

TERMS & CONDITIONS
(Waikato Engine Reconditioners Limited)

Waikato Engine Reconditioners Limited ("WERL") supplies goods and services to the Customer subject to the following terms and conditions which will prevail despite any indication to the contrary by any person acting or purporting to act on behalf of WERL.

Agreement

- 1.1 Receipt of this signed application will be deemed to be acceptance by the Customer of these terms and conditions, notwithstanding anything that may previously have been stated to the contrary to the Customer.

Quotes and Prices

- 2.1 All quotes and estimates of payment are GST exclusive unless otherwise stated and the Customer must pay the GST and other applicable taxes and duties on any invoices tendered to the Customer for payment by WERL.
- 2.2 All quotes and estimates of payment are valid for fourteen (14) days from the date of issue unless otherwise approved in writing and signed on behalf of WERL.
- 2.3 WERL reserves the right to alter the quotation because of circumstances beyond its control.
- 2.4 Prices are subject to change without notice. All orders will be charged at prices prevailing at the date of the invoice.

Terms of Payment

- 3.1 Payment is due on the 20th of the month following the date of invoice.

Personal Properties Securities Act 1999 (PPSA)

- 4.1 If the value of an invoice exceeds \$1,000.00 or more, clauses 4.2 to 4.4 shall additionally apply.
- 4.2 The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of WERL in all property that WERL has performed services on or in which goods and materials supplied or financed by WERL have been attached or incorporated.
- 4.3 The Customer shall provide to WERL all information and do all things for WERL to register its interest in the goods on the Personal Property Securities Register and the Customer indemnifies WERL for all costs (including legal costs), expenses and disbursements incurred by WERL or its agents/advisors taking any steps to enforce or maintain WERL's security interest.
- 4.4 The Customer agrees to grant a 'Purchase Money Security Interest' to WERL as that term is defined in the PPSA.

Event of Default

- 5.1 On the event of non-payment of an invoice by the due date:
- (a) A late fee of 2.5% per month on any amount outstanding will be incurred.
- (b) The Customer becomes liable for the payment of all costs incurred by WERL as a result of the default including but not limited to administration charges, debt collection costs and legal costs.
- (c) Any amount owing shall immediately become due and payable notwithstanding paragraph 3 of these terms;
- (d) WERL may (without the consent of the customer) appoint a receiver in respect of any Amount Owing and any receiver is authorised to do anything referred to in these terms and conditions and otherwise to exercise all rights.

Warranties and Claims

- 6.1 To the extent permitted by law, WERL makes no warranty, representation or condition to the Customer other than:
- (a) A workmanship warranty for all petrol engines for a period of 12 months or not exceeding 20,000 kilometres whichever occurs first;
- (b) A workmanship warranty for all small diesel engines up to 3.5 litres for a period of 12 months or not exceeding 20,000.00 kilometres whichever occurs first;
- (c) A workmanship warranty for trucks for a period of 12 months not exceeding 50,000 kilometres;
- (d) A workmanship warranty for marine and industrial engines for a period of 12 months not exceeding 700 hours.
- 6.2 For the avoidance of doubt, WERL makes no representation as to the fitness or quality of parts but will to the extent permissible by law provide to the client any guarantee as to the quality of parts made available by the manufacturer.
- 6.3 No representation, express condition, warranty or variation of these terms and conditions will bind WERL unless it is in writing and signed on behalf of WERL.
- 6.4 All claims and disputes, other than a warranty claim under clause 6.1, are to be notified in writing to WERL within seven (7) days following the date of the invoice.

- 6.5 Any warranty claim under clause 6.1 is to be notified in writing to WERL within seven (7) days of the Customer reasonably becoming aware of a potential breach of the warranty or possible defect in the workmanship provided by WERL. Notwithstanding this, all claims must be notified within the 12 month warranty period, time being of the essence. The Customer will not be entitled to make any claim for breach of warranty after the 12 month warranty period has expired.

Liability

- 7.1 WERL's liability to the Customer is limited to the price of the services in respect of which such liability arises. WERL will have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising.

Use of Information

- 8.1 The Customer agrees that WERL may obtain information about the Customer from the Customer or any other person and any credit or debt collection agencies in the course of WERL's business, including credit assessment, debt collecting and direct marketing activities, and the Customer consents to any person providing WERL with such information.
- 8.2 The Customer agrees that WERL may use any information it has about the Customer relating to the Customer's creditworthiness and give that information to any other third party, (including any credit or debt collection agency) for credit assessment and debt collection purposes. The Customer agrees that any other information collected by WERL about the Customer is accessed or collected in the course of its business, including direct marketing activities.
- 8.3 The Customer must notify WERL of any change in circumstances that may affect the accuracy of the information provided by the Customer to WERL or any company related to WERL. If the Customer is an individual (ie: a natural person) the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information which WERL holds about the Customer.

General

- 9.1 *Rights Powers and Remedies:* The rights, powers and remedies provided for in these terms and conditions are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to WERL by law.
- 9.2 *Waiver:* If WERL exercises or fails to exercise any right or remedy available to it, this shall not prejudice WERL's rights in exercising that or any other right or remedy. Waiver of any term of these terms and conditions must be specified in writing and signed by an authorised officer of WERL.
- 9.3 *Assignment:* WERL is entitled at any time to assign to any other person all or part of any debt owing by the Customer to WERL.
- 9.4 *Review:* WERL reserves the right to review any of these terms and conditions at any time and from time to time. If, following any such review, there is any change to these terms and conditions that change will take effect from the date on which WERL gives notice to the Customer of such change.
- 9.5 *Severability:* If any part of these terms and conditions is held by any Court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of these terms and conditions.
- 9.6 *Governing Law:* These terms and conditions are governed by and construed in accordance with New Zealand law, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

Definitions

In these terms and conditions:

"**Amount Owing**" means, at any time, the unpaid price charged by WERL for the services provided, and any other sums which WERL is entitled to charge under these terms and conditions or which are otherwise owing by the Customer to WERL (in whatever capacity).

"**Customer**" means the person or entity making the application or any person acting with ostensible authority on behalf of the customer.

An "**Event of Default**" means an event where:

- (a) the Customer fails to comply with these terms and conditions or any other agreement with WERL; or
- (b) an event occurs or information becomes known to WERL which in WERL's opinion, might materially affect the Customer's creditworthiness, the value of the goods the subject of the Security Interest, or the Customer's ability or willingness to comply with its obligations under these terms and conditions or any other agreement with WERL; or
- (c) any guarantor of the Customer's obligations under these terms and conditions is in default under any agreement with WERL (in any capacity); or
- (d) WERL considers the Customer may be unable to meet its payment obligations under these terms and conditions; or

"**Goods and Services**" means all goods and services supplied from time to time by WERL to the Customer.