

CONDITIONS OF SALE

DICTIONARY

1. Some words in these *Conditions of Sale* have a special meaning to make reading easier. These words are spelt in capital letters and their special meaning can be found in a Dictionary, which appears at clause 43 of these *Conditions of Sale*.

ACCEPTANCE OF CONDITIONS OF SALE

2. APG will sell the PRODUCT to the CUSTOMER on the terms and conditions set out in these *Conditions of Sale*. These terms have precedence over all other terms and conditions (except any distribution agreement) unless a PERSON in writing authorised to vary these terms on behalf of APG has accepted a variation.

STANDARD CLAUSES AND PRIORITY

3. To avoid dispute, the CUSTOMER agrees that if the CUSTOMER intends to rely on anything said by APG, the CUSTOMER will advise APG promptly of what was said that the CUSTOMER intends to rely on in writing and allow APG reasonable time to confirm or deny that such representations form a part of the *Conditions of Sale* between the CUSTOMER and APG. The CUSTOMER agrees that unless APG confirms in writing that the things said are accepted by it as true, nothing said is a part of any contract between the CUSTOMER and APG.

4. If APG has prepared a written comparison of the CUSTOMER'S specifications with the PRODUCT and if there is any inconsistency between the comparison and the details of the PRODUCT, the PRODUCT details override to the extent of such inconsistency.

5. APG is continually developing the PRODUCT and it is the CUSTOMER'S responsibility to check that any changes are not disadvantageous to the CUSTOMER or any party to whom the CUSTOMER may supply.

DELIVERY

6. Unless otherwise agreed in writing the PRODUCT will be delivered up by APG for collection by the CUSTOMER from the factory of APG in Cairns, Australia and the price agreed upon is "ex works".

7. If the CUSTOMER does not require delivery on the date specified for delivery, APG will store the PRODUCT for the CUSTOMER for up to 7 days without charge. If after 7 days the CUSTOMER still does not require delivery, APG may deliver the PRODUCT to the CUSTOMER and in doing so is performing its obligations and the CUSTOMER agrees to pay the delivery costs. If APG agrees to continue to store the PRODUCT, APG must be paid a storage fee of one percent (1%) of the price of the PRODUCT per month or part thereof and the CUSTOMER waives all rights to claim for defects in the PRODUCT, non-conformity with description or lack of fitness for purpose. The CUSTOMER agrees that APG will not be liable for any theft, loss or damage to the PRODUCT from 7 days after the agreed delivery date if APG agrees to store the PRODUCT for the CUSTOMER in accordance with this clause. The date due for payment is to remain irrespective of whether APG agrees to store the PRODUCT.

8. APG reserves the right to make partial deliveries against an order and to separately invoice same unless otherwise agreed in writing. Payment of such invoices will be in accordance with Clause 13 hereof.

9. Any quoted time for delivery by APG shall be deemed to be an estimate only and APG shall not be liable for late delivery or non-delivery and under no circumstances will APG be liable for any loss, damage or delay, whether direct or indirect including consequential losses, occasioned to the CUSTOMER or its customers arising from late or non-delivery of the PRODUCT or provision of services.

CANCELLATION

10. The CUSTOMER must pay to APG all costs, expenses and loss of profits if the CUSTOMER cancels an order.

PRICE

11. The price of the PRODUCT includes all costs of APG standard packaging (and loading the PRODUCT onto any vehicle or into any shipping containers provided by the CUSTOMER).

12. The CUSTOMER agrees that APG may allocate any monies received to such invoices or accounts and in such proportions as it thinks fit.

13. The CUSTOMER agrees that the CUSTOMER does not own the PRODUCT until the CUSTOMER has paid for it and legal ownership of the PRODUCT remains with APG until APG has been paid for the PRODUCT.

14. Until the CUSTOMER has paid for the PRODUCT the CUSTOMER gives to APG the following rights:

- the right to enter and remain upon any premises under the CUSTOMER'S (direct or indirect) control where the PRODUCT is located and to do so as the CUSTOMER'S agent and without liability for trespass or nuisance or any resulting damage and retake possession of the PRODUCT and/or to await payment;
- the right to keep or resell or reuse any PRODUCT repossessed;
- the right of access to all the CUSTOMER'S records, including computer records, and any other information evidencing a contract of sale or any dealings with the PRODUCT after its delivery to the CUSTOMER; and
- the right to take and retain possession of any documents or certificates of registration, ownership or any other documents evidencing title to, or ownership of, the PRODUCT.

