

**TERMS AND CONDITIONS
FOR THE SUPPLY OF MAINTENANCE SERVICES AND THE SALE OF AIRCRAFT PARTS**

This is a legally binding agreement between AeroPearl Pty Ltd (ACN 088 767 284) (“**Supplier**”) and the Customer and the Customer agrees that the Services and Products are provided on the following terms and conditions:

1. INTERPRETATION

Unless the context requires otherwise, the following terms shall have the following meaning:

ACL means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

Contract has the meaning given in clause 3;

Customer means the customer specified in the Work Order or quotation and includes its servants, employees and agents and any related bodies corporate as defined in the Corporations Act 2001 (Cth);

Customer Responsibilities means the items that the Customer is responsible for as detailed in a Work Order;

Equipment means any aircraft, part or component thereof furnished by or on behalf of Customer and upon which the Services are to be performed by the Supplier;

Force Majeure Event means any: (i) act of God, fire, earthquake, cyclone, storm, flood or landslide (ii) strike, block-out, work stoppage or other labour hindrance of a general nature and not limited to the workforce of a party; (iii) explosion, public mains electrical supply failure or nuclear accident; (iv) sabotage, riots, civil disturbance, insurrection, epidemic, national emergency or act of war (whether declared or not); (v) requirement or restriction or failure to act by any government or semi-governmental body; (vi) unavoidable accident; or inability to obtain or delay in obtaining adequate labour, contractors, equipment, material, transport or other supplies; (vii) or any other cause beyond the reasonable control of the affected party but does not include (viii) any event which the affected party could have prevented or overcome by exercising a reasonable standard of care or (ix) a lack of funds for any reason;

Insolvency Event means Customer is (i) deemed to be or states in writing that it is insolvent, (ii) is subject to any types of insolvency or collective judicial or administrative proceedings in which its assets are subject to control or supervision for purposes of dissolving, liquidating or reorganising Customer or its assets, (iii) suspends or declares in writing its intention to suspend payments to creditor(s), suspends or ceases all or substantially all of its business, or (iv) takes steps, or is subject to actions, analogous to the items listed above;

Owner means the full legal and beneficial title holder of the Equipment; Products means all parts and components and any consumables, whether new, used, overhauled, repaired or supplied by the Supplier, including those fitted to the Equipment in performing the Services or the subject of any contract of sale by the Supplier;

Security Interest means a mortgage, charge, pledge, security interest or other security interest securing any obligation of any person or any other agreement or any other third party interest;

Services means work performed by the Supplier on the Equipment or any part of it and shall include such other unforeseen and additional work as Supplier considers necessary to render the Equipment airworthy or serviceable and all transport, freight, storage, hangarage, inspections, modifications and testing ancillary thereto;

Supplier's Facility means AeroPearl Hangar, 3 Melaleuca St, Brisbane Airport or such location notified by the Supplier in writing;

Work Order means the written work order relating to the Services and/or Products in the form specified by the Supplier.

2. CAPACITY

- (a) If Customer is not the full legal and beneficial title holder of the Equipment:
- (i) Customer enters into this arrangement and each Contract on its own behalf and as agent for the Owner;
 - (ii) Customer warrants that it has obtained Owner's consent to the Customer entering into these terms and conditions and each Contract as Owner's agent and shall provide evidence of the same to Supplier on request; and
 - (iii) entry into these terms and conditions and each Contract as an agent for Owner does not relieve Customer of any of its obligations.
- (b) Where Customer is not the Owner or where it cannot provide satisfactory evidence as required by this clause, Supplier may, in its absolute discretion and without prejudice to its other rights, refuse to provide Services and Products in respect of the Equipment.

