

HIRE AGREEMENT TERMS AND CONDITIONS

1. Application

1.1 These are the terms and conditions of hire ("**Terms and Conditions**") of Industrial Galvanizers Corporation (NZ) Limited NZBN: 9429031352949, trading as Ingal Civil Products ("**ICP**") with any person who seeks to hire Equipment from ICP ("**Customer**") and apply to the exclusion of any other conditions proposed or submitted by the Customer, except as expressly agreed, in writing, by ICP.

1.2 These Terms and Conditions are to be read in conjunction with the Hire Schedule completed by the Customer at the time of accepting the hire of the Equipment (collectively the "**Hire Agreement**").

1.3 These Terms and Conditions are also to be read in conjunction with any credit application, guarantee, website terms and conditions and other documents entered into by the Customer at the time of hire or for the purpose of a trade account with ICP in connection with which the hire is made.

1.4 These Terms and Conditions may be amended by ICP at any time by ICP publishing an amended version of these Terms and Conditions on its website. Changes to these Terms and Conditions will only apply to Hire Agreements entered into after the change occurs.

2. Definitions and Interpretation

2.1 In these Terms and Conditions, unless the context otherwise dictates:

"**Call Out Fees**" means an additional charge (as determined by ICP from time to time) for any attendance by ICP or its agents and contractors in respect of the Equipment during the Hire Period, including delivery, servicing and repair of the Equipment.

"**Commencement Date**" means the date of commencement of the Hire Agreement which shall be the earlier of the Commencement Date specified in the Hire Schedule or the date the Customer takes possession of the Equipment.

"**Equipment**" means the Equipment listed in the Hire Schedule and includes any other equipment, vehicles or tools (including safety or installation equipment) given to the Customer as part of the hire whether or not stated in the Hire Schedule.

"**Hire Fee**" means the fee stated in the Hire Schedule.

"**Hire Period**" means the period commencing on the Commencement Date and ending on the last day of the term shown on the Hire Schedule.

"**Hire Schedule**" means the document (signed or adopted by the Customer) which includes particulars of the Equipment and the Hire Period and such other information as ICP requires from time to time.

"**PPSA**" means the *Personal Property Securities Act 1999*.

2.2 In these Terms and Conditions and in the Hire Schedule:

- A reference to a person includes a corporation, association or other legal entity;
- A reference to a day, week, month or year is to a calendar day, week or month or year (as applicable);
- A reference to a party is a party to the Hire Agreement, namely ICP and the Customer;
- If the Customer comprises more than one person then the Hire Agreement binds each of them jointly and severally;
- If an action is to be done (for example return of the Equipment) on a day on which the ICP's branch from which the Equipment was

collected is not open for business, the action must be done on the next following day on which the ICP branch is open; and

- Headings are for convenience only and do not affect the interpretation of the Hire Agreement.

3. Hire Service

3.1 Subject to the Customer's execution or adoption of the Hire Schedule and compliance with any other pre-requisites of ICP, ICP will provide the Equipment to the Customer clean and in good working order for the Customer to take and use for the Hire Period in accordance with the Hire Agreement.

3.2 The Customer acknowledges that the Hire Agreement does not offer the Customer any right to acquire the Equipment whether on commencement or conclusion of the hire. ICP remains at all times the sole owner and proprietor of the Equipment and the Equipment is required to be returned to ICP on conclusion of the Hire Period.

3.3 The Hire Period may not be extended except at the discretion of ICP. ICP shall not be required to make demand for return of the Equipment on conclusion of the Hire Period.

3.4 The Customer is liable for, and must satisfy itself, on or before the Commencement Date that:

- the Equipment is suitable for the purposes that the Customer requires; and
- the Customer has the requisite skill, licenses and permits, labour or additional equipment required to make use of the Equipment for the Customer's purposes.

No refunds will be provided in respect of any elapsed Hire Period where the Customer has been unable to make use of the Equipment except due to any defect in the Equipment.

3.5 The Customer acknowledges that the Hire Period (including any extension of the Hire Period or consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not extend beyond two (2) years from the date on which the Customer took possession of the Equipment or such earlier Commencement Date ("**Maximum Period**") and despite anything else in the Hire Agreement, ICP shall be entitled, notwithstanding any contrary agreement between ICP and the Customer, to require the Customer to immediately return the Equipment to ICP before expiry of the Maximum Period and unless ICP is satisfied that the Customer will effect return accordingly, ICP may take such steps as it deems fit to seize, including by force if necessary, the Equipment from wherever it is located.

