

NORTH ISLAND FORKLIFTS LIMITED - TERMS OF TRADE

These Terms of Trade apply to the supply of all Goods and Services by NIF on or after 1 February 2020 until further notice. NIF reserves the right to change these Terms of Trade at any time, with such changes becoming effective from the date of uploading onto NIF's website or upon notification in writing to the Customer.

1. APPLICATION OF TERMS OF TRADE

1.1 These Terms of Trade shall apply between NORTH ISLAND FORKLIFTS LIMITED ("NIF") and you (the "Customer") for the sale of all Goods, and the supply of all Services, to you by NIF unless otherwise agreed in writing. All price estimates or quotes given by us, and all purchase orders for Goods and Services issued by you, will be accepted on the basis of these Terms of Trade. If you accept delivery of Goods or the supply of Services from us, or deliver property to us for repairs or servicing, those actions by you will be deemed to be acceptance of these Terms of Trade notwithstanding anything that may be stated to the contrary in your enquiries, correspondence or your purchase order.

2. PRICES

2.1 Stated or quoted prices:
 (a) are exclusive of GST. GST will be payable by you at the rate applicable at the time of supply as an additional amount on all prices, interest and charges;
 (b) are based on current costs, exchange and duty rates. NIF reserves the right to alter prices should any of these factors change after an order is placed; and
 (c) may be altered by NIF without notice, and the actual price of Goods and Services may be different from prices estimated when the Goods and Services are ordered.

3. PAYMENT

3.1 Unless otherwise agreed in writing, you must pay for:
 (a) machine, engine or certain specialised Goods at the time of Delivery and any deposit required by NIF must be paid at the time of placing the order; and
 (b) other Goods and Services by the 20th day of the month following the date of the invoice relating to those Goods or Services.
 3.2 If full payment for the Goods or Services supplied is not made on the due date, then without prejudice to any other remedies available to us:
 (a) we may cancel or withhold supply or delivery of further Goods or Services;
 (b) you shall pay (at NIF's discretion) interest on the amount due at the rate of 1.5% per month calculated on a daily basis from the due date until the date payment is received in full by us. Any payments received by us will be firstly applied against such additional interest. You shall further be liable to reimburse us for any costs (including legal costs as between solicitor and client) incurred by us in recovering monies due or enforcing any of our rights pursuant to these Terms of Trade
 3.3 Your payment obligations to us under these Terms of Trade shall be made free of all deductions, rights of set-off or counterclaim.
 3.4 If NIF shall at any time deem your credit to be unsatisfactory, we may stop any further credit or require further security for payment and may suspend performance of our obligations under any contract until the provision of sufficient security from you. All costs and expenses incurred by NIF as a result of such suspension and any commencement shall be payable by you upon demand.

4. PLACE AND MANNER OF DELIVERY

4.1 Delivery of the Goods to you ("Delivery") shall be at NIF's place of business. If the Goods are stored in some other place, then that other place shall be the place of Delivery. The expenses of, and incidental to, the Delivery, insurance, transit and storage of the Goods after Delivery shall be your cost unless otherwise agreed.
 4.2 Where NIF arranges (as your agent and at your expense) for the Goods to be sent to you then:
 (a) Delivery of the Goods to a carrier either named by you, or failing such naming, to a carrier at the discretion of NIF for the purpose of transmission to you, is deemed to be Delivery of the Goods to you;
 (b) unless otherwise directed in writing by you, NIF shall make such contact with the carrier at limited carrier's risk within the meaning of the Contract and Commercial Law Act 2017; and
 (c) you are responsible (not NIF) to insure the Goods during transit against all losses which may be incurred due to any cause whatsoever.

4.3 NIF accepts no liability where Delivery of the Goods within any agreed time is prevented or hindered by reason of delays in manufacture, supply or transportation or other circumstances beyond the reasonable control of NIF.

