

1. Definitions and Interpretation

In these Terms and Conditions:

- (1) "Claims" includes any claims, demands, suits, actions, causes of action 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) "Purchaser" means the entity purchasing goods and/or services from the Seller subject to these Terms and Conditions;
- (4) "Reconditioned engine" means an engine completed by the Seller.
- (5) "Seller" means Teterin Engineering Co Pty Ltd ACN 636 483 951 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 otherwise requires:
 - (a) a reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any 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, body corporate or governmental agency;
 - (c) where any party comprises of more than one person, this Agreement binds them jointly and each of them severally;
 - (d) a word which denotes the singular denotes the plural and a word which denotes the plural denotes the singular; and
 - (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 services from the Seller to the Purchaser are:
 - (1) those set out in these Terms and Conditions (except as otherwise agreed in writing); and
 - (2) those, if any, which are implied by law and which cannot be excluded.
- 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 from time to time by the Seller in its discretion without prior notice to the Purchaser.
- 3.3 The price at which the goods and/or services are to be sold by the Seller to the Purchaser shall be agreed upon by the Seller's acceptance of the Purchaser's purchase order.
- 3.4 Unless otherwise stated or agreed, all prices for goods and services payable under these Terms and Conditions:
 - (1) are 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 payable in respect of the taxable supply; and
 - (2) do not (unless otherwise stated or agreed in writing) include any other sales tax or other governmental taxes 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.

4. Delivery of Goods

- 4.1 In respect of all sales and/or deliveries of 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 (unless the Seller quotes a price inclusive of transportation).
- 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 delivered and/or the result of services immediately upon delivery and/or supply of the services and it must, within 7 days after the earlier of date of such delivery, supply or inspection (time being of the essence), 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 the warranty in clause 5.2 or otherwise not in accordance with these Terms and Conditions. If the Purchaser fails to give such a notice within that timeframe, then to the extent permitted by law the related goods and/or services are deemed to have been accepted by the Purchaser to the Purchaser's satisfaction and the Purchaser must pay for the goods and/or services in full in accordance with the provisions of these Terms and Conditions relevant to payment.
- 5.2 With the exception of clause 5.6, upon delivery of goods, the Seller shall provide a "Closing Report" in respect of such goods and the Seller warrants to the Purchaser the accuracy of the information contained in the "Closing Report".
- 5.3 All statutory or implied conditions and warranties which may otherwise be binding on the Seller are excluded to the extent permitted by law, unless otherwise agreed.
- 5.4 To the extent permitted by law, all liability of the Seller to the Purchaser (including for any related Claims by the Purchaser) under the warranty in clause 5.2 and any condition or warranty which cannot be legally excluded under clause 5.3 is limited to, at the option of the Seller:
 - (1) in the case of goods supplied to the Purchaser:
 - (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of the goods at such location as is deemed suitable by and to the Seller;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (d) the payment of having the goods repaired by the Seller's authorise repairer, excluding demurrage; or
 - (e) refund of the relevant price paid by the Purchaser; and
 - (2) in the case of services provided to the Purchaser (including the delivery of goods referred to above to the extent the Seller is responsible for delivery):
 - (a) supplying the services again;
 - (b) paying the cost of having the services supplied, excluding demurrage, again; or
 - (c) refund of the relevant price paid by the Purchaser.
- 5.5 To the extent permitted by law and except to the extent of the Seller's limited liability under clause 5.4, the Seller shall have no further or other liability (including liability in respect of any Claims in negligence) to any person for any loss or damage, consequential or otherwise, howsoever suffered or incurred by any person, including the Purchaser, in relation to the goods and/or services supplied by the Seller to the Purchaser and the delivery of such goods and, without limiting the generality thereof, in particular any loss or damage consequential or otherwise suffered or incurred by any such person, including the Purchaser, caused or resulting directly or indirectly from:
 - (1) any failure, defect or deficiency of whatsoever nature or kind in the goods and/or services; or
 - (2) any act or omission of the Seller, its employees, agents or subcontractors whether amounting to negligence, wrongdoing or otherwise.
- 5.6 The Seller's liability for any defect or damage to goods described as a reconditioned engine completed by the Seller shall be limited to:
 - (1) EX-DES engines – six (6) months from date of delivery and shall be limited to parts and component replacement only, labour shall not be included. Seller's liability excludes freight charges.
 - (2) All other reconditioned engines – six (6) months from date of delivery or 3,000 operating hours whichever occurs first and shall be limited to parts and component replacement only, labour shall not be included. Seller's liability excludes freight charges.
 - (3) Without limiting the meaning of clause 5.5, the Seller's liability is limited to the value of the goods and services provided by the Seller.
 - (4) If the Seller did not manufacture the goods, liability is limited to the warranty to which the Seller is entitled from the goods manufacturer.
 - (5) Otherwise liability is negated absolutely.

