1. Definitions and Interpretation

1.1 In these Terms and Conditions:

(1) “Claims” includes any claims, demands, suits, actions, and proceedings for compensation, loss and/or damages, including consequential loss;

(2) “GST” means the goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

(3) the Purchaser means Teterin Engineering Co Pty Ltd and/or any related body corporate of the Purchaser within the meaning of section 50 of the Corporations Act 2001 (Cth);

(4) “Reconditioned engine” means an engine completed by the Seller.

(5) “Reconditioned goods” means Teterin Engineering Co Pty Ltd and, where applicable, any related body corporate of the Seller within the meaning of section 50 of the Corporations Act 2001 (Cth);

(6) unless the context requires:

(a) a reference to any law, legislation or legislative provision includes any statutory modification, amending or successor legislation, and/or subordinate legislation or regulations issued under that legislation or legislative provision;

(b) the term “person” or any other expression importing a natural person includes any company, trust, partnership, joint venture, association, governmental or official agency;

(c) where any paragraph comprises of more than one person, this Agreement binds them jointly and each of them severally;

(d) a word which denotes the singular also denotes the plural and which denotes the plural denotes the singular;

(e) the words “include” or “including” are to be construed without limitation.

2. Operation of these Terms and Conditions

2.1 The only terms and conditions which are binding upon the parties with respect to the supply of any goods and/or the rendition of the pure supply of:

(1) those set out in these Terms and Conditions (except as otherwise agreed in writing); and

(2) any goods or services supplied on an implied or written contract or which cannot be excluded to the extent permitted by law.

2.2 For the avoidance of doubt, if the Seller is unable to supply the Purchaser’s total order of any goods and/or services in full, these Terms and Conditions apply to the goods and/or services supplied.

3. Price and GST

3.1 The price list of the Seller is not an offer to sell but is an invitation to treat only and the Seller reserves the right to accept or reject in its absolute discretion any purchase orders which may be received by it from the Purchaser.

3.2 The prices shown in the Seller’s price list are subject to alteration in the Seller’s discretion, and/or the result of services and/or goods notwithstanding they were deemed to be accepted by the Seller under clause 5.1.

3.3 If the Purchaser will not return the order for the goods if they are in a saleable condition; and

(2) the Seller may charge a handling charge equivalent to 10% of the price of the goods returned, unless the Purchaser is a “customer” for the purposes of the Australian Consumer Law.

3.4 If the Seller grants the Purchaser credit PURCHASE ORDER (PO)

4. Delivery of Goods

4.1 In respect of delivery of goods and/or delivery of the goods to the Purchaser where a place of delivery other than at the Seller’s premises is specified, the Purchaser must pay the costs of transportation of the goods to the Purchaser’s nominated place of delivery, at the same time as, and in addition to, the price at the Seller’s risk.

4.2 If a delivery date is specified, that date is an estimate only and the Seller shall not be liable for any claims in connection with any delay in delivery.

5. Acceptance of Goods and Services and Exclusion of Implied Conditions and Warranties

5.1 The Purchaser must inspect all goods and/or services immediately upon delivery and/or supply of the services and it must, within 7 days after the earlier of that delivery or inspection, give written notice to the Seller, with particulars, of any claim that the goods and/or services are defective in any way, in breach of these Terms and Conditions, and/or the warranty in clause 5.2 and/or the result of services and/or goods.

5.2 If the Purchaser does not (unless otherwise agreed in writing) return the defective goods immediately upon delivery and/or supply of the services and it must, within 7 days after the earlier of that delivery or inspection, give written notice to the Seller, with particulars, of any claim that the goods and/or services are defective in any way, in breach of these Terms and Conditions, and/or the warranty in clause 5.2 and/or the result of services and/or goods.

5.3 The price at which the goods and/or services are to be sold to the Buyer are the Seller’s sole and exclusive cost of the goods and/or services.

5.4 Unless otherwise stated or agreed, all prices for goods and services payable under these Terms and Conditions are:

(1) exclusive of GST and the Purchaser, as recipient of a taxable supply, must pay (at the same time and in the same manner as the price is due to be paid) the amount of any GST (or any rate of tax) on the goods that are part of the taxable supply.

(2) do not (unless otherwise stated or agreed in writing) include any other sales or other governmental taxes or levies and, should any such taxes be levied or imposed by the Commonwealth of Australia or State Governments, then the Purchaser shall be liable for and must promptly pay all taxes so levied or imposed.

