

Franks' Motorcycles & 4 Spares

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf.

DATE: _____ REF No. _____

CUSTOMER'S TRADE NAME: _____

CUSTOMER'S FULL or LEGAL NAME: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

Postcode: _____

COMMERCIAL CUSTOMERS ONLY

Company Number: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company)

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

Postcode: _____

Home Phone: _____ Home Phone: _____

TRADE REFERENCES (excluding Farmlands, Farm Source, PGG Wrightson etc)

Business Name 1: _____ Business Name 2: _____

Address or A/C No: _____ Address or A/C No: _____

Phone: _____ Phone: _____

Fax: _____ Fax: _____

SERVICING:

Send me Service Reminders: Yes ☐ 3mthly ☐ 6mthly ☐ : No ☐

Please provide On-Farm Servicing: Yes ☐ No ☐

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of L C Franks T/A Franks' Motorcycles & 4 Spares which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.***

SIGNED (FRANKS): _____ SIGNED (CUSTOMER): _____

Name: _____ Name: _____

Position: _____ Position: _____

ID: _____ DOB: _____

WITNESS TO CUSTOMERS SIGNATURE:

Signed: _____ Name: _____ Date: _____

L C Franks T/A Franks' Motorcycles & 4 Spares – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Franks" shall mean L C Franks T/A Franks' Motorcycles & 4 Spares, its successors and assigns or any person acting on behalf of and with the authority of L C Franks T/A Franks' Motorcycles & 4 Spares.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Franks to the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Services" shall mean all Services provided by Franks to the Customer, including any advice or recommendations (and where the context so permits shall include any provision of Parts and/or Equipment as hereinafter defined) and shall be as described on the invoices, quotation, work authorisation or any other forms provided by Franks to the Customer.
- 1.5 "Parts" shall mean Parts provided by Franks to the Customer either separately, or as part of the Services (and where the context so permits shall include the supply of Services and/or Equipment).
- 1.6 "Equipment" shall mean all Equipment including any accessories supplied on hire by Franks to the Customer (and where the context so permits shall include any supply of Services and/or Parts as defined above).
- 1.7 "Price" shall mean the price payable for the Services as agreed between Franks and the Customer in accordance with clause 4 of this contract.
- 2. Consumer Guarantees Act 1993**
- 2.1 If the Customer is acquiring Parts for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Parts by Franks to the Customer.
- 3. Acceptance**
- 3.1 Any instructions received by Franks from the Customer for the provision of Services and/or the Customer's acceptance of Services provided by Franks shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Franks.
- 3.4 The Customer shall give Franks not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Franks as a result of the Customer's failure to comply with this clause.
- 3.5 Services are provided by Franks only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 4. Price and Payment**
- 4.1 At Franks' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Franks to the Customer in respect of the Services provided; or
- (b) Franks' estimated Price, which shall not be deemed binding upon Franks as the actual Price can only be determined upon completion of the Services. Franks undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate. Variances in the estimated Price of more than ten (10%) will be subject to the Customer's approval before proceeding with the Services; or
- (c) Franks' quoted Price (subject to clause 4.2) which shall be binding upon Franks provided that the Customer shall accept Franks' quotation in writing within thirty (30) days of issue.
- 4.2 Franks reserves the right to change the Price in the event of a variation to Franks' quotation (including, but not limited to, any variation as a result of increases to Franks in the cost of Parts and/or labour).
- 4.3 At Franks' sole discretion a deposit may be required.
- 4.4 The Seller may submit detailed progress payment claims in accordance with the Seller's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any Parts ordered for the Services but not yet installed.
- 4.5 At Franks' sole discretion:
- (a) payment shall be due on completion of the Services; or
- (b) payment shall be due before undertaking the Services.
- 4.6 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due twenty (20) days following the end of the month in which the invoice is dated.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and Franks.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5. Provision of the Services**
- 5.1 At Franks' sole discretion provision of the Services shall take place when Franks provides the Services at Franks' address.
- 5.2 Where Franks is requested to store the Customer's Parts or vehicle, or where Parts or vehicles are not collected within twenty-four (24) hours of advice to the Customer that they are ready for collection, then Franks (at its sole discretion) may charge a reasonable fee for storage.
- 5.3 The failure of Franks to provide the Services shall not entitle either party to treat this contract as repudiated.
- 5.4 Franks shall not be liable for any loss or damage whatsoever due to failure by Franks to provide the Services (or any parts of them) promptly or at all where due to circumstances beyond the control of Franks.
- 6. Risk**
- 6.1 If Franks retains ownership of any Parts nonetheless, all risk for the Parts passes to the Customer on collection.
- 7. Title**
- 7.1 Franks and Customer agree that the ownership of any Parts shall not pass until:
- (a) the Customer has paid Franks all amounts owing for the particular Parts; and
- (b) the Customer has met all other obligations due by the Customer to Franks in respect of all contracts between Franks and the Customer.
- 7.2 Receipt by Franks of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Franks' ownership or rights in respect of the Parts shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Parts shall be kept separate and identifiable until Franks shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Parts shall pass from Franks to the Customer Franks may give notice in writing to the Customer to return the Parts or any of them to Franks. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Parts shall cease; and
- (c) the Customer is only a bailee of the Parts and until such time as Franks has received payment in full for the Parts then the Customer shall hold any proceeds from the sale or disposal of the Parts, up to and including the amount the Customer owes to Franks for the Parts, on trust for Franks; and
- (d) until such time that ownership in the Parts passes to the Customer, if the Parts are converted into other products, the parties agree that Franks will be the owner of the end products; and
- (e) if the Customer fails to return the Parts to Franks then Franks or Franks' agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Parts are situated and take possession of the Parts, and Franks will not be liable for any reasonable loss or damage suffered as a result of any action by Franks under this clause.
- 8. Personal Property Securities Act 1999 ("PPSA")**
- 8.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Parts previously supplied by Franks to the Customer (if any) and all Parts that will be supplied in the future by Franks to the Customer.
- 8.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Franks may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Franks for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Parts charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of Franks; and
- (d) immediately advise Franks of any material change in its business practices of selling the Parts which would result in a change in the nature of proceeds derived from such sales.
- 8.3 Franks and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 128, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by Franks, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Customer shall unconditionally ratify any actions taken by Franks under clauses 8.1 to 8.5.
- 9. Defects**
- 9.1 The Customer shall inspect the Services/Parts on provision and shall within three (3) days of provision (time being of the essence) notify Franks of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Franks an opportunity to inspect the Services/Parts within a reasonable time following provision if the Customer believes the Services/Parts are defective in any way. If the Customer shall fail to comply with these conditions the Services/Parts shall be presumed to be free from any defect or damage. For defective Services/Parts, which Franks has agreed in writing that the Customer is entitled to reject, Franks' liability is limited to either (at Franks' discretion) replacing the Services/Parts or repairing the Services/Parts.
- 10. Return of Parts**
- 10.1 Returns of Parts will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 9.1; and
- (b) Franks has agreed in writing to accept the return of the Parts; and
- (c) the Parts are returned at the Customer's cost within fifteen (15) days of the delivery date; and
- (d) Franks will not be liable for Parts which have not been stored or used in a proper manner; and
- (e) the Parts are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 10.2 Franks may (at their sole discretion) accept the return of Parts for credit but this may incur a handling fee of up to twenty percent (20%) of the value of the returned Parts plus any freight costs.
- 10.3 Electrical Parts, non-stocklist items, or Parts ordered to the Customer's specifications are under no circumstances acceptable for credit or return.
- 11. Warranty**
- 11.1 Franks may (at their sole discretion and subject to the conditions set out in clause 11.2) warrant their workmanship against any defect, provided such defect is reported to Franks within the time specified by Franks in writing, and will either (at Franks' sole discretion) replace or remedy the defective workmanship.
- 11.2 The conditions applicable to the warranty given by clause 11.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Customer to properly maintain any Services; or
- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Franks; or
- (iii) any use of any Services otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Services after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.
- (b) The warranty shall cease and Franks shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Franks' consent.
- (c) In respect of all claims Franks shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 11.3 In the case of second hand Parts, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults, as is and acknowledges that no warranty is given by Franks as to the quality or suitability of the Part(s) for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Franks shall not be responsible for any consequential loss or damage howsoever arising out of the use of second hand Parts.
- 12. Cancellation**
- 12.1 Franks may cancel any contract to which these terms and conditions apply or cancel provision of Services at any time before the Services are provided by giving written notice to the Customer. On giving such notice Franks shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to Franks for Services already provided. Franks shall not be liable for any loss or damage howsoever arising from such cancellation.
- 12.2 In the event that the Customer cancels the Services, then the Customer shall be liable for any loss incurred by Franks (including, but not limited to, any amounts owing by the Customer to Franks for Services already provided and any loss of profits) up to the time of cancellation.
- 12.3 Cancellation of orders for Parts made to the Buyer's specifications or non-stocklist items will definitely not be accepted, once the order has been processed.
- 13. Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of eight percent (8%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 13.2 In the event that the Customer's payment is dishonoured, for any reason, the Customer shall be liable for any dishonour fees incurred by Franks.
- 13.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Franks from and against all costs and disbursements incurred by Franks in pursuing the debt including legal costs on a solicitor and own Customer basis and Franks' collection agency costs.
- 13.4 Without prejudice to any other remedies Franks may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Franks may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. Franks will not be liable to the Customer for any loss or damage the Customer suffers because Franks has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount owing to the Customer of two hundred dollars (\$200.00) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to Franks' other remedies at law Franks shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Franks shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Franks becomes overdue, or in Franks' opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 14. Security and Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which Franks may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Franks or Franks' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Franks (or Franks' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Franks elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Franks from and against all Franks' costs and disbursements including legal costs on a solicitor and own Customer basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Franks or Franks' nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.
- 15. Privacy Act 1993**
- 15.1 The Customer and the Guarantor/s (if separate to the Customer) authorises Franks to:
- (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors' creditworthiness or marketing products and Services to the Customer and/or Guarantors; and
- (b) disclose information about the Customer and/or Guarantors, whether collected by Franks from the Customer and/or Guarantors directly or obtained by Franks from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantors.
- 15.2 Where the Customer and/or Guarantors are an individual the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Customer and/or Guarantors shall have the right to request Franks for a copy of the information about the Customer and/or Guarantors retained by Franks and the right to request Franks to correct any incorrect information about the Customer and/or Guarantors held by Franks.
- 16. Loan Motorcycle**
- 16.1 The Loan Motorcycle shall at all times remain the property of Franks and are returnable on demand by Franks.
- 16.2 The Loan Motorcycle may only be driven during the period of loan by the Customer or persons named on the front of this form and then only if they hold a current driver's licence appropriate for the Loan Motorcycle at the time when they are driving it.
- 16.3 The Customer shall:
- (a) ensure that all reasonable care is taken in handling and parking the Loan Motorcycle and that it is left securely locked when not in use.
- (b) keep the Loan Motorcycle in the Customer's own possession and control and shall not allow the use of the Loan Motorcycle by any third party.
- (c) not alter or make any additions to the Loan Motorcycle including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Loan Motorcycle or in any other manner interfere with the Loan Motorcycle.
- (d) keep the Loan Motorcycle, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Franks to the Customer. In the event that the Loan Motorcycle is not returned in clean condition then Franks reserves the right to charge the Customer for all costs Franks incurs in cleaning the Loan Motorcycle.
- 16.4 The Customer acknowledges and agrees that they shall not permit any form of charge to be applied in relation to the Loan Motorcycle and further agrees that they shall not be entitled to any form of lien over the Loan Motorcycle.
- 16.5 The Customer shall be liable for any parking or traffic infringement and will supply relevant details as required by the Police and/or Franks relating to any such parking or traffic infringement and offences, impoundment, towage and storage.
- 16.6 The Customer, by signing on the front of this agreement, accepts that they shall be liable to Franks for any loss of or damage to the Loan Motorcycle and consequential loss to the full extent of any insurance excess (where applicable). In the event insurance is rendered invalid by any action of the Customer then the Customer shall be liable to Franks for the full cost of repairing or replacing the Loan Motorcycle (whichever is the lesser).
- 16.7 Any insurance excess applied (plus GST) shall be for each and every claim.
- 17. Unpaid Franks' Rights**
- 17.1 Where the Customer has left any item with Franks for repair, modification, exchange or for Franks to perform any other Services in relation to the item and Franks has not received or been tendered the whole of the Price, or the payment has been dishonoured, Franks shall have:
- (a) a lien on the item;
- (b) the right to retain the item for the Price while Franks is in possession of the item;
- (c) a right to sell the item.
- 17.2 The lien of Franks shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
- 18. Customer's Disclaimer**
- 18.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Franks or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Franks and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgement.
- 19. General**
- 19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Gore.
- 19.3 Franks shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Franks of these terms and conditions.
- 19.4 In the event of any breach of this contract by Franks the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Parts.
- 19.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Franks nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.6 Franks may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.7 Franks reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Franks notifies the Customer of such change.
- 19.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 19.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19.10 The failure by Franks to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Franks' right to subsequently enforce that provision.