5. RETURN OF GOODS

5.1 Except as provided in this clause, you are not entitled to return the Goods to NIF for any reason. For defective Goods which you are entitled to reject, NIF's liability is limited to either (at NIF's discretion) repairing or replacing the Goods, or refunding the purchase price, provided that:
 (a) you must notify NIF within 5 Working Days of Delivery that the Goods are defective;
 (b) NIF is given a reasonable opportunity to investigate your claim;
 (c) NIF will not be liable for Goods which have been tampered with or modified without NIF's approval or which have not been stored

or used in a proper manner and must be returned in an "as new" condition; and

(d) NIF will not be liable to pay you any amount more than the amount (if any) NIF actually receives from our supplier of the defective Goods.

5.2 NIF may (in its discretion) accept the Goods for credit, but this may incur a handling fee and freight costs of such amount as NIF may determine depending on the circumstances of the matter.

6. PASSING OF RISK IN THE GOODS

6.1 The Goods remain at NIF's risk until Delivery to you, but when title passes to you the Goods are at your risk whether Delivery has been made or not. Where Delivery has been delayed because of your fault, the Goods shall be at your risk as regards any loss which may occur due to such delay.

7. PASSING OF TITLE IN THE GOODS

7.1 Title in the Goods only passes to you when payment for those Goods (together with any additional interest or charges as set out in these Terms of Trade) has been made in full by way of cleared funds.

8. RETENTION OF TITLE IN THE GOODS

8.1 You agree that title in any Goods supplied shall not pass to you until payment has been made in full. Until such time as title passes to you:
 (a) you will hold such Goods supplied or any of them on trust for NIF as bailee of NIF;
 (b) you will store the Goods separately from other goods in your possession in a manner so as to prevent any deterioration, and will clearly distinguish and identify the Goods as NIF's Goods;
 (c) NIF may give notice in writing to you to return the Goods to NIF. Upon receipt of such notice, your rights to obtain title or any other proprietary interest in the Goods shall cease; and
 (d) if you fail to return the Goods to NIF, then NIF or NIF's agent shall have your authority and licence to enter upon and into buildings and premises owned, occupied or used by you where the Goods are situated and to take possession of the Goods for removal.

9. LIEN

9.1 All Goods delivered to you together with any of your personal property in our possession for repair or servicing, are subject to a lien and security interest which you hereby grant in favour of NIF. Where NIF has not received or been tendered the whole of the price, or where payment has been dishonoured, NIF shall have:
 (a) the right to retain the Goods and/or your personal property for the price while NIF is in possession of them;
 (b) a right of stopping the Goods in transit whether or not Delivery has been made or ownership has passed; and
 (c) a right of resale of such Goods and/or your personal property provided that NIF's lien shall continue despite the commencement of proceedings or judgment for the price having been obtained.

10. PERSONAL PROPERTY SECURITIES ACT 1999

10.1 You acknowledge and agree that the above clause 8 (Retention of Title in the Goods) and clause 9 (Lien), create Security Interests in the Goods supplied, in all Proceeds of those Goods and in your personal property in our possession as security for the repayment of all moneys owing by you to NIF, and for the performance of all of your obligations to NIF, either pursuant to these Terms of Trade or any other outstanding contract with NIF.

10.2 You agree at NIF's request to promptly sign any documents, provide all necessary information (which information you warrant to be complete, accurate and up-to-date in all respects) and do anything else reasonably required by NIF to ensure that any such Security Interests constitute perfected Purchase Money Security Interests including executing any variations to these Terms of Trade reasonably requested by NIF.

10.3 If you fail to comply with these Terms of Trade or any other contract with NIF, NIF or its agent may exercise any and/or all remedies afforded to a secured party by Part 9 of the PPSA and enter any building or premises owned, occupied, or used by you to search for and re-take possession of any or all of the Goods. You further agree that where NIF has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.