6. Delivery of Goods

6.1 In respect of delivery of goods and/or delivery of the goods to the Purchaser where a place of delivery other than at the Seller’s premises is specified, the Purchaser must pay the costs of transportation of the goods to the Purchaser’s nominated place of delivery, at the same time as, and in addition to, the price at the Seller’s risk.

6.2 Payment and Invoicing

6.1 Payment for all goods and services must be made in full without any set-off or counterclaim in cash, direct deposit to the Seller’s nominated bank account or by bank cheque no later than by the expiration of the above dates, calculated from the date of each invoice.

6.2 Payment is deemed to be made:

(1) if cash is tendered – on the date it is tendered; and

(2) if paid by direct deposit or otherwise) or other negotiable instrument is tendered – on the date upon which the funds are cleared in the Seller’s bank account.

6.3 Time is of the essence in the Purchaser’s obligation to make payment for all goods and services sold by the Seller to the Purchaser.

6.4 If the Purchaser defaults in making payment to the Seller in accordance with these Terms and Conditions, the Seller may:

(1) charge the Purchaser interest calculated on the portion of the Purchaser’s account overdue at the rate of 2% per month from the date on which the default arose and the Purchaser shall, on demand being made, forthwith pay to the Seller the interest immediately on demand; and/or

(2) require the Purchaser to forthwith pay the Seller immediately on demand for all the Seller’s costs of recovery, including legal costs calculated on a solicitor and client basis as a consequence of the Seller instructing its solicitor to provide advice to it in connection with such proceedings.

6.5 Any payments tendered to the Seller may be applied as follows:

(1) first as reimbursement for any collection costs incurred by the Seller in accordance with clause 6.4(2);

(2) secondly, in payment of any interest charged to the Purchaser in accordance with clause 6.4(1); and

(3) thirdly, in satisfaction or part satisfaction of the oldest portion of the Purchaser’s account.

7. Returns

7.1 To the extent permitted by law, the Purchaser must not return any goods to the Seller, including any goods the Purchaser claims are defective or not in accordance with these Terms and Conditions (whether or not the goods are deemed to be accepted by the Purchaser), unless the Seller has first given its written approval for their return. Any returns which are approved by the Seller must then be with freight and carriage prepaid by the Purchaser.

7.2 If the Seller, in its discretion, gives its written approval for the return of goods notwithstanding they were deemed to be accepted by the Seller under clause 5.1.

7.3 If the Seller gives its written approval for the return of goods which are not deemed to have been accepted by the Purchaser under clause 5.1, the Seller must refund to the Purchaser the freight costs of returning the goods, unless the Purchaser has paid for the goods in full.

8. Risk

8.1 Goods supplied and/or delivered by the Seller to the Purchaser are at the Purchaser’s risk and the title of the goods to the Purchaser or the delivery to their Purchaser or into the Purchaser’s custody.

9. Retention of Title in Goods

9.1 The Purchaser agrees that the property in goods supplied by the Seller to the Purchaser does not pass to the Purchaser until the Purchaser has paid to the Seller the price of the goods and/or services in full and/or the Purchaser’s account is in credit balance.

9.2 The seller must store the goods in such a manner as to show clearly that they are the property of the Seller.

9.3 The Seller may sell the goods, in the ordinary course of its business, as agent and in a fiduciary capacity, to another person for any price, and the Seller may retain and/or sell any proceeds from insurance claims which must be kept in a separate bank account.

9.4 In the event that the Seller sells the goods to its customers or mixes the goods with other goods, the Purchaser may not claim any entitlement in respect of the goods.

9.5 Any payments tendered to the Seller may be applied as follows:

(1) upon which the Seller’s rights to receive a

9.6 Where any party comprises of more than one person, this Agreement binds them jointly and each of them severally.

10.PPSA

10.1 In this clause 10, “PPSA” means the Personal Property Securities Act 2009 (Cth) and all terms used in this clause 10 which have a meaning in the PPSA have the same meaning as therein defined, unless the context requires otherwise.

10.2 The Purchaser acknowledges and agrees with the Seller that for the benefits of any goods from the Seller to the Purchaser on these Terms and Conditions constitutes a Security Agreement for the purposes of the PPSA in connection with which:

(1) the Purchaser grants a Security Interest in the goods and their proceeds and that Security Interest, to the extent it can be under the PPSA, a Purchase Money Security Interest in the goods.

(2) the Seller is entitled to register its Security Interest in the goods and their proceeds as a Purchase Money Security Interest under the PPSA.

(3) the Purchaser’s Security Interest in the goods is not subject to the Seller’s prior written consent.

