



**TAG ASIA ENGINEERING (A DIVISION OF TAG AVIATION ASIA LIMITED)**

**STANDARD TERMS AND CONDITIONS**

**WHEREAS:** the Customer has requested the Company to carry out the Services by issuing a Work Order, in response to which the Company has sent the Quotation to the Customer.

**WHEREAS:** upon accepting the terms of the Quotation, which incorporate these Terms, the Customer shall return the signed Quotation to the Company by email, fax or post, together with a Purchase Order.

## **1 DEFINITIONS**

The following words and expressions shall have the meanings hereby assigned to them:

- 1.1 AD: means Airworthiness Directives issued by NAA/FAA/TCCA.
- 1.2 ADD: means Acceptable Deferred Defect.
- 1.3 Affected Party: means the party prevented from fulfilling any of its obligations in respect of these Terms as a result of an event of Force Majeure.
- 1.4 Agreement: means the Work Order Acknowledgement and these Terms taken as a whole or the Quotation (if applicable) or the Maintenance Contract (if applicable) and these Terms as a whole. In the event there is any discrepancy between the Work Order Acknowledgement or Quotation and these Terms then the Work order Acknowledgement or Quotation (whichever is applicable) shall apply.
- 1.5 Aircraft: means the aircraft more specifically described in the Quotation, including its or their Engines (as appropriate), APU, fitted Components and documentation.
- 1.6 Airworthiness Data: means any information necessary to ensure an aeronautical product or a product or Component can be maintained in an airworthiness condition.
- 1.7 AMP: means the Customer's approved maintenance program current at signature of the Maintenance Contract.
- 1.8 APU: means the Auxiliary Power Unit fitted to the Aircraft.
- 1.9 AWR: means Additional Work Request.
- 1.10 HKCAD: means the Civil Aviation Authority of Hong Kong.
- 1.11 CAMP: means Computerised Aircraft Maintenance Program.
- 1.12 Certificate of Release to Service or CRS: means the certificate of release to service issued by the Company to the Customer on completion of the Services.
- 1.13 Commencement Date: means the date specified in the Work Order Acknowledgement or Quotation (if applicable) as the "Expected Input Date" or such other date as may be agreed between the Parties.
- 1.14 Company: means TAG Aviation Asia Limited.

- 1.15 Completion Date: means the date specified in the Work Order Acknowledgement or Quotation (if applicable) as the "Expected Output Date", or if different, the actual date on which Services are completed.
- 1.16 Component: means a component or accessory which can typically be removed and exchanged at a line or base maintenance level and is covered by its own component maintenance manual.
- 1.17 Customer: means any person, firm or body corporate buying or offering to buy goods and Services from the Company.
- 1.18 Customer Property: means any item on-board the Aircraft which does not form part of the Aircraft.
- 1.19 Day: means one (1) calendar day.
- 1.20 Engine(s): means the engine(s) fitted to the Aircraft.
- 1.21 Equipment: means as an individual or collective reference, as appropriate, to a Customer's Engine module assembly, sub-assembly, Component or Part.
- 1.22 Exchange Parts: has the meaning as set out in clause 14.1.
- 1.23 External Services: means services supplied to the Company from external suppliers, including but not limited to, suppliers of Parts, component repair or overhaul, aircraft painting, interior repair, non-destructive testing and logistics.
- 1.24 FAA: means the Federal Aviation Administration of the United States of America.
- 1.25 Facility: means the Company's facilities at Hong Kong International Airport.
- 1.26 Flight Cycle or FC: means one Aircraft take-off and landing irrespective of the purpose of the flight during which the Equipment is installed in to the Aircraft.
- 1.27 Force Majeure: means any cause beyond the control of either party including but not limited to acts of God, war, riot, acts of Government, civil disturbance, strikes, lock outs, trade disputes causing cessation or slow-down of work, difficulties in obtaining labour, fuel or materials, inability to procure material after due and timely diligence, late deliveries from sub-contractors or suppliers themselves subject to force majeure, breakdown of machinery, fire, flood or accident or any other cause beyond the control of either party whether or not similar to the causes specifically mentioned herein.
- 1.28 Indemnified Parties: means the Company, its affiliates, agents and sub-contractors and its and their respective employees, officers and directors, successors and assigns.
- 1.29 IPC: means Illustrated Parts Catalogue.
- 1.30 HKIAC: means the Hong Kong International Arbitration Centre.
- 1.31 Life Limited Part or LLP: means any Component, Equipment or Part which has a maximum approved life permitted by its manufacturer and/or Competent Aviation Authority.