15. The CUSTOMER agrees to pay APG, in addition to all other sums required to be paid to APG, all legal and other expenses incurred by APG in collecting any monies due from the CUSTOMER to APG and all legal and other expenses incurred by APG, its servants and agents in removing and/or retaking and/or reselling, by legal process or otherwise, the PRODUCT.

INSTALLATION TRAINING AND START-UP

16. The CUSTOMER is responsible for installation, training and start-up of the PRODUCT, unless otherwise agreed in writing.

17. PRODUCT supplied by APG shall be installed in accordance with APG recommended installation procedures and APG shall not be liable in respect of any damage occasioned to the PRODUCT by reason of any CUSTOMER, or any other PERSON, failing to install the PRODUCT in accordance with APG recommended installation procedures.

TECHNICAL ASSISTANCE

18. If required, APG will provide a technical officer for installation support, charged at APG's then prevailing labour rate per hour worked whilst on site. The CUSTOMER must pay reasonable travel and accommodation costs of any such PERSON at cost plus 10%. Travelling time to and from site will also be charged at APG's then prevailing charge per hour of travel, or part thereof.

QUOTATION AND ORDER

19. Unless specified otherwise APG quotations are valid for 30 days.

20. Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, rates of exchange, shipping expenses, cartage, cost of materials, labour rates, and other charges affecting the cost of production ruling on the date the quotation is made and any alterations thereto either before acceptance of or during the currency of the contract shall be to the CUSTOMER'S account. Prices quoted are Australian dollars unless specified otherwise.

LICENSES

21. APG will obtain and provide all approvals, licenses and permits which APG needs to manufacture the PRODUCT and the CUSTOMER is responsible for all approvals, licenses and permits needed to operate the PRODUCT after delivery. The CUSTOMER is also responsible for obtaining any necessary import approvals, licenses and permits.

WARRANTIES

22. Subject to the written warranties given by APG to the CUSTOMER and subject further to any warranty or condition imposed upon APG which cannot lawfully be excluded under any law (including warranties imposed under the Trade Practices Act) every other warranty or condition is excluded but if it cannot be lawfully excluded then the liability of APG is limited to the following:

a) in the case of the PRODUCT, any one or more of the following:

- the replacement of the goods or the supply of equivalent product;
- the repair of the PRODUCT;

b) in the case of services, at APG sole discretion:

- the supplying of services again, or
- the payment of the cost of having the services supplied again.

23. The CUSTOMER agrees that the price charged by APG reflects in part the partial limitation of liability set out in the preceding clause and the CUSTOMER agrees to release APG, its officers, directors, employees and agents from all claims, damages, causes of action, and judgments and any COSTS including the costs of delay, loss of profit and loss of data or loss of physical resource arising out of or connected with any use, manufacture, sale, distribution or exploitation of the PRODUCT.

24. The provisions of the preceding clause do not apply to limit the liability of APG for personal injury but the CUSTOMER agrees to indemnify and save harmless APG against any liability whatsoever including liability for personal injury and to carry out all steps reasonably to be expected of the CUSTOMER to avoid liability and to maintain appropriate insurance against failure of the PRODUCT and the CUSTOMER agrees that the CUSTOMER accepts all responsibility for any sales tax, goods and services tax, value added tax, customs and excise duty or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the PRODUCT or any part thereof, or upon the manufacture, use, sale or delivery of same; costs of delivery from the APG factory in Cairns, Australia; costs of delivery of any shipping containers to the APG factory in Cairns, Australia; insurance; or, shipping containers marked "returnable". If the cost to APG of performing its obligations under the contract shall be varied by reason of the making or amendment after the date of quotation of any law or order, regulation or by-law having the force of law, the amount of such increase or decrease shall be added to or deducted from the contract price.

25. Subject to the warranties given by APG and any implied terms which cannot be lawfully excluded the CUSTOMER agrees to waive all rights (capable of being waived) to claim for any defects in either the PRODUCT or services supplied by APG:

- once the CUSTOMER has certified in writing that the PRODUCT or services supplied are satisfactory; or,
- unless the CUSTOMER has drawn any defects alleged to the attention of APG in writing either within 10 days of when the PRODUCT is commissioned or within one month of delivery, whichever is the earlier.

