

Hire Terms and Conditions

The owner agrees to hire the Equipment to the Hirer on the terms and conditions contained in this agreement.

1. DEFINITIONS

“Equipment” means the equipment or goods and any accessories as described in the Schedule which the Owner agrees to hire to the Hirer.

“Hirer” means the person, firm or corporation taking the Equipment on hire.

“Insolvency Manager” means liquidator, official manager, receiver, receiver and manager or voluntary administrator.

“Owner” means thyssenkrupp Materials Australia Pty Ltd (ABN 94 078 033 520; NZ Overseas Company Number 5895457) trading as thyssenkrupp Infrastructure, its successors and permitted assigns including or such other owner of the Equipment as is from time to time advised by the Owner.

2. HIRE

The Hirer offers to take the Equipment on hire on the terms of this Agreement to the exclusion of any and all other terms and this Agreement becomes operative on its acceptance by the Owner or delivery of the Equipment to the Hirer – whichever is first to occur.

3. CONDITION OF EQUIPMENT - SURVEYS

Prior to delivery, the Equipment will be subject to a joint inspection by a representative of each party to establish the general condition thereof. At the completion of the hire period the Equipment will be subject to an “Off Hire Survey” to be arranged by the Owner. Any damage caused during the hire period will be established by reference to the two Surveys, and damage of any description and howsoever caused is the responsibility of the Hirer. Notwithstanding anything herein contained the cost of repairs, if any, necessary to re-instate the Equipment to its “on hire” condition will be paid by the Hirer.

4. TRANSPORTATION, ERECTION AND DISMANTLING

(a) Unless quoted in this Agreement, transportation costs to and from the site, including the supply of additional labour, equipment, materials and transportation expenses and other requirements are at the cost of the Hirer and the Hirer will reimburse the Owner within thirty days (30) of the Owner presenting an invoice to the Hirer.

(b) Unless otherwise specified in this Agreement, it will be the Hirer’s responsibility after delivery of the Equipment to the site to supply all necessary craneage, labour and other handling equipment to off-load, assemble, erect, dismantle and load the Equipment at the cost of the Hirer. Where the owner quotes for transportation, labour, craneage, equipment all prices quoted unless stated specifically otherwise are for Normal weekday hours only. Penalty rates will apply to all works conducted out of hours weekdays & all day on weekends. Any delays beyond 1 hour per truck in loading or unloading of transport caused for whatever reason will result in any costs incurred by the Owner being charged as an additional item.

5. SITE ACCESS

All site specific requirements (ie medicals, inductions, any modifications in excess of AS/NZS1418 & AS/NZS 250) will be charged as additional unless specified within the Owners quotation or hire agreement at a rate of cost plus 10%. Any costs required for service vehicle modifications and/or driver training will also be charged as additional.

6 RISK AND INDEMNITY

The Hirer assumes all risks and liabilities for and in respect of the Equipment and for injuries to or death of persons and damage to property howsoever arising from the possession, use, maintenance, repair or damage of the Equipment by the Hirer unless and to the extent that the same arises as a result of the negligence or default of the Owner. Notwithstanding whether or not the Hirer has effected insurance in respect of the Equipment, the Hirer will indemnify the Owner against loss (including loss under-ground where applicable) or destruction of or damage to the Equipment, whether by fire, theft, accident, seizure, confiscation or any other cause whatsoever, and will indemnify and continue to indemnify the Owner and hold the Owner harmless from and against all losses, damages, claims, penalties, liabilities and expenses (including legal costs on an indemnity basis)

howsoever arising incurred as a result of or in connection with the Equipment or the possession, use, maintenance, repair or storage of the Equipment unless and to the extent that the same arises as a result of the negligence or default of the Owner or the seizure or taking of possession of the Equipment by the Owner or by some other party entitled to do so and validity claiming title through the Owner.

7 INSURANCE

(a) The Owner does not insure goods while on site and once delivery to site is complete. The Hirer at its own expense will maintain General Liability Insurance of not less than \$20 Million and All Risks Insurance acceptable to the Owner covering the Equipment for the duration of the hire period. The sum incurred for loss of or damage to the Equipment will be the full replacement value of the Equipment, as nominated by the Owner. Such Policy will be in the joint names of the Owner and the Hirer and will note the Owner as owner of the Equipment and will cover the respective rights of each party relating to personal injury, property damage (including damage to the Equipment) and all other losses of whatsoever nature arising out of the use of the Equipment excluding liability for claims being the subject of compulsory third part bodily injury insurance on vehicles registered by the Owner.