3.6 Except as provided in these Terms and Conditions or the law otherwise requires, all other cancellations, early returns and refunds are at ICP's sole discretion.

3.7 ICP shall be entitled to assume that any person effecting collection or delivery of the Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer fully releases and indemnifies ICP on account of any action or omission by such person.

4. Payments

4.1 The Customer must pay the Hire Fee in the sum and when prescribed in the Hire Schedule and these Terms and Conditions. To the extent not otherwise stated in the Hire Schedule, Hire Fees that are periodic are payable in advance on the Commencement Date and each recurrence of the interval thereof (eg. weekly or monthly or otherwise) as specified in the Hire Schedule. For short term or other particular hires (as determined by ICP), ICP may require the payment of the Hire Fee for the entirety of the Hire Period upfront on the Commencement Date. This will be specified in the Hire Schedule.

4.2 In addition to the Hire Fee, but without limitation to any other provision of these Terms and Conditions, the Customer must pay on demand by ICP:

- (a) **(Replacement Cost)** ICP's cost to acquire new replacement Equipment for any Equipment which is not returned to ICP (for whatever reason);
- (b) **(Cleaning)** all costs incurred by ICP in cleaning the Equipment if not cleaned by the Customer before its return;
- (c) **(Repairs)** all costs incurred by ICP in repairing any damage to the Equipment sustained whilst in the possession of the Customer;
- (d) **(Fuel & consumables)** the cost of consumables provided by ICP (including fuel, oils etc.) and not returned or replenished by the Customer;
- (e) **(Delivery and collection)** all costs incurred by ICP in delivering and recovering possession of the Equipment if not collected or returned by the Customer;
- (f) **(Call Out Fees)** Call Out Fees for any attendances by ICP required in the course of the Hire Period or at the request of the Customer;
- (g) **(Duties & taxes)** any duties, goods and services tax, other taxes, tolls, fines, penalties, levies or Government or semi-Government charges whatsoever payable in respect of the hire or arising from the Customer's use of the Equipment even if not specified on the Hire Schedule; and
- (h) **(PPSA)** the cost of ICP taking any action under clause 7 (including registration fees).

4.3 The Customer shall be liable for interest on outstanding payments under the Hire Agreement calculated daily at the rate of 3% per month.

4.4 Without limiting the rights of ICP, if the Customer has provided credit card or other payment methods for the debiting of the Hire Fee, the Customer authorises ICP to debit from the said credit card or other payment method any fees, charges or other monies (including interest) owing by the Customer to ICP under the Hire Agreement.

4.5 The Customer will be taken to have approved any charges billed to the Customer or debited from the Customer's credit card or other payment method provided by the Customer unless the Customer gives notice of any dispute of such charges within thirty (30) days of the date of billing or debiting of the charge.

5. Customer Obligations and Risk

5.1 Without limiting any other provisions of the Hire Agreement, the Customer must:

- (a) Effect collection of the Equipment from ICP on the Commencement Date unless a delivery (and any fee payable for that delivery) has been agreed as part of the Hire Agreement;
- (b) Return the Equipment to ICP by the Customer delivering the Equipment to the same ICP branch from which the hire was made, before close of business on the last day of the Hire Period;
- (c) Ensure the Equipment is returned clean and in good repair, together with replacement fuel and other consumables provided;
- (d) Ensure that the Equipment is operated only for its intended use, safely, lawfully, and in accordance with any operating manual or instructions (supplied by ICP or posted on the Equipment);
- (e) Ensure that all persons operating the Equipment are properly instructed in its safe and proper use and, if necessary, hold all necessary qualifications, certificates and licences for its safe operation;
- (f) Carry out a comprehensive hazard and risk assessment before using the Equipment and comply with all occupational health and safety laws and best practice when operating the Equipment;

(g) Safely secure and tie down the Equipment when in transit or being stored; and

(h) Report any accident or damage to the Equipment to ICP within two days of the accident or damage occurring.