PAYMENT AND RIGHT TO CHARGE INTEREST

26. If APG agrees to supply the PRODUCT on credit: a) The CUSTOMER acknowledges this right may be withdrawn at any time. b) The CUSTOMER must pay to APG all monies due and owing within the time shown on the invoice and, if no time is shown, within thirty days of the invoice date. If payment is not made when due APG may charge interest on monies outstanding at a rate of interest per annum equal to two percent (2%) in excess of the overdraft index rate on overdraft accounts for sums up to fifty thousand Australian dollars (AUS \$50,000) charged by the damage arising out of or incidental to the use of the PRODUCT after delivery of the PRODUCT or provision of any service.

27. If APG recommends any PERSON, PRODUCT or service or its suitability or competence for a particular purpose or task, APG is not liable for any loss or damage sustained by the CUSTOMER as a result of such PERSON, PRODUCT or service not being of satisfactory standard.

28. The CUSTOMER agrees that in deciding to acquire the PRODUCT or any other PRODUCT or service the CUSTOMER has undertaken or will independently undertake to investigate any recommendations and to carry out such tests and inspections as the CUSTOMER considers necessary to satisfy the CUSTOMER that the PRODUCT is suitable for the CUSTOMER'S purposes or the purposes of any proposed or actual purchaser from the CUSTOMER.

CUSTOMER'S MATERIALS

29. If APG is to use the CUSTOMER'S materials or goods in the manufacture of the PRODUCT or provision of service APG accepts no responsibility and shall not, in any way be liable to the CUSTOMER for any damage done or caused to such materials or goods.

DESIGN

30. The CUSTOMER accepts full responsibility for any design provided by the CUSTOMER and undertakes to indemnify APG against any claim arising in respect thereof. 28. The CUSTOMER warrants that any PRODUCT manufactured, constructed or supplied by APG, which is based in whole or in part upon designs, drawings or specifications supplied to APG by or on behalf of the CUSTOMER shall not infringe any letters patent or registered designs. The CUSTOMER shall indemnify and keep indemnified and hold harmless APG against any action, loss, cost claim or damage that may be brought against or suffered by APG for any breach of this warranty by the CUSTOMER.

RISK

31. The PRODUCT supplied by APG to the CUSTOMER is at the CUSTOMER'S risk immediately upon delivery.

PROPERTY PROTECTION

32. The CUSTOMER must not reverse-engineer, disassemble, decompile, reproduce, or permit any other PERSON to reverse-engineer, disassemble, decompile or reproduce the PRODUCT except as may be necessary to repair or service or maintain the PRODUCT and the CUSTOMER agrees that if the CUSTOMER or any PERSON associated with the CUSTOMER or under the CUSTOMER'S direct or indirect control makes any product the same as or similar to the PRODUCT in breach of these or any other terms agreed between the CUSTOMER and APG that such property is immediately transferred to APG and immediately becomes the property of APG and the CUSTOMER hereby authorises APG to act as its agent to take possession of any such product.

33. The CUSTOMER agrees to account to APG for any profit made as a result of any breach of these *Conditions of Sale* and to pay APG and to indemnify APG against any loss sustained by APG as a result of breach by the CUSTOMER of these *Conditions of Sale*.

34. The CUSTOMER agrees that the INTELLECTUAL PROPERTY in the PRODUCT or any part of the PRODUCT is and remains the property of APG and that the PRODUCT may only be used or dealt with by the CUSTOMER for the purpose represented to the CUSTOMER unless otherwise agreed in writing.

35. The CUSTOMER agrees to keep confidential the CONFIDENCES of APG.

ASSIGNMENT

36. The CUSTOMER must not assign the CUSTOMER'S rights under these *Conditions of Sale* without the prior written consent of APG.

APPLICABLE LAW

37. Any agreement or dealings between the CUSTOMER and APG are governed in all respects according to the domestic laws of Queensland and the parties agree to submit to the court of appropriate jurisdiction in the State of Queensland. The VIENNA CONVENTION is incorporated into this Agreement but unless otherwise expressly stated the VIENNA CONVENTION only applies to contracts involving PERSONS resident outside of Australia.

NOTICES

38. In addition to methods of service recognised by law, any notices required to be given by either party under this Agreement may be also given either by: a) Facsimile transmission, or b) Registered air mail, addressed to the other party at its usual place of business and shall be deemed to be served in the case of facsimile transmission at the time of sending, upon the production of a transmission report evidencing satisfactory transmission, to the facsimile transmission number of the other party and in the case of service by post upon proof of posting of such letter to the business address of the other party.