(b) Each of the Owner and the Hirer is entitled to receive payments of monies under the insurance policy effected pursuant to this clause according to its interest in the policy. Each party agrees to assist and co-operate with the other in making, pursuing and settling any claim made under the policy.

Without limiting the generality of the above, and if the Owner so requests, the Hirer will expend all money received by it under the policy in respect to damage to the Equipment in restoring or replacing the Equipment to its “on hire” condition subject to reasonable wear and tear, and if such money is insufficient the Hirer will make good the deficiency at its own cost.

(c) A copy of the insurance cover note is to be provided to the Owner prior to the Equipment leaving the Owner’s premises.

8 NOTICE OF ACCIDENTS

If the Equipment is involved in any accident resulting in injury to persons or damage to property (including damage to the Equipment) immediate notice must be given to the Owner by facsimile and confirmed in writing to the Owners office, within 14 days of the date of the accident.

9 USAGE

The Equipment will be used only for the purpose for which it has been designed, and operated strictly within the manufacturer’s rated capacity and operational recommendations and in accordance with any applicable statutory authority regulations. The Hirer undertakes not to do or cause or suffer to be done any act, matter or thing that is likely to endanger the safety or condition of the Equipment.

10 CHANGE OF SITE

The Hirer will not move the Equipment from the site to which it is first delivered unless prior consent thereto in writing is obtained from the Owner.

11 HIRE PERIOD

The hire period will commence on the date specified in the Schedule and will be for a term specified in the Schedule or such further period as is agreed by the Owner in writing.

12 HIRE CHARGES

The Hirer will pay hire charges for the entire hire period on the Equipment at the rate specified in the Schedule. In addition to hire charges, the Hirer will pay any sales, rental or other taxes, stamp duty, import duties, bonds or any other charges which may be levied upon this Agreement and/or the use or delivery of the Equipment.

13 OPTION TO EXTEND HIRE PERIOD

Should the Hirer wish to extend the hire period beyond the period nominated, such extended hire will be subject to the Owner’s agreement, the availability of the Equipment and the following conditions:

(a) The option to extend the terms may be exercised by the Hirer only by delivery of a written notice of exercise of option to the Owner at least 30 days before the expiry of the term.

(b) If the notice referred to above has been duly delivered in time, all monthly rental payments for the Equipment and other payments due under this Agreement have been received by the Owner in full as at the end of the term and all other applicable terms and conditions of this Agreement have been fully observed and performed by the Hirer up to and including the last day of the term then the term will be extended for the rental period specified in the Schedule commencing on the day following the date of expiration of the Terms of this Agreement and at the new monthly rental also specified in the Schedule.

(c) If the term is extended pursuant to the above, then all the terms and conditions of this Agreement, with the necessary changes being made, will continue to apply but this clause will be deemed to be deleted.

14 PAYMENT

Payment of Hirer's account will be by monthly installments unless otherwise agreed in writing. The first hire charge installment will be paid on the date of commencement of hire stated in the Schedule and each subsequent installment will be paid on the same day of each succeeding month unless otherwise agreed in writing. Accounts not so paid will bear interest at the rate of 3% per month, and will result in the full amount owing becoming immediately due, owing and payable, but this will not waive the Owner's rights as herein provided to terminate this Agreement.

From the end of the term until the return of the whole of the Equipment to the Owner, the daily hire charge rate is payable by the Hirer to the Owner. The parties agree that this rate is a genuine pre-estimate of the likely damages which would be suffered by the Owner if the Equipment were not returned to the Owner by the due date for return.