10.4 You (to the extent permitted by law) expressly waive and contract out of, and agree that you shall have no rights under, the following provisions of Part 9 of the PPSA to:

- (a) receive a notice under section 114(1)(a);
- (b) receive a statement of account under section 116;
- (c) receive any surplus distributed under section 117(1)(c);
- (d) recover any surplus under section 119;
- (e) receive notice of any proposal of NIF to retain collateral under section 120(2);
- (f) object to any proposal of NIF to retain collateral under section 121;
- (g) not have any goods damaged in the event that NIF were to remove an accession under section 125;

- (h) receive notice of the removal of an accession under section 129;
 - (i) apply to the Court for an order concerning the removal of an accession under section 131;
 - (j) redeem collateral under section 132; and
 - (k) reinstate this contract under sections 133 and 134.
- 10.5 You acknowledge receipt of a copy of these Terms of Trade and waive any right to receive from NIF a copy of any financing statement, financing change statement or any verification statement that is registered, issued, or received at any time in relation to these Terms of Trade. You acknowledge that by placing an order for Goods with NIF, you are deemed to have assented to the provisions of these Terms of Trade.
- 10.6 You agree to immediately notify NIF in writing of any change of your legal or business name.
- 10.7 You expressly authorise NIF to allocate and apply in any proportions as it sees fit any moneys received from you towards part payment of the price of the Goods and/or in part payment of the price of any other Goods supplied to the intent that the Security Interests created by these Terms of Trade shall remain in full force and effect until all moneys owing, and/or all obligations due to be performed, by you to NIF have been paid or performed in full.

11. WARRANTIES, LIMITATION OF LIABILITIES

- 11.1 Details of warranties available, if any, will be provided upon written request but are always subject to clauses 11.2 and 11.3 of these Terms of Trade. Except to the extent of written warranties given by us to you, all warranties and representations in respect of Goods sold or Services supplied are excluded, including (to the extent permitted by law) those expressed or implied by law. Where any written warranty conflicts with clauses 11.2 or 11.3, the provisions of clauses 11.2 and 11.3 as applicable shall apply.
- 11.2 We shall not be liable:
- (a) where you have altered or modified the Goods, mis-applied the Goods, or have subjected them to any unusual or non-recommended use, abuse, servicing or handling;
 - (b) for loss caused by any factors beyond our control;
 - (c) for any indirect or consequential loss of any kind;
 - (d) for any second hand Goods; or
 - (e) where the terms of any written warranty have not been complied with, or any manufacturer's operations manual or specifications provided or known to you has not been complied with.
- 11.3 Our total liability under any warranty for damaged or defective Goods supplied by us or in relation to the provision of Services is limited at our option to either:
- (a) replacing or repairing the defective or damaged Goods and Services; or
 - (b) refunding the price of the defective or damaged Goods and Services.
- 11.4 You agree to hold NIF harmless and hereby indemnify NIF for any liability or costs which NIF may incur due to your use of the Goods including, but without limitation, any liability incurred for damage to any third party, degradation to the environment or damage to any other person's property.

12. CONSUMER GUARANTEES ACT, AND CONTRACT AND COMMERCIAL LAW ACT EXCLUDED

- 12.1 Where Goods are supplied to you for a business purpose, then you agree that the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 are hereby excluded and do not apply.
- 12.2 To the extent inconsistent with these Terms of Trade, the relevant provisions of the Contract and Commercial Law Act 2017 are hereby excluded and do not apply.
- 12.3 These Terms of Trade do not and do not purport to restrict or otherwise limit the application of relevant statutes to the subject matter herein other than to the extent that such restriction or limitation is lawfully permissible.
- 12.4 You undertake in relation to Goods and Services it acquires from NIF:
- (a) not to give any express written guarantees on behalf of any manufacturer, NZ importer or distributor of the Goods, nor on behalf of NIF except with NIF's express written approval;
 - (b) that you will not use the Goods for any purpose for which they are not suitable, and you will (wherever appropriate) correctly advise your customers, employees and contractors as to the purposes to which the Goods should or should not be put; that any literature that you may supply and which relates to the Goods will comply with the Consumer Guarantees Act 1993;
 - (c) to immediately notify NIF in writing of any claim it may receive pursuant to the Consumer Guarantees Act 1993, giving details of the Goods concerned and the claimant's contact information; and
 - (e) to effectively and in writing contract out of the Customer Guarantees Act 1993 where you agree to supply Goods to your own customers for the purposes of that customer's business.

