicing.

Failure by the Supplier 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 Supplier may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

All disputes relating to the execution, interpretation, construction or enforcement of the rights and obligations of the parties hereto shall be governed by the laws of, and resolved in the State of Queensland, Australia, and the parties hereby consent to venue for the commencement of proceedings in Brisbane, Queensland.

To the extent permissible by law, any lawsuit based on or related in any way to a Sales Order or the Product described therein must be commenced within three (3) years after delivery of the Product to the Purchaser or it shall be barred.

#### PRIVACY:

The Supplier abides by its obligations with respect to privacy. The Purchaser and its guarantors, if any, may view the Supplier's privacy policies (APP Privacy Policy and Credit Reporting Privacy Policy) at [www.ingaleps.com.au](http://www.ingaleps.com.au)

The Purchaser and its guarantors, if any, understand that the personal information given herein or in any Sales Order, credit application or other document, is to be used by the Supplier 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 Supplier for the purpose of reviewing the credit history of the account, updating the Supplier's credit file on the Purchaser and its guarantors, if any, and/or reviewing credit limits.

#### NOTICES & GENERAL PROVISIONS:

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. A notice given or served in accordance with this section shall 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 stated on a successful transmission report printed by the sender's facsimile machine;
- (c) 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
- (d) 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
- (e) 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.

The Purchaser and the Supplier consent to contracts being made and communications being sent by email transmission for the purpose of the *Electronic Transactions (Queensland) Act 2001*.

The rights and remedies of the Supplier under this Document 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.

Any provision in this Document 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 this Document or affecting the validity or enforceability of that provision in any other jurisdiction.

This Document, together with any Sales Order, contains 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 this Document shall not be of any force or effect unless expressly agreed to in writing and signed by the parties or their duly authorised signatories.