15 MAINTENANCE, OPERATION AND INSPECTION

(a) The Hirer will not remove or alter any numbering or lettering on the Equipment and will not modify the Equipment in any way whatsoever without the Owners express prior written approval. The Hirer is required during the period of hire to observe and comply with the provisions of all applicable Statutes, Acts and Ordinances and Regulations in force during the hire period in relation to the work on which the Equipment will be employed and the manner of performance of such work, having regard to the premises in, on, or about which such work is required to be performed. The Hirer, at his own expense, will maintain the Equipment in good and serviceable repair and will return it in such condition to the Owner. The Hirer at his own cost will supply consumables, fuels, oils, parts, and greases of approved grades nominated by the Owner. The Equipment will be checked daily by the Hirer for any signs of damage or wear.

(b) On a monthly basis the Equipment log book (if provided by the Owner) is to be filled out and a copy emailed weekly to the Owner's office

16 ACCESS TO EQUIPMENT

The Owner has at all times, free access to the Equipment and may examine and/or test it at the discretion of the Owner on reasonable notice.

17 WARRANTY

(a) The Hirer acknowledges that no express or implied warranty is given by the Owner except such warranties as may be implied by law, whether in relation to merchantability, fitness for any purpose, quality or otherwise.

(b) In the event any defect, not caused by the Owner, prevents normal usage, the Hirer may return the Equipment to the Owner and terminate this Agreement unless the Owner offers within seven (7) days of notification of such defect to repair or replace the Equipment with suitable alternative equipment at no additional cost to the Hirer.

(c) The Owner will not be liable to the Hirer or any third party under contract, tort, equity, common law, statute, indemnity, for any misrepresentation or otherwise, for any direct or indirect loss of profit, income or turnover, loss of contract, business or sales, loss of opportunity, goodwill, production or business continuity or for any

special, penal, incidental, contingent or consequential loss or damages.

(d) To the extent that the Customer is "in trade", and the Goods are of a kind ordinarily acquired for personal, domestic, or household use, the Customer and the Supplier agree that the Consumer Guarantees Act 1993 shall not apply to this agreement. If any statutory provisions under the Consumer Guarantees Act 1993 or any other statutes apply to this Agreement then, to the extent to which the Owner is entitled to do so, the Owner's liabilities under the statutory provisions is limited, at the Owner's option, to:

(i) replacement of the Equipment or the supply of equivalent Equipment; or

(ii) payment of the cost of replacing the Equipment or of acquiring equivalent Equipment; or

(iii) payment of the cost of having the Equipment repaired; or

(iv) repair of the Equipment.

(e) The Hirer hereby confirms that it has relied upon its own investigations and enquiries in relation to the Equipment, its suitability for the purpose for which the Hirer intends to use the Equipment and the performance of the Equipment.

(f) The Hirer further confirms that it has not been induced to enter into this Agreement in reliance upon any express or implied oral or written statements or representations, guarantees, promises or inducements whatsoever other than as contained in this Agreement. The Hirer further confirms that it does not rely on warranty or representation made by or on behalf of the Owner except as expressly provided in this Agreement.

18 SECURITY OF EQUIPMENT

It is the Hirer's responsibility to ensure that the Equipment is securely locked when not in use, that all ancillary equipment is locked away and that all reasonable measures are taken to protect the Equipment against acts of thefts and vandalism.

19 RETENTION OF TITLE, LIENS AND ENCUMBRANCES

(a) As between the Owner and the Hirer, the Equipment remains the exclusive property of the Owner and must not be put at the disposal of any third party. The Owner expressly warrants and covenants that it is and will remain entitled to possession of all the Equipment and every part thereof as owner, head-lessor or otherwise, and has the power to enter into this Agreement with the Hirer. Nothing contained in the Agreement renders on the Hirer any right or property or interest in the Equipment other than as a Hirer.

(b) The Hirer will not, and will not attempt to, lease mortgage, pledge, sell, charge, encumber, sublet, part with possession of, grant any lien, license or other encumbrance over, or otherwise dispose of or deal with, or permit or suffer any lien or other encumbrance to exist or be created over the Equipment or any part of the Equipment or any of the rights of the Hirer under this Agreement during the term and will keep the Equipment free from any distress, execution of other legal process.

(c) The Hirer will notify potential workers on the Equipment of the existence of the restriction on the creation of liens or similar interests, whether by way of pledge or otherwise in or over the Equipment, and will notify any persons seizing the Equipment or any part thereof of the restrictions contained in the preceding paragraph.