- 12.5 You indemnify NIF against liability (including liability to claims, costs and expenses in defending claims) which would not have arisen had you complied with your undertakings set out in clause 12.4 above.

13. TERMS OF TRADE TO PREVAIL

- 13.1 These Terms of Trade shall prevail where there is any inconsistency or variance with:
- (a) any previous terms of trade, invoice or document;
 - (b) any previous usage of trade or course of dealing between the parties; and
 - (c) anything that may have been stated by either party (or their representatives) to the other party unless specifically agreed to in writing by NIF.
- 13.2 No alteration or variation of these Terms of Trade will be binding upon NIF unless authorised by NIF in writing. These Terms of Trade will without further notice apply to all future transactions between the parties whether or not this document is delivered to you in the course of such a transaction.

14. SEVERANCE

- 14.1 Should these Terms of Trade or any part of them be held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, such term or part of it may in NIF's sole discretion be severed from the rest without affecting the validity or enforceability of the remaining terms.

15. WAIVER

- 15.1 The delay or failure by NIF to enforce its rights at any time or for any period in relation to any one or more of these Terms of Trade shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these Terms of Trade.

16. NOTICES

- 16.1 Any notice to be given under these Terms of Trade must be in writing, must be delivered or sent by post or by e-mail, if to:
- (a) NIF, at its usual business address or to info@nif.co.nz; or
 - (b) you, to your registered office or your usual business address.
- 16.2 Any notice will be deemed to have been received:
- (a) if delivered by hand, when it is left at the relevant address during normal business hours;
 - (b) if sent by post, 3 Working Days after it has been posted; or
 - (c) if sent by email, at the time set out on the relevant confirmation report evidencing an error-free transmission to the correct email address.

17. PRIVACY ACT

- 17.1 You and any guarantor (if relevant) authorise us to collect and hold personal information from any source we consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information, for debt collection purposes, or for any other related purpose. You further authorise us to disclose personal information held by us for the purposes set out above to any other parties. You understand that you have a right of access and may request correction of personal information held by us about you.

18. DEFINED TERMS

- 18.1 Unless the context otherwise requires:
- "NIF" means the NORTH ISLAND FORKLIFTS LIMITED;
- "Goods" mean all goods supplied to you from time to time by NIF including forklifts, parts, accessories, consumables, other plant and equipment, materials or substances specified and all parts or components of the same.
- "PPSA" means the Personal Property Securities Act 1999 as amended or substituted from time to time.
- "Services" means all services provided, performed or supplied by us and whether described in any purchase order, in our invoice or otherwise.
- "Terms of Trade" means these terms of trade as may be amended or substituted from time to time by notice in writing to you or upon uploading to NIF's website.
- "us", "our" and "ours" are references to NIF.
- "Working Day" means a day on which registered banks are open for business in Tauranga, excluding Saturdays, Sundays and public holidays.
- "you", "your" and "yours" are references to the Customer as recorded on NIF's Credit Application (and if more than one person comprises the Customer, then they include references to those persons jointly and severally) or that person, firm, or company with whom NIF enters into a contract for the supply of Goods and Services.
- 18.2 Words and phrases used herein which are defined in the PPSA shall have the same meaning given to them in, or by virtue of, the PPSA.

The above Terms of Trade are accepted by the Customer:

DATED: _____

Name of Signatory (please print): _____

Signature: _____

Position of Signatory (please print): _____

Date: _____