5.2 Without limiting any other provisions of the Hire Agreement, except as authorised by ICP in writing, the Customer must not:

- (a) Damage the Equipment or tamper with, or repair (or attempt to repair) the Equipment;
- (b) Remove or deface from the Equipment anything printed on or attached to the Equipment by ICP, including ICP ownership symbols or marks, safety or operational information and testing tags;
- (c) Part with possession of the Equipment, including by loss, licence, bailment or sub-hire to someone else (the Customer acknowledges that all sub-hires are at ICP's sole discretion);
- (d) Pledge the Equipment as security to any person including by the grant of any mortgage, lien or charge of the Equipment, or otherwise deal with the Equipment in any manner inconsistent with the rights of ICP as owner of the Equipment;
- (e) Rely upon any statement or representation regarding the Equipment or its operation except as contained in these Terms and Conditions or any materials supplied with the Equipment by ICP;
- (f) Exceed the recommended or legal load, capacity limits or other specifications of the Equipment as stated on the Equipment or as instructed by ICP;
- (g) Use the Equipment for any purpose other than for which it is intended and in accordance with its operating instructions; or
- (h) Use the Equipment in connection with any illegal or unauthorised purpose, including by carrying any illegal, prohibited or dangerous substance in or on the Equipment.

6. Risk and Insurance

6.1 The Customer operates the Equipment **at the Customer's risk** and agrees to indemnify ICP (including its officers, employees, agents and contractors) for any injury and/or damage caused by the Customer or any other person transporting or utilising the Equipment at the Customer's request.

6.2 The Customer **must have adequate insurance to cover all liabilities in connection with the Customer's use of the Equipment**, including:

- (a) public liability for an amount no less than \$10,000,000 per event; and
- (b) loss, damage and theft insurance in respect of any property in or in connection with the Equipment.

6.3 ICP may on request, prior to hire of Equipment, request the Customer provide proof of adequate insurance coverage to satisfy clause 6.2.

7. Equipment maintenance, malfunctions and repair

7.1 Where applicable, the Customer is responsible (at its cost) for the daily maintenance and care of the Equipment, for example, checking of fuel, oil, water, battery levels, tightening of bolts, belts or fittings, and lubrication of all grease points. The Customer must not, however, tamper with or attempt to service or repair the Equipment (including via a licensed technician) except as authorised by ICP.

7.2 If the Equipment malfunctions or breaks down, the Customer must:

- (a) Immediately stop using the Equipment; and
- (b) Return the Equipment to ICP for inspection and repair.

7.3 The Customer may be required to pay a Call Out Fee on account of any attendance by ICP or its agents and contractors to inspect and repair the Equipment.

7.4 ICP does not warrant that alternative Equipment will be available for hire. ICP is not liable to the Customer for any loss resulting in malfunction or breakdown of the Equipment. Hire Fees and other charges will however abate for any period during which the Customer is unable to use the Equipment due to a defect, malfunction or breakdown in the Equipment outside of the Customer's control.

7.5 Subject only to any express provision of this Hire Agreement to the contrary, the Customer is responsible for any loss, theft or damage of the Equipment.

8. Personal Property Securities Act

8.1 In this clause 8, any term unless otherwise defined herein has the same meaning as defined in the PPSA.

8.2 The Customer acknowledges that ICP's retention of title in the Equipment may give rise to a security interest in the Equipment, against the Customer or any other person for the purposes of the PPSA. ICP's security interest(s) will extend and attach to all proceeds within the meaning of the PPSA.

8.3 ICP may register any security interest it holds at any time on the PPS Register. The Customer acknowledges that registration of a security interest by ICP does not in itself deem the hire of the Equipment to be a "deemed security interest" within the meaning of section 17(1)(b) of the PPSA unless or until it shall legally have become one.

8.4 If ICP has not registered a security interest in respect of the Equipment on the Commencement Date, the Customer acknowledges that the Hire Period (including any extension of the Hire Period or consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not extend beyond one (1) year from the date on which the Customer took possession of the Equipment or such earlier Commencement Date and despite anything else in the Hire Agreement, ICP shall be entitled, notwithstanding any contrary agreement between ICP and the Customer, to require the Customer to immediately return the Equipment to ICP before expiry of this Customer has substantially uninterrupted possession) may not extend beyond one (1) year period and unless ICP is satisfied that the Customer will effect return accordingly, ICP may take such steps as it deems fit to seize, including by force if necessary, the Equipment from wherever it is located.

8.5 The Customer must sign any document, provide any information and do anything else, which ICP reasonably requires to:

- (a) Ensure that ICP's security interest in the Equipment is perfected and enforceable under PPSA with first priority in respect of any other security interests; and
- (b) Enable ICP to exercise any rights it has under the Hire Agreement and PPSA in connection with its security interest in the Equipment.

8.6 The Customer waives the right to receive a copy of any Verification Statement in relation to any Security Interest created by the Hire Agreement and agrees, to the extent permitted by law, that as between the Customer and ICP:

- (a) sections 114(1)(a), 133 and 134 of the PPSA will not apply;
- (b) you will have none of the rights referred to in sections 116, 120(2), 121, 125, 129 and 131 of the PPSA; and
- (c) where ICP has rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply.