20 PPSA

(a) This clause applies to the extent that the Personal Property Securities Act 1999 ("PPSA") operates in relation to any "security interest" (as defined in PPSA) under this Agreement.

(b) This document constitutes a security agreement in writing covering the Equipment for the purposes of the PPSA.

(c) The Equipment referred to in this Agreement, is a security interest and a "purchase money security interest" ("PMSI") to the extent that it can be under section 16 of the PPSA.

(d) The Hirer agrees, in addition, to the extent possible under PPSA, that all Equipment which is at any time subject to the Owner's security interest, secures as a PMSI the interest of the Owner as either Bailor or Lessor (as the circumstances dictate) of all Equipment supplied to the Hirer. This does not limit what other amounts are secured under this Agreement.

(e) The Hirer agrees to do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of:

- (i) ensuring that the Owner's security interest is enforceable, perfected and otherwise effective under the PPSA;
- (ii) enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its security interest, and
- (iii) enabling the Owner to exercise rights in connection with the security interest.

(f) The Owner's rights under this Agreement are in addition to and not in substitution for the Owner's rights under any other law (including PPSA) and the Owner may choose whether to exercise rights under this Agreement, or under such other law, as it chooses.

(g) The following provisions of the PPSA do not apply and, for the purposes of section 107 are "contracted out" of this Agreement in respect of the Equipment:

- (i) sections 125 (right not to have goods damaged when Owner removes accession), 126 (right not to be reimbursed for damaged caused when Owner removes accession), 127 (Hirer's right to refuse permission to remove an accession), 129 (notice of removal of accession to the extent it requires the Owner to give a notice to the Hirer) ; section 114(a)(1) (notice of sale of collateral to the extent it requires the Owner to give a notice to the Hirer); section 116 (Hirer's right to receive a statement of account if collateral sold by the Owner); section 120(2) (notice of retention); and section 133 (re-instatement of security contract); and

(ii) in relation to section 109 (secured party may take possession of and sell collateral), and section 120 (retention of collateral), the Hirer agrees that in addition to the Owner's rights under PPSA, the Owner shall have the power to retain, deal with or dispose of any Equipment in the manner specified in those sections but also under this Agreement in any other manner it deems fit (subject to any rights of third parties).

(h) The Hirer waives its rights to receive a verification statement under section 148 of the PPSA.

(i) The sale or on-hire of Equipment is not permitted to any related company of the Hirer as defined by sections 2(5) and 2(6) of the Companies Act 1993 or any Owner's security interest.

21 HIRER'S FURTHER OBLIGATIONS

The Hirer undertakes:

(a) Not to assign this Agreement or the Hirer's rights under this Agreement.

(b) To notify the Owner immediately in writing of any change in address of the Hirer or the location of the Equipment.

(c) To pay all of the Owner's expenses incurred by reason of any breach or non-performance by the Hirer of any term or condition of this Agreement or by reason of the Owner retaking or attempting to regain possession of the Equipment if the Owner is entitled to do so.

(d) To pay to the Owner on demand any monies or interest which the Owner may substantiate for any failure by the Hirer to comply with any obligation under this Agreement or any other obligation incurred by the Hirer in respect of the Equipment and any other expense incurred by the Owner in relation to the enforcement or protection of the Owner's rights under this Agreement or in the Equipment including but not limited to the monies paid by the Owner in obtaining the release of any lien claimed over the Equipment or in dismantling or removing the Equipment from any premises or location and for any repair or renovation of the Equipment or such premises or location.

(e) Not to substantially or materially alter the Equipment without the prior consent of the Owner except in the case of an emergency, and then only as a temporary expedient to avoid damage or loss to the Equipment.

(f) Not to use or operate or permit the Equipment to be used or operated in the manner of for a purpose for which the Equipment is not designed or manufactured or for a purpose that is unlawful, nor will the Hirer operate, maintain or store the Equipment improperly, carelessly or contrary to the terms of this Agreement or any law for the time being in force or contrary to any instructions or advice given in the operation and maintenance manuals and will comply with all statutory and other requirements that may affect the

Equipment or the use of it and will observe all the provisions of any statute, regulation or by-law relating to the Equipment.