- (ii) may be accepted by Customer within fourteen (14) days from the date of the quotation (unless otherwise agreed by Supplier in writing) by signing and returning the Work Order attached to the quotation;
 - (iii) in respect of the Services, will be subject to the Customer delivering the Equipment in accordance with the terms of the quotation, or where no terms detailing delivery are specified in the quotation, within fourteen (14) days from the date of the quotation to the Supplier;
 - (iv) the Services and Products, unless otherwise specified by the Supplier in writing, are calculated on the assumption that the Supplier will be able to complete the Services and/or supply the Products specified in the quotation and/or any other unforeseen and additional work and Products as Supplier considers necessary to render the Equipment airworthy or serviceable, within four months from the date of the quotation. If the Services or Products are completed or supplied in excess of four months from the date of the quotation for any reason beyond Supplier's control, Supplier will be entitled to charge the Customer for any reasonable increases in the Supplier's labour rates for Services and prices for Products supplied after that four month period.
- (b) Supplier may, in its absolute discretion, withdraw or amend the quotation at any time before it is accepted by the Customer.
- (c) A Contract is formed each time the Customer authorises a Work Order and/or delivers the Equipment to the Supplier and consists of the Work Order, and these terms and conditions (“Contract”).
- (d) If there is any inconsistency between any terms of a Work Order and these terms and conditions, the order of priority for the purpose of construction of the Contract is:
- (i) the Work Order terms and conditions; then
 - (ii) these terms and conditions.

4. SERVICES

- (a) The Supplier is authorised and instructed to perform the Services and to supply and fit the Products.
- (b) The Customer may request that it supply the Supplier with materials and parts required to perform the Services. Use of such Customer-supplied materials is at the sole discretion of the Supplier. Where the Supplier has agreed to use the Customer-supplied materials or parts, a handling fee of 10% of the value of the material and parts provided to the Supplier will be payable to the Supplier in addition to all other amounts payable for the relevant Services. All materials and parts provided by the Customer must have appropriate traceability paperwork and be free from defects. All costs of use, delivery and return of such materials are to the account of the Customer.
- (c) Any parts or components replaced by the Supplier in the course of performing the Services will be returned to the Customer only if specifically requested by the Customer in writing within fourteen (14) days of acceptance of the quotation, the date of the Work Order or whenever performance of the Services commences, whichever is the earlier, and provided that all amounts due and payable by the Customer to the Supplier pursuant to the Contract have been paid in full. In the event that no such request is made, title to any such parts or components shall pass to the Supplier upon fitting replacement parts or components to the Equipment.
- (d) The Customer warrants that it has, and will have on the date on which title to an exchange part passes from the Customer to the Supplier, clear title to the exchange part, free of all Security Interests.
- (e) The Customer acknowledges and agrees that the Supplier may contract the Services to third parties and that in doing so, the Supplier will not be liable for the Services provided by third parties nor will it be liable for any damage sustained by the Equipment during their transport to and from such third parties and the Customer agrees with any payment terms specified by the Supplier and/or the third party including, if specified, payment in advance for the subcontracted services.
- (f) The Supplier is authorised, for any purpose incidental or ancillary to the Services, to:
- (i) test, tow, taxi and/or fly the Equipment; and
 - (ii) to transport or fly the Equipment to another hangar or facility on such terms as to the cost as the parties agree in writing.



3. QUOTATIONS AND CONTRACTS

- (a) Quotations issued by the Supplier will be in writing and:
 - (i) shall relate to the supply of Services and/or Products specifically itemised in the quotation;
- (c) If the Customer fails to perform any of its obligations under the Contract, the Supplier may, in addition to all of its other rights under applicable law, use, apply or retain all or any portion of the Deposit.

6. PRICE AND PAYMENT

- (a) In consideration of the Supplier's provision of the Services and/or supply of the Products, the Customer must pay for:
 - (i) the Services and/or Products required under the Contract;
 - (ii) Products not included in the Contract but which the Supplier supplies at Customer's request;
 - (iii) all packaging, freight, customs, clearance, and handling costs arising out of performance of the Contract;
 - (iv) hangarage or storage of the Equipment and Products if they are required to be hangered or stored during the performance of the Services or are not collected by the Customer pursuant to clause 9;
 - (v) all expenses reasonably and properly incurred by the Supplier at Customer's request

without set-off, deduction or withholding, in immediately available funds.