(4) the charge is not void if a Financing Statement or a Financing or Change Statement in relation to the goods in favour of a third party without the Seller’s prior written consent.

(5) the goods are Collateral for the purposes of the PPSA.

(6) the Purchaser will do all the things necessary including signing any required documents and providing all information the Seller requires to register a Financing Statement or Financing Change Statement in or in relation to the goods in respect of the Seller’s Security Interest in the goods.

(7) the Purchaser will not change its name, ACN or ABN or other relevant personal or company registration details without the Seller’s prior written consent.

(8) the Purchaser waives its rights to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement in respect of the Security Interest created pursuant to this clause 10.

(9) the Purchaser will pay on demand the Seller’s costs of any discharge of the Security Interest or necessity of any Financing Statement or Financing Change Statement;

(10) unless otherwise agreed in writing, the parties agree not to disclose information of the kind referred to in clause 10(10).

11. Governing Law

11.1 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Queensland, Australia.
10.3 Section 115(1) of the PSSA allows for the contracting out of provisions of the PPSA and, to the maximum extent permitted by law, the Purchaser agrees with the Seller that the following sections of the PPSA are contracted out of and will not apply: sections 95, 96, 118, 121, 125, 130, 132, 135, 142 and 143.

10.4 Section 115(7) of the PSSA allows for the contracting out of provisions of the PPSA and, to the maximum extent permitted by law, the Purchaser waives any rights the Purchaser may otherwise have pursuant to, and the parties hereby contract out of, the following sections of the PPSA: sections 127, 129(2) and (3), 130(1), 132, 134(2), 135, 136(3), (4) and (5) and 137.

11. Dispute Resolution
11.1 If any dispute arises in relation to the matters the subject of these Terms and Conditions, a party must not commence any court or arbitration proceedings in relation to such dispute unless the parties have complied with the following provisions of this clause 11 except where a party seeks interlocutory relief:

(1) a party claiming that a dispute has arisen out of or in relation to this Agreement must give notice to the other party specifying the nature of the dispute;
(2) if, within 14 days of receipt of the notice (or such further period as may be agreed in writing by the parties), the parties are unable to resolve the dispute or reach agreement as to:
   - (a) the dispute resolution technique (eg. expert determination) and procedures to be adopted;
   - (b) the timetable for all steps in those procedures; and
   - (c) the selection and compensation of the independent person required for such technique,
      the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales, and the President of the Law Society of New South Wales or the President’s nominee will select the mediator unless the parties agree on the mediator to be engaged.

12. Force Majeure
12.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

13. Assignment
13.1 The Purchaser shall not be entitled to assign or transfer its rights, obligations and interests under these Terms and Conditions without the prior written consent of the Seller.

14. General
14.1 These Terms and Conditions:
   - (1) contain the entire agreement and understanding between the Seller and the Purchaser on everything connected with the subject matter of these Terms and Conditions;
   - (2) supersede any prior agreement, representations or understanding on anything connected with that subject matter and terms and conditions of purchaser issued or asserted by the Purchaser, whether attached to or comprising part of a purchase order or otherwise disclosed by the Purchaser; and
   - (3) displace and replace any terms and conditions issued or asserted by the Purchaser subsequent to the disclosure by the Seller of these Terms and Conditions, unless otherwise agreed in writing by the Seller.

14.2 The Seller and the Purchaser have entered into these Terms and Conditions without relying on any representation by the other or any servant or agent of the other.

14.3 The parties agree that any provisions of these Terms and Conditions which are to apply after completion of, and payment for, the supply of goods and services will not merge on such completion and will continue to be binding on the parties.

14.4 These Terms and Conditions may only be amended or supplemented by agreement in writing of the parties.

14.5 All provisions of these Terms and Conditions shall be construed so as not to be invalid, illegal or unenforceable in any respect but if any such provision on its true interpretation is illegal, invalid or unenforceable, then that provision shall be read down to such extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and so as to give it a valid operation of a partial character PROVIDED THAT, if any such provision or part thereof cannot be so read down, such provision shall be deemed to be void and severable and the remaining provisions hereof shall not in any way be affected or impaired.

14.6 A power or right may only be waived in writing by the party to be bound by the waiver.

14.7 No rule of construction shall apply to the disadvantage of a party on the basis that that party prepared these Terms and Conditions or seeks to rely on and enforce them.

14.8 These Terms and Conditions and all provision of goods and services by the Seller to the Purchaser is governed by the law in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales and any Court that may hear appeals from those Courts in respect of any proceedings in connection with this Agreement.