(g) Not to use or operate or permit the Equipment to be used or operated when not in proper repair or (if the Equipment is required to be registered, licensed, insured or the subject of a permit during its use or operation) when it is unregistered, unlicensed, uninsured or not the subject of a permit.

(h) To promptly give notice to the Owner of the occurrences of any event of default or any event which with the passing of time or the giving of notice, of both, might constitute an Event or Default.

22 TRANSFER OF OWNERSHIP OF EQUIPMENT

(a) The Owner may at any time during the term transfer or assign ownership of the Equipment to another party and, at the time, obtain a lease back of the Equipment provided that the term of the lease back is at least for the balance of the term of this Agreement in which case:

(i) The Owner and the Hirer will become the sub-lessor and the sub-lessee, respectively, of the Equipment;

(ii) The Owner warrants it has full right to sub-let the Equipment to the Hirer;

(iii) any necessary changes will be deemed to be made to this Agreement, and

(iv) this Agreement otherwise remains in full force and effect.

(b) The Owner will notify the Hirer as soon as practicable of any transfer or assignment of ownership of the Equipment by the Owner.

23 TERMINATION OF AGREEMENT

(a) Where the period of hire is not for a fixed period or becomes for an indefinite period, the Agreement may be terminated by 14 days' notice in writing given by either party to the other.

(b) If the Hirer defaults in punctual payment of any sum due to the Owner or fails to observe and perform the terms and conditions of this Agreement, or suffers any distress or execution to be levied against it or, being a person, commits any act of bankruptcy, calls a meeting of his creditors or any of them executes a deed for the benefit of his creditors, or is adjudged bankrupt, or is a member of a corporation, becomes insolvent, goes into liquidation, receivership, or administration, or the Hirer does or causes or permits to be done any act or thing whereby the Owner's rights in the Equipment may be prejudiced or put into jeopardy, this Agreement may immediately be terminated by the Owner.

(c) On termination of this Agreement the Hirer will, on demand, immediately deliver the Equipment together with all tools and accessories supplied with the Equipment or forming part of the Equipment in good order and repair (with due allowance for normal wear and tear) at the expense of the Hirer, to the Owner and in accordance with the reasonable directions issued by the Owner and, in default, the Owner may enter any premises occupied or controlled by the Hirer and repossess the Equipment, and for such purpose break open any gate or lock and dismantle the Equipment from any part of the premises to which it may be affixed without being guilty of any form of trespass and without liability to repair or reinstate any such premises or items belonging to the Hirer, and is entitled to recover within 3 days from the date of termination all hire charges due, together with any other charges levied in accordance with this Agreement. The Hirer indemnifies the Company absolutely in this regard.

24 DAMAGES ON TERMINATION

(a) Upon the termination of this Agreement for any reason whatsoever except upon the expiration of the term of this Agreement, the Hirer will immediately pay to the Owner by way of liquidated damages, in addition to and without prejudice to and without prejudice to any other right or remedy of the Owner contained in or implied by this Agreement or general law, an amount equal to the aggregate of:

(i) the unpaid balance of the hire charge instalments comprising the total rental that would have been payable until the expiration of the terms of this Agreement had this Agreement not been terminated, brought to a present value by applying the discount rate (as defined below) to each instalment over the period by which the day for payment thereof is, by virtue of this clause, brought forward

together with an amount equal to the Stamp Duty, if any, payable in respect of such rebated total; and

(ii) the cost and expenses incurred by the Owner in repossessing and storing, insuring and registering the Equipment and entering upon and removing the Equipment from land or premises where the Equipment is situated and making good any injury or damage caused to the said land or premises; and

(iii) the cost and expenses of repairs reasonably necessary to bring the Equipment to proper working order condition and repair apart from normal wear and tear.

(b) For the purpose of this special condition, "discount rate" means a rate calculated at the date of termination to give the Owner a rate of return equal to its original rate of return in respect of the hiring of the Equipment under this Agreement had the hiring run until the expiration of the term and had all payments been received on their due dates.

25 AMENDMENT

The document contains the entire Agreement of the parties and may not be amended except in writing signed by both parties.

26 SUBROGATION

The Hirer agrees, at its expense, to assist and co-operate with the Owner in relation to the Owner exercising any and all of its rights in respect to the Equipment, including without limitation, the Owner instituting, carrying on and enforcing, compromising or completing any legal proceedings which the Owner thinks desirable to protect its rights in respect of the Equipment.