- (b) All amounts payable under a Contract must be paid by such progress payment as Supplier may require and by payment of any balance thereof on delivery of the Equipment or Products to Customer or otherwise as the Supplier agrees in writing, and in any event, prior to Equipment uplift from the Supplier's facility.
- (c) Where credit arrangements have been approved in writing by the Supplier, the Customer must pay all amounts strictly in accordance with those arrangements.
- (d) The Supplier may impose a late payment fee on any amount overdue under a Contract from the date payment was due until payment has been received in full, calculated on a daily basis using the prevailing Commonwealth Bank of Australia Overdraft Index Rate.
- (e) If the Customer disputes any portion of a Work Order or amounts due to the Supplier pursuant to a Contract, it shall pay the undisputed portion and seek to reach agreement with the Supplier on the disputed portion within the next 30 days.

7. TAXES

- (a) All amounts payable under a Contract for the supply of goods or services are expressed on a GST exclusive basis ("GST Exclusive Payment").
- (b) If GST is imposed on any supply made under a Contract, the recipient of that supply must pay, in addition to the amount payable for the supply, an amount calculated by multiplying the prevailing GST rate by that amount. Any amount payable under this clause 7(b) is payable on the day that payment of the amount payable for the supply that has given rise to the obligation to pay GST is required pursuant to the Contract.
- (c) The supplier will ensure that any invoice or other reasonable request or demand for payment of a supply provided by it to the recipient of that supply shall constitute a tax invoice under the relevant GST legislation and is provided at or before the time of the payer making the GST Exclusive Payment.
- (d) In this clause 7, terms used shall have the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (e) The Customer is liable for the payment of all taxes and duties that are payable or incurred by the Supplier in connection with the supply of Products and Services (other than income tax levied against the Supplier) and indemnifies the Supplier on demand for any such taxes and duties.

8. TIME FOR PERFORMANCE

- (a) Customer acknowledges and agrees that dates and times for performance set out in any Contract are estimates only and should not be relied upon by Customer. The Supplier will endeavour to supply the Products and Services under a Contract within a reasonable time.
- (b) Without limiting clause 8(a), Customer acknowledges and agrees that: (i) the estimated date and time of redelivery may change in cases where components are unavailable and must be ordered. (In such cases, the Supplier will place orders for the missing components within a reasonable timeframe to limit delay as much as practicable but Customer hereby irrevocably releases the Supplier from any liability resulting from such delay); and (ii) performance of the Services by the Supplier is dependent upon timely performance by Customer of the Customer Responsibilities and, without limiting clause 8(a), the Supplier is relieved of its obligation to perform a Contract, and Customer releases the Supplier, to the extent that the failure to perform, default or delay was caused by a failure or delay of Customer in performing the Customer Responsibilities or in providing any documents, data or consents necessary for the Supplier to perform its obligations.

5. DEPOSIT

- (a) If a deposit is specified in the Work Order (the Deposit), the Seller's obligation to supply the Services and/or the Products is conditional on payment of the Deposit to the Supplier's bank account noted in the Work Order. To the extent permitted by law, the Deposit is non-refundable.
- (b) The Supplier may commingle the Deposit with its general funds and the Customer acknowledges that no interest will be payable on any refunded Deposit.
- (c) Neither party shall be liable for any default or delay in performance of its obligations where such failure is due to a Force Majeure Event during the period that Force Majeure occurrence continues. An affected party must notify the other party of a Force Majeure Event as soon as possible and performance of an obligation affected by a Force Majeure Event shall be resumed as soon as possible after termination or abatement of the Force Majeure Event. Either party may terminate a Contract immediately by notice in writing to the other where a Force Majeure Event continues for more than 30 days.
- (d) The Supplier will be entitled to deliver, and the Customer must take and pay for such part of the Products and/or Services as can be delivered, while the Force Majeure Event exists.

9. DELIVERY AND REDELIVERY

- (a) The Customer must, at its cost, deliver the Equipment and all technical data required by the Supplier to complete the Services to the Supplier's Facility or such other location specified by the Supplier in writing.
- (b) The Supplier will notify Customer when the Equipment and Products are available for redelivery. Redelivery of the Equipment and Products is Ex-Works (the Supplier's Facility) as defined in the International Chamber of Commerce Incoterms Rules 2010. If Customer fails to collect the Equipment and Products within the time specified in the notice (or, if no time is specified, within a reasonable time) the Supplier may charge hangarage/storage fees from the date notice was given until the Equipment and/or Products are collected. The Supplier may terminate hangarage/storage arrangements at any time immediately upon 7 days written notice to Customer. The Supplier is not required to redeliver the Equipment or any Products unless and until the Customer has paid all amounts due and owing to the Supplier under the Contract and/or any other Contract between the Customer and the Supplier.

10. RISK AND TITLE

- (a) The Equipment supplied by Customer shall at all times, while in the care custody or control of the Supplier, be at the risk of Customer. However, subject to clause 15, the Supplier will be liable for any damage to the Equipment that is caused by the negligence of the Supplier.
- (b) Risk in the Products supplied by the Supplier passes to the Customer on the date of delivery of those Products to:
 - (i) the Customer, or any of its agents, representatives or subcontractors (including the freight or shipping subcontractor retained by Customer); or
 - (ii) if the Supplier is directed or required to arrange freight of the Equipment and Products, the freight or shipping subcontractor retained by the Supplier.
- (c) The Supplier shall not be liable for any loss, damage or non-receipt of Equipment or Products after the Equipment or Products leave the Supplier's Facility, except, subject to clause 15, to the extent such loss is caused by the negligence of the Supplier.
- (d) Title in all Products supplied by the Supplier remains with the Supplier, and no legal or equitable interest or property in Products supplied will pass to the Customer, until the Customer has paid in full all amounts due and owing under the Contract and/or any other Contract between the Customer and the Supplier.
- (e) Customer must not remove any property, including without limitation log books, records, engines, Products or Equipment from the Supplier's Facility prior to full payment for the relevant Contract without the Supplier's prior written consent.
- (f) Where title in the Products remains with the Supplier and the Customer is in actual or constructive possession of the Products, the Customer:
 - (i) must not deliver the Products to any person except as directed by the Supplier in writing or create or permit any Security Interest over the Products;
 - (ii) possesses the Products as a bailee only and owes the Supplier the duties and liabilities of a bailee. This bailment continues in relation to each of the Products until all amounts under the relevant Contract have been paid for in full;
 - (iii) must store the Products separately from other goods owned by the Customer and shall identify them as Products owned by the Supplier;
 - (iv) must insure the Products for their full insurable or replacement value (whichever is the higher); and
 - (v) must not remove, deface or obliterate any identifying plate, mark or number on any of the Products.



- (g) If the Customer parts with possession of any Products in which title is vested in the Supplier before the Contract has been paid in full, the Customer agrees that:
- (i) all amounts owing in respect of those Products remains outstanding;
 - (ii) the Customer holds any proceeds of re-supply of the Products on trust for the Supplier as soon as those proceeds are received or become receivable by the Customer;
 - (iii) any accessory or item that attaches to any of the Products by an act of the Customer, or of any person at the direction or request of the Customer, becomes and remains the property of the Supplier until the Supplier is paid the amount due in full, at which time title in the Products (including the accessory) passes to the Customer or the relevant person (as the case may be); and
 - (iv) the Supplier may recover possession of the Products at the Customer's cost, including at any site used by the Customer, and the Customer grants the Supplier an irrevocable licence to do so without incurring liability to the Customer or any person claiming through the Customer.

11. LIEN

In addition to any other right or remedy under this Agreement or at law, the Customer grants the Supplier a lien over the Aircraft, any Aircraft records (including maintenance log books), and any Products supplied by Customer in the possession, custody or control of the Supplier (whether the property was provided pursuant to a Contract or for any other reason) for any and all monies owed to the Supplier by the Customer.

12. INSPECTION AND ACCEPTANCE

The Customer shall assess the Services and inspect and examine the Equipment and Products on delivery and subject to the rights and remedies pursuant to clauses 13 and 15, no claim shall be recognised unless received by the Supplier in writing within 14 days of the date of notification that the Equipment and Products are available for redelivery. The Customer will at all times follow the Supplier's instructions and procedures in respect of the disposition and return of any Products or Equipment the subject of any claim hereunder.

13. WARRANTIES

- (a) The Supplier warrants that:
- (i) the Services will be performed using properly qualified personnel and with due care; and
 - (ii) the Products will be of an acceptable quality.
- (b) At the request of the Customer, where Products and Services supplied under a Contract are supplied by a third party, the Supplier will use reasonable endeavours (not including the expenditure of money) to assign any warranty provided by that third party to the Customer.
- (c) The warranties provided under this clause 13 will not be honoured where:
- (i) any failure to conform is not notified to the Supplier in accordance with clause 12;
 - (ii) the Customer causes them to become of unacceptable quality or fails to prevent them from becoming of unacceptable quality or they are damaged by abnormal use;
 - (iii) the Customer before acquiring the Products examines them and that examination ought reasonably to have revealed that the Products were not of acceptable quality;
 - (iv) the Products are used other than for the purpose stated in the Contract;
 - (v) the Products are altered or modified without the Supplier's prior written approval; and
 - (vi) the Products are serviced other than by the Supplier's authorised personnel.
- (d) These warranties are in addition to other rights and remedies that are available to the Customer at law. The Products come with guarantees and/or warranties that come from the manufacturer that cannot be excluded under the ACL.

14. PERSONAL PROPERTY SECURITIES ACT 2009 (Cth)

- (a) In this clause, a word or expression not otherwise defined in this Agreement that is defined in the Personal Property Security Act 2009 (Cth) ('PPS Act') has the meaning given to it in the PPS Act.
- (b) The Customer acknowledges and agrees that:
- (i) each Contract constitutes a security agreement for the purposes of the PPS Act; and
- (i) exercise any of its rights under a Contract;
 - (ii) demand payment of any or all monies owing from the Customer to the Supplier and Customer agrees to pay the same accordingly;
 - (iii) suspend the supply of any or all Products and Services under any one or more Contracts;
 - (iv) suspend the terms of any or all approved credit arrangements, in which case all amounts then outstanding in respect of each

- (ii) a security interest is taken in all Products previously supplied by the Supplier to the Customer and all products that will be supplied in the future by the Supplier to the Customer; and
 - (iii) the security interest granted by the Customer to the Supplier pursuant to each Contract constitutes a purchase money security interest as defined in section 14 of the PPS Act.
- (c) The Customer undertakes to:
- (i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
 - A) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register ("PPSR");
 - B) register any other document required to be registered by the PPS Act; or
 - C) correct a defect in a statement referred to in this clause 14;
 - (ii) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPS Act or releasing any goods charged;
 - (iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products in favour of a third party without the prior written consent of the Supplier.
- (d) To the extent section 115(1) allows, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply to any Security Interest created under a Contract.
- (e) The Customer waives any right to receive any notice or verification statement required to be provided under the PPS Act (including under sections 144 and 157) in respect of any Security Interest unless the requirement to give the notice cannot be waived or excluded.

15. INDEMNITY AND LIMITATION OF LIABILITY

- (a) Liability -To the extent permitted by law, the Supplier's liability for any act or omission in connection with the Contract or the supply of Services or Products, whether due to negligence, breach of obligation or warranty, representation or guarantee is limited to one or more of the following, at the Supplier's sole discretion:
- (i) to the extent related to goods: replacement of the goods; supply of equivalent goods; repair of the goods; payment of the cost of replacing or repairing the goods or of acquiring equivalent goods; and
 - (ii) to the extent related to services: resupply of the services or payment of the cost of having the services supplied again.
- (b) Indemnity – The Customer indemnifies and holds harmless the Supplier and its officers, agents, employees and subcontractors against all liability, loss, claim demand, damages, action or cost (including costs on a solicitor/client indemnity basis) arising out of or in connection with a Contract or the supply of Services or Products.
- (c) The Supplier will not be liable for any loss whatsoever arising from delay in performance of Services or a Contract and accepts no responsibility for any transaction, schedule or plan of the Customer's which is delayed or affected as a result of delay in the provision of Services or supply of a Product or that breach.
- (d) Consequential Loss - To the fullest extent permitted by law, the Supplier will not be liable to the Customer, its related bodies corporate, employees, agents and assigns (or anyone claiming through the Customer) for loss of profit, loss of use, loss of revenue, loss of contracts, loss of opportunity and all special, indirect and consequential losses in connection with the Equipment or Products under a Contract howsoever caused or arising and whether or not the Supplier was aware or ought to have been aware of the possibility of such loss or damage.
- (e) Where the provisions of the ACL apply, the ACL will prevail over any terms of a Contract that are inconsistent with or otherwise would be a breach of the ACL but only to the extent of any inconsistency.

16. DEFAULT AND TERMINATION

- (a) The occurrence of each of the following events is an "Event of Default":
- (i) the Customer fails to pay any amount due to the Supplier under a Contract on the due date or remedy any other breach within fourteen (14) days after receiving notice from the Supplier requiring the breach to be remedied;
 - (ii) an Insolvency Event; and
 - (iii) any information provided by the Customer in a credit application is or becomes false or misleading.



suspended credit arrangement becomes immediately due and payable;

- (v) take possession of all Products for which title has not passed to the Customer in accordance with clause 10 and for this purpose the Customer authorises the Supplier or its servants and agents to enter into any premises where Products may be situated and to take possession thereof;
- (vi) with or without taking possession of Products for which title has not passed to the Customer in accordance with clause 10, sell the same by public auction or private treaty or by retail or wholesale by cash or on terms and generally as the Supplier thinks fit and apply the proceeds actually received, after deducting expenses of sale and enforcement in or towards reduction of any debt owed by the Customer to the Supplier;
- (vii) impose a late payment fee pursuant to clause 6(d);
- (viii) seek specific performance or damages from the Customer;
- (ix) demand payment of any costs incurred by the Supplier, whether by retention of legal advisers, mercantile agents or other agencies acting on the Supplier's behalf in respect of any enforcement of the terms of a Contract or recovery or attempted recovery of either monies owed by the Customer to the Supplier, or Products for which title has not passed to the Customer in accordance with clause 10, and the Customer agrees to pay the same accordingly;
- (x) terminate any or all Contracts;

17. GENERAL

- (a) All intellectual property devised by the Supplier pursuant to the provision of Services remains the property of the Supplier unless the parties agree otherwise in writing.
- (b) No provision of any Contract may be construed against a party solely because that party was responsible for preparation of that Contract or any part of it.
- (c) No variation or amendment of a Contract (including issue by Customer of any Customer terms and conditions) is binding unless agreed in writing and executed by both parties.
- (d) No failure to exercise or delay in exercising any right or remedy by a party operates as a waiver, and no waiver is valid or binding on the party granting it unless made in writing.
- (e) A party giving notice under a Contract must give that notice in writing; addressed and sent to the street or postal address, fax number or email address notified by the other party. A notice given in accordance with this clause will be taken to be received: (i) if delivered to the recipient's address, on the date of delivery; (ii) if sent by prepaid post, three days after the date of posting; and (iii) if sent by fax when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; and (iv) if sent by email the earlier of (i) when the sender receives an automated message confirming delivery or (ii) 1 hour after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- (f) Each Contract constitutes the entire agreement between the parties as to its subject matter; and in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.
- (g) If part or all of any clause of a Contract is illegal, void, invalid or unenforceable it will be read down to the extent necessary to ensure that it is not illegal, void, invalid or unenforceable, but if that is not possible, it will be severed from the Contract and the remaining provisions of the Contract will continue to have full force and effect, and the parties will attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' original intention in relation to the subject matter severed.
- (h) The operation of the United Nations Convention on Contracts for the International Sale of Parts does not apply to any Contract.
- (i) Each Contract is governed by the laws of the Northern Territory, Australia and each party submits to the exclusive jurisdiction of the courts of that State.