8.7 The Customer agrees that:

- (a) The rights of ICP under the PPSA are in addition to any other rights under the Hire Agreement and ICP may choose how or which rights to exercise as it sees fit; and
- (b) That ICP's rights under the PPSA, ICP shall, in the event of default by Customer of the Hire Agreement, have the right to seize, purchase, take possession, retain, deal with or dispose of any goods,

in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

8.8 The Customer must:

- (a) Not create or allow to be created any security interest in the Equipment by any other person other than with the express written consent of ICP;
- (a) Not take any action or omission that would result in ICP's security interest under this Hire Agreement to be or become unperfected, invalidated or lose its priority to another security interest; and
- (b) Advise immediately ICP if and when it becomes aware of any event that would cause or has already caused ICP's security interest to be or become unperfected, invalidated or lose its priority to another security interest.

8.9 If the Customer parts with possession of the Equipment for any reason (including with the permission of ICP) the Customer must take all steps including registration under PPSA as may be required to:

- (a) Ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPSA;
- (b) Ensure the Customer has, subject to ICP's rights, first priority (unless another priority is agreed in writing by ICP) for the security interest; and
- (c) Enable ICP and the Customer to exercise their respective rights in connection with the security interest.

10. Breach by Customer

10.1 The Customer will be in default of the Hire Agreement if the Customer:

- (a) breaches any provision of the Hire Agreement including these Terms and Conditions and (if the breach is remediable) fails to remedy that breach within seven (7) days of written demand by ICP; or
- (b) becomes bankrupt or insolvent (including by having a liquidator, administrator, receiver, receiver and manager appointed to it or any of its assets) or, if the Customer is a business customer, ceases to carry on its business.

10.2 If the Customer is in default of the Hire Agreement, ICP shall be immediately entitled to any number of the following:

- (a) terminate the Hire Agreement; and
- (b) sue for recovery of monies payable by the Customer to ICP under the Hire Agreement; and
- (c) take all actions it deems fit to repossess the Equipment (and the Customer agrees that ICP and its agents are authorised to enter any premises where the Equipment is located and seize the Equipment); and
- (d) declare any deposit, security bond or other conditional payment as forfeited; and
- (e) declare any other benefit in connection with the Hire Agreement provided by ICP to the Customer as invalid.

10.3 The Customer acknowledges that if the Customer fails to return the Equipment to ICP the Customer remains responsible for Hire Fees calculated daily until the Equipment is returned or repossessed by ICP.

10.4 The Customer indemnifies ICP in respect of any damages, costs or loss resulting from a default by the Customer of the Hire Agreement, including but not limited to legal costs (on an indemnity basis) in taking any action against the Customer or any other person for recovery of any damages, costs or loss and/or repossession of the Equipment.

11. Security

11.1 The Customer may, prior to hire, be required to pay a security bond (in the form of cash, credit card hold or bank guarantee, as determined by ICP), as security for the performance of the Customer's obligations under the Hire Agreement. The Customer agrees that if the Customer is in default of the Hire Agreement, ICP shall be immediately entitled to apply the security bond to any amount which ICP is entitled to recover against the Customer under the Hire Agreement. Subject to successful return of the Equipment and there being no outstanding charges by the Customer under the Hire Agreement, ICP will refund as soon as practicable to the Customer any remaining security deposit or other surplus funds including (subject to third party claim) any surplus funds following the taking of recovery action by ICP.

11.2 Without otherwise limiting the provisions of clause 11.1 (if applicable), the Customer hereby:

- (a) Charges, for the due and punctual payment and performance of the Customer's obligations and liabilities under the Hire Agreement, all of the Customer's legal and equipment interest (both present and future) of whatsoever nature held in all real property and personal property;
- (b) Agrees, upon ICP's request, to execute any document and do all things necessary for ICP to register a mortgage or charge over any charged property under this clause; and
- (c) Agrees to indemnify ICP on an indemnity basis against any and all costs and expenses (including legal fees) incurred by ICP in connection with the preparation and registration of such documents or ancillary documents (including but not limited to a caveat of land) or other action taken in connection with ICP's charge under this clause.

12. Limitation of Liability

12.1 If and to the extent that the *Consumer Guarantees Act 1993* applies to the Hire Agreement:

- (a) The Customer has the benefit of certain statutory guarantees in relation to the hire of the Equipment which cannot be excluded; and
- (b) ICP's liability in respect of any guarantee is limited to the replacement or repair of the goods, or the cost of having the goods repaired or replaced, in accordance with the relevant legislation.

