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## B&C Motorcycles Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Bikebitz” means B&C Motorcycles Ltd, its successors and assigns or any person acting on behalf of and with the authority of B&C Motorcycles Ltd.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods (including parts, oils, or Vehicles) or Services supplied by Bikebitz to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Vehicle” shall mean the motorcycle or other vehicle whether or not such vehicle travels on or off road as described in any documentation supplied by Bikebitz to the Client.
- 1.5 “Price” means the Price payable for the Goods as agreed between Bikebitz and the Client in accordance with clause 6 below.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Bikebitz’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Bikebitz.
- 2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Bikebitz’s website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

### 3. Trade-In

- 3.1 In the event that Bikebitz accepts a trade-in as part payment of purchases or Goods outright, then the Client acknowledges and warrants that he/she owns the said property and that it is not in any subject to any security, charge, lien or hire purchase agreement.

### 4. Change in Control

- 4.1 The Client shall give Bikebitz not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Bikebitz as a result of the Client’s failure to comply with this clause.

### 5. Online Ordering

- 5.1 The Client acknowledges and agrees that:
  - (a) Bikebitz does not guarantee the websites performance or availability of any of its Goods; and
  - (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
  - (c) there are inherent hazards in electronic distribution and as such Bikebitz cannot warrant against delays or errors in transmitting data between the Client and Bikebitz including orders, and you agree that to the maximum extent permitted by law, Bikebitz will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.
- 5.2 Bikebitz reserves the right to terminate your order if it learns that you have provided false or misleading information, interfered with other users or the administration of Bikebitz’s Services, or violated these terms and conditions.

### 6. Price and Payment

- 6.1 At Bikebitz’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Bikebitz to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to Bikebitz’s current price list; or
  - (c) Bikebitz’s quoted or estimated price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Bikebitz reserves the right to change the Price if a variation to Bikebitz’s quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as additional or obscured defects or faults found on closer inspection or disassembly, or as a result of any increase to Bikebitz’s in the cost of materials and labour including overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) will be charged for on the basis of Bikebitz’s quotation and will be shown as variations on the invoice.
- 6.3 At Bikebitz’s sole discretion a deposit may be required upon request in which case such deposit shall become immediately due and payable.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Bikebitz, which may be:
  - (a) on delivery of the Goods;
  - (b) by way of instalments in accordance with Bikebitz’s payment schedule for major rebuild work;
  - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client’s address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Bikebitz.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Client and Bikebitz.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Bikebitz an amount equal to any GST Bikebitz must pay for any supply by Bikebitz under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 7. Delivery of Goods

- 7.1 Delivery (“Delivery”) of the Goods is taken to occur at the time that:

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- (a) the Client or the Client's nominated carrier takes possession of the Goods at Bikebitz's address; or
  - (b) Bikebitz (or Bikebitz's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 At Bikebitz's sole discretion the cost of delivery is in addition to the Price.
- 7.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Bikebitz shall be entitled to charge a reasonable fee for redelivery and/or storage where Services have been completed on Vehicles.
- 7.4 Any time or date given by Bikebitz to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Bikebitz will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

### 8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Bikebitz is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Bikebitz is sufficient evidence of Bikebitz's rights to receive the insurance proceeds without the need for any person dealing with Bikebitz to make further enquiries.
- 8.3 If the Client requests Bikebitz to leave Goods outside Bikebitz's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 8.4 The Client acknowledges and agree that where Bikebitz has performed temporary repairs on the Vehicle that:
- (a) Bikebitz offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - (b) Bikebitz will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair of the damaged Vehicle.
- 8.5 The Client acknowledges that Bikebitz is only responsible for parts that are replaced by Bikebitz and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify Bikebitz against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 8.6 Where the Client has supplied parts for Bikebitz to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the parts. Bikebitz shall not be responsible for any defects in the parts, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of parts supplied by the Client.

### 9. Specifications

- 9.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Bikebitz's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Bikebitz;
  - (b) while Bikebitz may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that Bikebitz has given these in good faith, and are estimates based on industry prescribed estimates.
- 9.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 9.3 Bikebitz reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases Bikebitz will notify the Client in advance of any such substitution.

### 10. Testing of Vehicle

- 10.1 Bikebitz or its employees may test drive or carry out tests on the Vehicle at Bikebitz's discretion and may if requested by the Client collect or re-deliver the Vehicle when nominated by the Client. Bikebitz will not be liable for (and the Client indemnifies Bikebitz against) any damages caused to, or by, the Vehicle during such tests, collecting or delivery unless it arises from the recklessness or wilful misconduct of Bikebitz's or its employees.

