

# TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1 "Yelavich Transport" shall mean Yelavich Transport Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from Yelavich Transport.
- 1.3 "Goods" shall mean all goods, chattels, or services, provided by Yelavich Transport to the customer, and shall include without limitation all rocks, fixtures and fittings, all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by Yelavich Transport to the customer.
- 1.4 "Price" shall mean the cost of the goods as agreed between Yelavich Transport and the customer subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Yelavich Transport from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The customer authorises Yelavich Transport to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Yelavich Transport to any other party.
- 3.2 The customer authorises Yelavich Transport to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such goods are sold by Yelavich Transport at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of Yelavich Transport between the date of the contract and delivery of the goods.

## 5. PAYMENT

- 5.1 Payment for goods shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice, or on receipt of delivery of goods, whichever is the earlier ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Yelavich Transport in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

## 6. QUOTATION

- 6.1 Where a quotation is given by Yelavich Transport for goods:
  - 6.1.1 The quotation may be withdrawn at any time, and
  - 6.1.2 The quotation shall be exclusive of Goods & Services Tax unless specifically stated to the contrary.
- 6.2 Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.

## 7. RISK

- 7.1 The goods remain at Yelavich Transport's risk until the delivery to the customer, but when title passes to the customer pursuant to clause 9.1 of the contract the goods are at the customer's risk whether delivery has been made or not.
- 7.2 Delivery of goods shall be deemed complete when Yelavich Transport gives possession of the goods for delivery to the customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to Yelavich Transport making time of the essence.
- 7.4 Where Yelavich Transport delivers goods to the customer by instalments and Yelavich Transport fails to deliver one or more instalments the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

## 8. AGENCY

- 8.1 The customer authorises Yelavich Transport to contract either as principal or agent for the provision of goods that are the matter of this contract.
- 8.2 Where Yelavich Transport enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

## 9. TITLE

- 9.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the customer when the customer has made payment for all goods supplied by Yelavich Transport.
- 9.2 Where the customer has not paid for any goods in its possession property in such goods shall remain with Yelavich Transport and:
  - 9.2.1 The goods shall be held by the customer as bailee; and
  - 9.2.2 If the goods are attached, fixed, or incorporated into any property of the customer, by way of any manufacturing or assembly process by the customer or any third party, title in the goods shall remain with Yelavich Transport until the customer has made payment for all goods, and where those goods are mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall be assigned to Yelavich Transport as security for the full satisfaction by the customer of the full amount owing between Yelavich Transport and customer.
- 9.3 The customer gives irrevocable authority to Yelavich Transport to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. Yelavich Transport shall not be liable for costs, damages or expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

## 10. DISPUTES

- 10.1 No claim relating to delivery of goods shall be considered unless made within 10 working days of delivery.
- 10.2 The customer shall be deemed to have accepted the goods unless the customer notifies Yelavich Transport otherwise within 5 days of delivery of goods to the customer.

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## 11 LIABILITY

- 11.1 Except as otherwise provided by statute Yelavich Transport shall not be liable for.
- 11.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by Yelavich Transport to the customer and without limiting the generality of the foregoing of this clause Yelavich Transport shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss and:
  - 11.1.2 Except as provided in this contract Yelavich Transport shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods provided by Yelavich Transport to the customer; and
  - 11.1.3 The customer shall indemnify Yelavich Transport against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Yelavich Transport or otherwise, brought by any person in connection with any matter, act, omission, or error by Yelavich Transport its agents or employees in connection with the goods.

## 12 CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer guarantees Act 1993 are excluded where the customer acquires goods or services from Yelavich Transport for the purposes of a business in terms of section 2 and 43 of that Act.

## 13 GENERAL LIEN

- 13.1 The customer agrees that Yelavich Transport may exercise a general lien against any goods or any property belonging to the customer that is in the possession of Yelavich Transport for all sums outstanding under this contract and any other contract to which the customer and company are parties.
- 13.2 If the lien is not satisfied within 7 days of the due date Yelavich Transport may having given notice of the lien at its options either:
- 13.2.1 Remove such goods or property and store them in such a place and in such a manner as Yelavich Transport shall think fit and proper and at the risk and expense of the customer, or
  - 13.2.2 Sell such goods or property or part thereof upon such terms as it shall think fit and apply for proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

## 14 WARRANTY

- 14.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly provided to the customer at the time of sale HOWEVER no warranty shall exceed that given by the manufacturer.
- 14.2 Yelavich Transport does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.

## 15 CANCELLATION

- 15.1 Yelavich Transport shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the customer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 15.2 Any cancellation or suspension under clause 15.1 of this agreement shall not affect Yelavich Transport's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the customer's obligations to Yelavich Transport under this contract.

## 16 MISCELLANEOUS

- 16.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Yelavich Transport.
- 16.2 Yelavich Transport shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 16.3 Failure by Yelavich Transport to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Yelavich Transport has under this contract.
- 16.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.
- 16.5 Where the terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.
- 16.6 If the customer is a company or trust, the director(s) or trustee(s) signing this contract jointly and severally guarantee to Yelavich Transport the payment of the balance of the customer's credit facility from time to time, and the payment of any and all other monies now or hereafter owed by the customer to Yelavich Transport. Any personal guarantee made by any party shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and customer shall be jointly and severally liable under the terms and conditions of this contract.
- 16.7 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.