6. 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 calendar month following 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 a cheque (bank 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 respect of 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 in its absolute discretion:
 - (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 be liable to pay the Seller all such interest accrued from time to time immediately on demand; and/or
 - (2) require the Purchaser to reimburse 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 the Purchaser's default and/or to institute such recovery process as the Seller in its discretion decides.
- 6.5 Any payments tendered by the Purchaser 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 cartage 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:
 - (1) the Seller will only give credit for the goods returned 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 "consumer" for the purposes of the Australian Consumer Law under Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 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 and cartage costs of the return of the goods if the Purchaser's claim that the goods are defective or not in accordance with these Terms and Conditions is found to be valid.

8. Risk

- 8.1 Goods supplied and/or delivered by the Seller to the Purchaser are at the Purchaser's risk immediately on the earlier of dispatch of the goods to the Purchaser or their delivery to the Purchaser or into the Purchaser's custody.

9. Retention of Title in Goods

- 9.1 The Purchaser agrees that the property in goods sold by the Seller to the Purchaser does not pass to the Purchaser until the price of such goods and any related services supplied by the Seller to the Purchaser is paid in full to the Seller and, until such time as the Seller is paid in full, the Purchaser holds the goods as the fiduciary agent and bailee of the Seller.
- 9.2 Until goods have been paid for by the Purchaser in full:
 - (1) the Purchaser must store the goods in such manner as to show clearly that they are the property of the Seller;
 - (2) the Purchaser may sell the goods, in the ordinary course of its business, as agent and in a fiduciary capacity for the Seller and must account to the Seller for the proceeds (including any proceeds from insurance claims) which must be kept in a separate bank account;
 - (3) in the event that the Purchaser sells the goods to its customers or mixes the goods with other goods for sale to its customers, then the Purchaser shall hold the proceeds of such sale, or where the goods are intermixed such part of the proceeds of such sales as relate to the intermixed goods, on trust for the Seller for payment to the Seller in accordance with these Terms and Conditions; and
 - (4) the Purchaser shall not assign or deal with any proceeds from the sale of goods or the intermixed goods, including assigning or dealing with all or any book debts arising upon the sale of the goods or intermixed goods prior to the receipt by the Seller of payment for same in full.
- 9.3 The Purchaser irrevocably authorises the Seller at any time to enter any premises:
 - (1) upon which the Seller's goods are stored to enable the Seller:
 - (a) to inspect the goods; and/or
 - (b) if the Purchaser has breached these Terms and Conditions, to reclaim possession of the goods; and
 - (2) upon which the Purchaser's records pertaining to the goods are held to inspect and copy the records.
- 9.4 The provisions of this clause 9 apply despite any arrangement between the parties under which the Seller grants the Purchaser credit PROVIDED THAT, where the Seller grants the Purchaser credit for a specific period, the credit period is for that period or until the re-sale of the goods by the Purchaser, whichever is the earlier, after which time the Seller may exercise all of its rights pursuant to this clause 9.

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 are defined in section 10 of 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 the agreement for sale 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 the Seller a Security Interest in the goods and their Proceeds and that such Security Interest is, to the extent it can be under the PPSA, a Purchase Money Security Interest;
 - (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 will not register a Financing Change Statement in respect of the Seller's Security Interest without the Seller's prior written consent;
 - (4) the Purchaser will not register or permit to be registered a Financing Statement or Financing 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 on the Register as a Security Interest;
 - (7) the Purchaser will not change its name, ACN or ABN or other such details recorded on the Register without first notifying the Seller;
 - (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 these terms and conditions;
 - (9) the Purchaser must pay on demand the Seller's costs of any discharge of the Security Interest or necessary amendment 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 section 275(1) of the PPSA to any interested person, or any other person requesting on behalf of an interested person, and the Purchaser waives any right it may have but for this clause under section 275(7)(c) of the PPSA to authorise the disclosure of the above information; and

- (11) in the event that no Sale Agreement is executed by the Purchaser, the delivery and use of the goods by the Purchaser shall constitute adoption or acceptance by the Purchaser of the Terms and Conditions set out in the proposed Sale Agreement.
- 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.