27 FORCE MAJEURE

(a) If any party, by reason of any event of force majeure, is wholly or partially unable to perform its obligations under this Agreement that party will give to the other party prompt written notice of the event of force majeure with reasonably full particulars of the event, whereupon the obligations under this Agreement of the party giving the notice, to the extent that it is affected by the event of force majeure, is suspended for as long as the event renders the party unable to so perform its obligations.

(b) The affected party will take all reasonable steps to remove the force majeure condition and resume performance of its obligations under this Agreement. The term "event of force majeure" includes an act of God, act of public enemy, war, blockade, public riot, lightning, earthquake, fire, storm, flood, explosion, blow out, Governmental restraint and any other event, whether of the kind enumerated above or otherwise, which is not reasonably within the control of the party claiming suspension, but excludes strikes, lockouts or other industrial disturbance.

28 WAIVER, INDULGENCE

No waiver by either party hereto of the breach or non-performance of any term condition or obligation hereof is a waiver of any subsequent breach or non-performance of the same or any other term condition or obligation hereof. The granting by the Owner of any time or indulgence does not affect or prejudice the Owner's rights under this Agreement.

29 DISPUTE RESOLUTION

(a) Should any dispute arise between the parties in relation to the interpretation or operation of any provision of this Agreement, then the parties will meet and negotiate in good faith in an attempt to resolve the dispute.

(b) Any dispute which cannot be resolved within fourteen (14) days in accordance with the preceding sub-clause may be referred by either of the parties to an arbitrator appointed by the President of the Arbitrators and Mediators Institute of New Zealand. Such arbitrator will hear and determine the matter in Auckland, New Zealand, and in accordance with the Arbitration Act 1996.

(c) The costs of the arbitrator will be met as to one half by each party to this Agreement or as the arbitrator may otherwise direct.

30 SERVICE OF NOTICES:

(a) Any demand, requisition, consent, election or notice may be given to or served upon a party to this Agreement by being left at the party's address stated in this Agreement or by being posted in a prepaid registered letter addressed to that party at such address. Any such demand, requisition, consent, election or notice is deemed duly served at the expiration of three (3) days after the date of

posting. Any notice to be given by either party to this Agreement will be in writing and may be executed under common seal, or signed by the attorney or attorneys of the party or by an Authorised Officer of the party.

(b) A notice of document is sufficiently given or served for the purpose of this Agreement if the notice or document is sent by facsimile transmission and in any such case is deemed to be duly given, made or served when the transmission has been completed except where:

(i) the sender's machine indicates a malfunction in transmission or the recipient immediately notifies the sender of an incomplete transmission, in which case the facsimile transmission is deemed not to have been given or made; or

(ii) the time of dispatch is at or after 5.00pm (recipient's local time) on a day on which business is generally carried on in the place at which such notice is sent, in which case the notice is deemed to have been received at the commencement of the business on the next such day in that place.

31 GOVERNING LAW

This Agreement is governed and construed in accordance with the laws of New Zealand.

32 INTERPRETATION:

In this Agreement unless the context otherwise requires:

(a) Agreement or covenants by two or more persons binds such persons jointly and severally.

(b) An agreement or covenant by a person is deemed to be an agreement or covenant by such person his or her executors administrators assigns and successors in title.

(c) An agreement or covenant by a company is deemed to be an agreement or covenant by such company its assigns and successors in such title.

(d) Words importing one gender is deemed to include the other gender or genders.

(e) Words importing the singular number is deemed to include the plural number and words importing the plural number is deemed to include the singular number.

(f) The word "person" is deemed to include a company or corporation.

33 SERVERABILITY

If any provision of this Agreement is found to be illegal or unenforceable it will be severed from the remainder of this Agreement and will not affect the enforceability of any other provision of this Agreement.

SCHEDULE

Equipment description:

Intended usage:

Replacement value:

Date of commencement of hire:

Hire period:

Hire Charges:

Hire Chargers during extended period:

Mobilization fee:

Demobilization fee:

Executed by the Hirer on thisday of20..

Signature

Name:

Position: