

TERMS OF TRADE

1. **What is the purpose of this agreement?**
- 1.1 This agreement sets out the terms that apply to the relationship between you and your agent(s) and/or principal(s) ("you" and "our") and Franklin Engineering Services Limited and our agent(s) ("we", "us" and "our").
2. **What information about you can we collect?**
- 2.1 You agree to provide us with and allow us to use all information necessary to give effect to this agreement and the provision of our products and performance of our services.
- 2.2 Unless your consent is withdrawn in writing, you agree to the disclosure of information:
 - to give effect to the provision of our products and performance of our services;
 - to enforce our obligations under this agreement or any additional agreement;
 - when authorised by you or required by law;
 - to assess credit worthiness; and
 - to market any of our products and services.
- 2.3 We will comply with the Privacy Act 1993. We will not use your information unless we have reasonably ensured it is accurate, complete, relevant and not misleading. If we give your information to another entity we will do everything reasonably within our power to prevent unauthorised use or disclosure of your information. You may access your information and ask us to correct any mistakes.
3. **What are our products and services?**
- 3.1 "Product(s)" and "service(s)" means and includes without limitation:
 - components, units, fixtures, fittings, accessories and materials (whether separate, attached to something or the subject of our services) supplied by us;
 - engineering, reconditioning, manufacturing, repair, maintenance, labour, delivery and installation; and
 - agency fees, charges and out of pocket expenses incurred by us,identifiable in any document or electronic record issued by either party (all of which are deemed to be incorporated into and form part of this agreement) or as ours by marking or manner of storage.
4. **What is the price?**
- 4.1 The price is the cost of the products and services as agreed between you and us from time to time subject to GST and out of pocket expenses. If no price is stated, the price will be the standard amount at which that we provide the products and services at the time of your request. The price is subject to reasonable change due to variations to the products and services to be provided or circumstances beyond our control.
- 4.2 We reserve the right to make necessary changes in products we manufacture and market at any time to improve product performance. These changes in products will be made without obligation to change or improve products that were previously manufactured. This warranty limits an implied warranty to one (1) year and no person, company or organisation is authorised to assume for our services and other liabilities in connection with the sale of our products.
5. **What happens when we give you a quote?**
- 5.1 All quotes will be exclusive of GST and remain valid one (1) month from the date of the invoice, unless agreed or stated otherwise.
- 5.2 You will be responsible for increased costs resulting from any subsequent changes to a quote due to any inadequate or inaccurate information, request/requirement for additional products and services, variations or delays caused by you or any other party beyond our control.
- 5.3 You can only accept quotes in writing and we may withdraw a quote at any time prior to your acceptance.
- 5.4 We may alter the quote due to circumstances beyond our control or clerical or computer error.
6. **When and how do you pay us?**
- 6.1 You agree to pay us in full and without set-off, deduction, counterclaim or retention:
 - for credit account holders, on or before the 20th day of the month following the date of our invoice;
 - for those without credit accounts, on completion of our services, unless otherwise agreed or required;
 - interest on any amount you owe after the due date at 2.5% per month/part month;
 - storage fees for any product stored by us after the agreed date of delivery/pick up;
 - expenses incurred as a result of enforcing any of our rights contained in this agreement including PPSR registration, debt collection and legal fees; and
 - a deposit may be required.
- 6.2 You agree to us allocating or reallocating any payment received from you towards any invoice. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.
- 6.3 If paying by credit card, we may require a retention equal to the value of the products and services and deduct the same from your credit card. Each credit card payment will incur a surcharge of 3% of the value of the payment.
- 6.4 You will be responsible for payment if a third party that you expect to pay you or us fails to pay.
7. **What warranties and limitations apply?**
- 7.1 Manufacturers' and third party warranties (where applicable).
- 7.2 Subject to 8.2, we provide a warranty on engine reconditioning for one (1) year from the date of purchase or 20,000 kms, whichever is earlier.
- 7.3 Subject to 8.2, we warrant that all products are free from defects in material and workmanship for one (1) year from the date of purchase.
- 7.4 If you are in trade and/or are a business, you agree that the parties contract out of the Fair Trading Act 1986 and Consumer Guarantees Act 1993 and Contract & Commercial Law Act 2017 to the extent permissible by law.
- 7.5 We are not liable for delay or failure to perform our obligations if the cause is beyond our reasonable control such as supplier delays.
- 7.6 Subject to applicable insurance and 7.1-7.5, if we are deemed liable for loss or damage of any kind, however arising including from provision of products and services to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract tort or otherwise, our total liability is limited to the value of products and services provided to you.
8. **What if you wish to make a claim in relation to our products and services?**
- 8.1 Indent ordered and custom made products or products used in modifications cannot be returned unless due to fault/defect.
- 8.2 Subject to 8.1, claims in relation to our products and services are subject to the following:
 - for claims relating to faulty/defective products and services, you notifying us within the applicable warranty period;
 - for claims not relating to faulty/defective products such as short or incorrect supply, you notifying us within seventy-two (72) hours of pick up/delivery;
 - the products having been installed correctly and in their correct application, used in accordance with the manufacturer's/our instructions and not having been subject to abuse, neglect, lack of maintenance, misuse, accident or modification or work by an unauthorised third party – breach of these terms will void any warranty claim;
 - the cost of return of a product being your sole responsibility; and
 - us either or only repairing or replacing defective products at our discretion.
- 8.3 Any products the subject of a claim under 8.2 cannot be destroyed or removed from the premises until we have inspected the same or waived our right to do so in writing.
9. **When will the products and services be provided?**
- 9.1 We will use our best endeavours to deliver the products and services at the time agreed between you and us; however, the time of delivery is not an essential term of this agreement. We may partially deliver products listed in one order and we if we fail to deliver an instalment that failure will not give rise to a right of cancellation.
- 9.2 Delivery is complete when we give the products to you, give the products to a third party carrier, or leave the products at the delivery site or your premises.
- 9.3 We are responsible and assume risk for the products until delivery in accordance with 9.2, pick up by you or the passing of ownership under 11.1, whichever comes first.
10. **For what are you responsible?**
- 10.1 You are solely responsible for and warrant that you have ensured and/or will ensure that information, plans and drawings on which we base our products and/or services are accurate and complete. We are not liable for variations and additions to our products and services where such is the result of inaccuracy or incompleteness and you will be responsible for the cost of additional products and services required to remedy any issues.
11. **What ownership and security rights do we have?**
- 11.1 We retain ownership of and hold a security interest in all products until you have paid us in full for all products and services provided to you. While we retain ownership, you will store all products in such a way that our interests are protected and they can be identified as provided by us.
- 11.2 You agree that we hold security interest in all of your present and after acquired property over the total amount of products and services provided to you, and:
 - authorise us to register a financing statement and charge on the Personal Property Securities Register, and provide all information and signatures necessary to effect the same;
 - will not register a financing charge or statement or charge demand in respect of products without our prior written consent;
- waive your entitlement under s 148 of the Personal Property Securities Act 1999 (PPSA) to receive a copy of a verification statement where we have registered our interest;
- that both parties contract out of s 114(1)(a), 133 and 134 of the PPSA;
- waive your rights as listed under s 107(2) of the PPSA; and
- give us seven (7) days prior written notice of any proposed change in your name or details such as contact information.
- 11.3 Where applicable, we own all existing and new intellectual property rights connected to the products and services and any plans and documents created by us in relation to the same. You fully indemnify us for any intellectual property infringements we may make when acting in accordance with your instructions and may use the products only if paid in full and for the purpose for which they were intended and supplied by us.
12. **What if you want to vary the products and services to be provided?**
- 12.1 All requests and orders are subject to these terms and no products or services may be varied unless both parties agree to the variation in writing prior to ordering supplies or manufacturing commencing, whichever is earlier. If we have reasonably relied on your original instructions then you will be responsible for payment of the original price of the products and services.
13. **When can a party cancel this agreement?**
- 13.1 Subject to 13.2-13.5, either party may cancel this agreement at any time by giving twenty-one (21) days prior written notice.
- 13.2 We have the right by seven (7) days written notice to suspend or cancel wholly or in part this or any agreement for the provision of products and services and/or close your credit account if you default by:
 - failing to pay or indicating you will not pay any sum owing by the due date;
 - any of your creditors seizing or indicating they will seize any products provided to you;
 - products in your possession becoming materially damaged while any amount remains unpaid;
 - being bankrupted, insolvent, under statutory management or put into liquidation;
 - a receiver being appointed over or a landlord possessing any of your assets;
 - a court judgment entered against you remaining unsatisfied for seven (7) days;
 - breaching the terms of this agreement; and
 - an adverse material change in your financial position.
- 13.3 If you default we may exercise a lien against any products in our possession.
- 13.4 You agree that if you default and the default is not remedied within seven (7) days, we may enter any premises occupied by you to inspect or retrieve any products. You will provide reasonable access to such premises and do all things necessary to give effect to our obligations. We may re-sell any products and credit the net sale proceeds to your account for the invoice value less adjustment for the condition of the products.
- 13.5 Cancellation under 13.1 or cancellation or suspension under 13.2 will not affect either party's claim for any amount due at the time of cancellation or suspension, damages for any breach of obligations under this agreement and any other legal rights either party may have. Upon cancellation of this agreement any amount owed by you for products and services provided up to and including the date of cancellation will become immediately payable and current orders and services will terminate.
14. **Does a personal guarantee apply?**
- 14.1 If you are a director of a company or the trustee of a trust:
 - in exchange for us agreeing to supply products and services and/or grant credit to the company or the trust, you also sign this agreement in your personal capacity, and jointly and severally personally undertake as principal debtors, to pay everything that the company or trust owes us, and to indemnify us against non-payment and/or default; and
 - any personal liability of you as director or trustee will not exclude the company or trust from the liabilities and obligations contained in this agreement.
- 14.2 A guarantee provided under 14.1 will continue to apply notwithstanding changes to these terms of trade in accordance with 15.8 and/or prior dealings.
15. **What else is agreed?**
- 15.1 We may outsource (contract out) part of the work required to perform our services, you agree to pay for all amounts due in connection with the same.
- 15.2 A failure by either party to enforce any of the terms of this agreement will not be deemed to be a waiver of any of the rights or obligations under this agreement.
- 15.3 Neither party may assign or transfer their rights or obligations under this agreement to any other party without our prior written consent.
- 15.4 If any of these terms are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.
- 15.5 This agreement supersedes all prior agreements, representations and warranties. Any instructions we receive from you and all arrangements between the parties are subject to these terms.
- 15.6 If a dispute arises between the parties either party must notify the other in writing within seven (7) days of the dispute arising. The parties will endeavour to resolve the dispute by negotiation within seven (7) days of receiving notice. If the parties cannot resolve the dispute then each party will have the right to refer the dispute for mediation or arbitration at any time. The arbitration will be undertaken in accordance with the Arbitration Act 1996. The presence of a dispute will not affect either party's claim for any amount due, damages for any breach of obligations under this agreement and any other legal rights either party may have.
- 15.7 Documentation related to this agreement may be served on you by email.
- 15.8 We will notify you of any changes to these terms and publish the same on our website - continued provision of products and services will be subject to your signed or written acceptance of the same. All other variations must be mutually agreed in writing.
16. **Our Liability**
- 16.1 To the fullest extent permitted by law, we will not be liable for:
 - loss caused by any factor beyond our control;
 - loss or damage caused (including but not limited to loss or damage to our products and services) in the removal, shipping, reinstallation, set up and testing of products or services provided by us, where we are not responsible for one or more of those processes;
 - any loss or damage caused to our products or services provided by subsequent works beyond our control including (but not limited to) the shipping, reinstallation, set up and testing of our products, where we are not responsible for one or more of those processes;
 - failure to deliver to you by any specified dates;
 - any damage to, or defectiveness or malfunction in any part or parts of the products and services eventually supplied to you;
 - the loss of or damage to any of your chattels left within our possession or control (whether such loss or damage results from our negligence or default or otherwise howsoever);
 - the loss of or damage to products or services while in transit (whether such loss or damage results from our negligence or default or otherwise howsoever);
 - deterioration of products or services as a result of exposure to the elements, after delivery;
 - any act or omission by any subcontractor;
 - any advice, recommendation, information, assistance or service provided by us in relation to our products or services, their use or application; or
 - loss of profits or consequential, indirect or special damage or loss of any kind whatsoever and howsoever arising.
- 16.2 Notwithstanding any other provision in these terms our total liability to you shall at all times be limited to an amount equivalent to the contract price paid, or to be paid, by the customer to the company for the relevant products and services.
- 16.2.1 No claim based on defective products and services will be allowed unless:
 - the claim is notified to us within seven days of delivery to you; and
 - we are given a reasonable opportunity to investigate the claim.
- 16.3 In respect of defective products or services not directly supplied by us, we will in no event be liable to pay to you any amount in excess of such amount (if any) as we shall have received from our supplier in respect thereof.