### 11. Title

- 11.1 Bikebitz and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Bikebitz all amounts owing to Bikebitz; and
  - (b) the Client has met all of its other obligations to Bikebitz.
- 11.2 Receipt by Bikebitz 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.
- 11.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to Bikebitz on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Bikebitz and must pay to Bikebitz the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Bikebitz and must pay or deliver the proceeds to Bikebitz on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Bikebitz and must sell, dispose of or return the resulting product to Bikebitz as it so directs.
  - (e) the Client irrevocably authorises Bikebitz to enter any premises where Bikebitz believes the Goods are kept and recover possession of the Goods.
  - (f) Bikebitz may recover possession of any Goods in transit whether or not delivery has occurred.

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- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Bikebitz.
- (h) Bikebitz may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 12. Personal Property Securities Act 1999 (“PPSA”)

- 12.1 Upon assenting to these terms and conditions in writing the Client 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 Goods previously supplied by Bikebitz to the Client (if any) and all Goods that will be supplied in the future by Bikebitz to the Client.
- 12.2 The Client 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 Bikebitz may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Bikebitz for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of Bikebitz; and
  - (d) immediately advise Bikebitz of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 Bikebitz and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Bikebitz, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by Bikebitz under clauses 12.1 to 12.5.

### 13. Client’s Disclaimer

- 13.1 The Client hereby disclaims any right to rescind, or cancel any contract with Bikebitz or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Bikebitz and the Client acknowledges that the Goods are bought relying solely upon the Client’s skill and judgment.

### 14. Defects

- 14.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Bikebitz of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Bikebitz an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Bikebitz has agreed in writing that the Client is entitled to reject, Bikebitz’s liability is limited to either (at Bikebitz’s discretion) replacing the Goods or repairing the Goods.

### 15. Returns

- 15.1 Non-stocklist items, second hand Goods (unless defective) or Goods made to the Client’s specifications are under no circumstances acceptable for credit or return.
- 15.2 For Goods (including new parts only) not manufactured by Bikebitz, the warranty shall be the current warranty provided by the manufacturer of the Goods. Bikebitz shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 15.3 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Bikebitz as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Bikebitz shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

### 16. Consumer Guarantees Act 1993

- 16.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Bikebitz to the Client.

### 17. Intellectual Property

- 17.1 Where Bikebitz has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Bikebitz.
- 17.2 The Client warrants that all designs, specifications or instructions given to Bikebitz will not cause Bikebitz to infringe any patent, registered design or trademark in the execution of the Client’s order and the Client agrees to indemnify Bikebitz against any action taken by a third party against Bikebitz in respect of any such infringement.
- 17.3 The Client agrees that Bikebitz may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Bikebitz has created for the Client.

### 18. Default and Consequences of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Bikebitz’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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- 18.2 If the Client owes Bikebitz any money the Client shall indemnify Bikebitz from and against all costs and disbursements incurred by Bikebitz in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Bikebitz's collection agency costs, and bank dishonour fees).
- 18.3 Without prejudice to any other remedies Bikebitz may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Bikebitz may suspend or terminate the supply of Goods to the Client. Bikebitz will not be liable to the Client for any loss or damage the Client suffers because Bikebitz has exercised its rights under this clause.
- 18.4 Without prejudice to Bikebitz's other remedies at law Bikebitz shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Bikebitz shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Bikebitz becomes overdue, or in Bikebitz's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client 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 Client or any asset of the Client.

### 19. Cancellation

- 19.1 Bikebitz may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Bikebitz shall repay to the Client any money paid by the Client for the Goods. Bikebitz shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Bikebitz as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 Cancellation of orders for Goods made, specifically ordered or modified to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 20. Privacy Act 1993

- 20.1 The Client authorises Bikebitz or Bikebitz's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by Bikebitz from the Client directly or obtained by Bikebitz 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 Client.
- 20.2 Where the Client is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Client shall have the right to request Bikebitz for a copy of the information about the Client retained by Bikebitz and the right to request Bikebitz to correct any incorrect information about the Client held by Bikebitz.

### 21. Unpaid Seller's Rights

- 21.1 Where the Client has left any item with Bikebitz for repair, modification, exchange or for Bikebitz to perform any other service in relation to the item and Bikebitz has not received or been tendered the whole of any monies owing to it by the Client, Bikebitz shall have, until all monies owing to Bikebitz are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of Bikebitz shall continue despite the commencement of proceedings, or judgment for any monies owing to Bikebitz having been obtained against the Client.

### 22. General

- 22.1 The failure by Bikebitz to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Bikebitz's right to subsequently enforce that provision. 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.
- 22.2 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 Tauranga in New Zealand.
- 22.3 Bikebitz shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Bikebitz of these terms and conditions (alternatively Bikebitz's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Bikebitz nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.5 Bikebitz may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.6 The Client agrees that Bikebitz may amend these terms and conditions at any time. If Bikebitz makes a change to these terms and conditions, then that change will take effect from the date on which Bikebitz notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Bikebitz to provide Goods to the Client.
- 22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.