RIGHTS

39. All rights in the PRODUCT other than those specifically granted in these *Conditions of Sale* are reserved to APG.

COSTS

40. Each of the parties shall bear their own engineering, legal and accounting COSTS and disbursements of and incidental to the preparation negotiation and carrying into effect of any Agreement.

SIGNING OVER RIGHTS

41. APG may subcontract or assign its rights hereunder.

SEVERANCE

42. The rights of APG set out herein are in addition to and not in derogation of the rights of APG at law and in equity.

43. Any provision of these terms prohibited by or unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction must, to the extent permitted by such law, be severed from these *Conditions of Sale* and rendered ineffective so far as is possible without modifying the remaining provisions of these *Conditions of Sale*. Where, however, the provisions of any such applicable law may be waived, they are hereby waived by the parties to the fullest extent permitted by such law to enable these *Conditions of Sale* to constitute a valid and binding obligation.

DICTIONARY

44. In these *Conditions of Sale* unless there is something in the subject or context inconsistent:

a) "BUSINESS DAY" means any day on which is not Saturday, Sunday or a public holiday in Brisbane, Queensland, Australia.

b) "CONFIDENCES" includes all secret and confidential information of whatsoever nature acquired by the CUSTOMER in whatsoever form and manner in consequence of or during the course of dealings with APG and in particular but without limiting this general statement includes any information as to technical know-how, manufacturing processes, specifications, formulations, and software configurations.

c) "COSTS" includes, where legal costs are included, costs on a solicitor and own client basis.

d) The word "CUSTOMER" means the PERSON accepting these *Conditions of Sale*.

e) "INTELLECTUAL PROPERTY" means all intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation and includes rights to copyrights, patents, trademarks, designs and circuit layouts as well as technical know-how and software. It includes patents, trademarks, service marks and trade designs belonging to APG whether registered or not.

f) "APG" means AUSTRALIAN PROFESSIONAL GALVANIZING PTY LTD, the supplier of the PRODUCT pursuant to these *Conditions of Sale*.

g) "PERSON" means a natural person and (where appropriate) means a firm, corporation, unincorporated association, trust, partnership and any other entity recognised by law including local authorities, states and countries.

h) "PRODUCT" means all goods and services supplied by APG under these *Conditions of Sale* and includes spare parts and accessories of the PRODUCT.

i) The words *Conditions of Sale* mean the terms set out in this section headed *Conditions of Sale* of the document or documents, if any, which this is a part and includes all other sections.

j) "VIENNA CONVENTION" means the United Nations Convention on Contracts for the International Sale of Goods.

INTERPRETATION

45. In these *Conditions of Sale*:

a) Words importing the singular number or plural number shall be deemed to include the plural number and singular number respectively.

b) Reference to any gender (where appropriate) includes the other genders and vice versa;

c) Reference to a Party includes a reference to any servant, contractor or agent of that Party so far as is lawful unless the context otherwise dictates.

d) Reference to any Statute includes a reference to any amendments to that Statute.

e) Headings are included for convenience of reference only and do not affect the meaning or interpretation of these *Conditions of Sale*;

f) Obligations Joint and Several

Where a party to these *Conditions of Sale* comprises more than one person the *Conditions of Sale*, covenants, warranties, indemnities and guarantees provided by them and the rights and benefits conferred on them hereunder binds them jointly and each of them severally.

g) Successors and Assigns The obligations and liabilities imposed and the rights and benefits conferred on the parties under these *Conditions of Sale*, if accepted, binds (to the fullest extent permissible by law) the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.

By responding to these *Conditions of Sale* the CUSTOMER accepts each of the terms and conditions set out in these *Conditions of Sale* unless in the CUSTOMER'S response to these *Conditions of Sale* the CUSTOMER expressly asks for changes to any particular clause.

ENTIRE CONDITIONS OF SALE

46. These *Conditions of Sale* and any accompanying documents contain the entire understanding of the parties with respect to the subject matter to which the *Conditions of Sale* and associated documents relate and there are no other prior or subsequent *Conditions of Sale*, understandings, terms, conditions, warranties, representations, covenants, inducements, promises, arrangements or undertakings oral or written whether express or implied between the parties extending defining or otherwise relating to the provisions of supply of PRODUCT or services to the CUSTOMER by APG binding on the parties with respect to the subject matter to which these *Conditions of Sale* relate.

47. Only written variation to these *Conditions of Sale* signed by a duly authorised representative of APG will override, vary or supersede these *Conditions of Sale*.