12.2 Notwithstanding clause 12.1, it is a condition of the Hire Agreement that the *Consumer Guarantees Act 1993* will not apply to any goods or services acquired for business purposes.

12.3 To the extent that the *Consumer Guarantees Act 1993* (or any other law which cannot be excluded) does not apply to the Hire Agreement:

- (a) ICP makes no representations and gives no warranties other than those set out in these Terms and Conditions;
- (b) ICP's liability in connection with any breach by ICP of the terms of the Hire Agreement is limited to a refund of the Hire Fee and any other charges paid by the Customer to ICP for the hire of the Equipment; and

- (c) Under no circumstances will ICP be liable for any damages or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Equipment by the Customer.

13. Dispute Resolution

13.1 If a dispute arises in relation to the Hire Agreement, or the hiring or the use of the Equipment generally, except in regards to a failure to pay by the Customer, ICP and the Customer agree to refer the dispute to mediation with a mediator appointed by them jointly, or failing agreement, by the president of the New Zealand Law Society (or its replacement body). Neither ICP nor the Customer shall commence litigation of any kind including to the Disputes Tribunal of New Zealand (except for any urgent matter, as jointly determined by ICP and the Customer) unless and until they shall have referred and attempted to resolve the dispute at mediation under this clause.

14. Privacy

14.1 ICP complies with the provisions of the *Privacy Act 1993* and its privacy policy and credit reporting policy may be viewed online at its website.

14.2 The Customer authorises ICP's collection of personal information regarding the Customer (including but not limited to the Customer's name, address, evidence of identity, credit card or other payment details, credit and business history) in order to provide its services under the Hire Agreement, exercise its rights under the Hire Agreement, enter into contracts or dealings with other parties in connection with the Hire Agreement and to carry out direct marketing and client relationship activities with the Customer.

14.3 The Customer consents to ICP's disclosure of personal information collected from the Customer or in relation to the Customer in accordance with ICP's privacy policy and credit reporting policy.

15. General

15.1 No covenant, term or obligation in these Terms and Conditions shall merge on completion or termination of the Hire Agreement but continues until fulfilled to the satisfaction of the party who is to benefit from the covenant, term or obligation.

15.2 No delay or omission by ICP in the exercise of its rights under the Hire Agreement shall be deemed a waiver of such right. Variations and waivers of the Hire Agreement by ICP are not effective unless in writing by ICP.

15.3 If any provision of these Terms and Conditions or the Hire Schedule is wholly or partly illegal, enforceable, void or voidable, such provision will be severed from the Hire Agreement and the balance of the Hire Agreement shall continue to apply.

15.4 ICP may assign its interest in the Hire Agreement to any person that acquires ICP or its business without needing to obtain the consent of the Customer. The Customer may not assign the Customer's interest in this Agreement to any other person except with the written consent of ICP first obtained.

HIRE SCHEDULE

PARTICULARS	
Customer:	Name: Address: PH: Fax: Email: Address where equipment will be located (if different):
Equipment:
Hire Fee:	\$ weekly monthly up-front on the Commencement Date Note: Periodic payments are payable in advance. You are required to pay your first periodic payment on commencement.
Hire Period:	Term: weeks months Commencement Date:/...../..... Note: Term may not exceed 2 years. Equipment to be returned before close of business on the last day of the Hire Period. Fees and charges apply for non-returned Equipment or damaged Equipment.
Security Bond:	\$..... paid: cash/EFT credit card hold <input type="checkbox"/> bank guarantee Note: Security bond will be refunded on return of equipment clean and undamaged, and subject to payment of all outstanding charges. Release of credit card holds may take 3 - 7 days to process.
Inclusions:	Delivery/collection fee: \$..... Other: Note: These charges are payable on commencement unless otherwise specified.
PAYMENT DETAILS (if credit card used)	
Credit Card details	Credit card number: Name on credit card: Expiry date: CCV: Credit card holder's signature: _____ ← SIGN HERE
ACCEPTANCE	
Please <u>tick then sign</u> : I have read and confirm that the information in this is true and correct.	

I have read and understood the Terms & Conditions attached to this Hire Schedule.

I warrant that I am the authorised signatory for the above named Customer and have the requisite authority to bind the above named Customer to this Hire Agreement.

_____ ← **SIGN HERE** _____

Authorised Signatory

Full Name

Date