- 1.32 Maintenance Contract: means, if applicable, the contract entered into by the Company and the Customer for the provision of Services which incorporates these Terms.
- 1.33 Maintenance Program: means the version of each Aircraft and/or Engine and/or APU type maintenance Program approved by NAA.
- 1.34 Maintenance Records: means the data generated by the Company as part of the performance of the Services.
- 1.35 Maintenance Statement: means the statement issued by the Company to the Customer on completion of the Services.
- 1.36 Man-Hour: means the exclusive allocation of one man (fitter, mechanic, technician, inspector or otherwise) to any Services for an elapsed time of one hour or part thereof pro-rata.
- 1.37 Materials: items utilized by the Company in the performance of the Services, excluding the Parts.
- 1.38 MEL: means the minimum equipment list.
- 1.39 Minimum Rate: has the meaning as set out in clause 7.1.
- 1.40 MRA: means Material Return Authorization.
- 1.41 NAA: means, as applicable, an aviation authority (such as FAA, HKCAD) having jurisdiction over the performance of Services, the Engine, Equipment or the Parties.
- 1.42 NDT: means Non Destructive Testing.
- 1.43 OEM: means the original equipment manufacturer of the Aircraft or Equipment.
- 1.44 Part(s): means any and all expendable material, consumable material or repairable material.
- 1.45 Pricing Schedule: means the Pricing Schedule as annually revised by the Company.
- 1.46 Purchase Order: means a purchase order of the Customer setting out the Services to be performed by the Company.
- 1.47 Quotation: means the document issued by the Company setting out the terms of the Company's engagement with the Customer, incorporating these Terms together with the terms set out in the Maintenance Contract (if applicable). Where no Quotation has been provided, then unless otherwise stated in the Work Order Acknowledgement, the TAE Standard Labour Rates applicable at the start date of the project shall apply.
- 1.48 TAE Standard Labour Rates: Document listing the Company's commercial terms and current standard labour rates as amended by the Company from time to time.
- 1.49 Services: means the services performed by the Company in accordance with the Agreement.

- 1.50 Service Bulletin or SB: means any service bulletin issued by relevant OEM.
- 1.51 Slot Reservation: has the meaning as set out in clause 3.2.
- 1.52 Taxes: means any and all sales, use, business, gross income, personal property, transfer, fuel, leasing, value added, excise, gross receipts, franchise, stamp, income, levies, imposts, withholdings or other fees, taxes or duties of any nature, together with any penalties, fines, charges or interest thereon.
- 1.53 TCAA: means Transport Canada Civil Aviation.
- 1.54 Term: means the period for the provision of Services as set out in the Agreement.
- 1.55 Terms: has the meaning as set out in clause 2.1.
- 1.56 Unaffected Party: means the party not affected by an event of Force Majeure.
- 1.57 Warranty: means the warranty set out in clause 5.2.
- 1.58 Work Order: means any request or notification however so made by the Customer to the Company containing any request for Services to be carried out under the Agreement by the Company, or notifying the Company of any specific information as the Customer may be obliged. The form of any such Work Order may include, but is not limited to information received from CAMP, draft purchase orders, in writing or made verbally.
- 1.58 Work Order Acknowledgement: means an agreement issued by the Company and signed by the Customer authorizing the Company to perform the services requested in a Work Order. For the avoidance of doubt the Work Order Acknowledgement and these Terms shall constitute the Agreement and unless otherwise stated in the Work Order Acknowledgement the TAE Standard Labour Rates applicable at the start date of the project shall apply.

## **2 GENERAL**

- 2.1 The headings in these Standard Terms of Business (the "Terms") have been inserted for convenience only and shall not be taken into account for the purposes of their interpretation.
- 2.2 In these Terms the singular shall include the plural, the masculine gender shall include the feminine gender, natural persons shall include legal and juristic persons and vice versa, unless otherwise required or indicated by the context.
- 2.3 If a Quotation is provided to the Customer the provisions of these Terms will be incorporated into the Quotation in their entirety, unless otherwise stated. Where any conflict arises between the terms of this document and the Quotation, the terms of the Quotation shall prevail.
- 2.4 The Customer acknowledges that the Quotation is based on the Work Order provided to the Company by the Customer. The Customer agrees that it is responsible for ensuring that any Quotation, when received by the Customer from the Company, clearly, fully and accurately sets out all the information that is required to be set out in the Quotation under this Agreement.

- 2.5 Where the Company issues a Quotation based on a Work Order from the Customer, if the Customer issues a further Work Order relevant to that Quotation as an amendment or addition to such, then the Company shall be entitled to update that Quotation and revise its terms accordingly taking into account such additional Work Order, or it may issue a new Quotation, at the Company's discretion.

The Company reserves the right to update or otherwise to revise the Terms as it deems appropriate.

### **3 SERVICES**

- 3.1 The Company shall be responsible for providing the Services at the Facility, subject to a validly executed Work Order Acknowledgement or Quotation (whichever is applicable). Services may be performed away from the Facility if requested to do so by the Customer and agreed to by the Company.
- 3.2 The Parties shall enter into a Work Order Acknowledgement or Quotation for any Services to which these Terms will apply. The Company shall, as necessary, set aside and allocate a slot ("Slot Reservation") for anticipated Services as detailed in the Work Order Acknowledgement or Quotation (whichever is applicable).
- 3.3 The Company shall be entitled to claim and recover from the Customer all amounts that may be due and payable by the Customer and the Company shall not be bound by or limited to the recovery of the amount indicated in the Work Order Acknowledgement or Quotation (whichever is applicable).
- 3.4 The Company shall perform such additional work as may be requested by the Customer and agreed by the Company.
- 3.5 The Company shall perform all Services in accordance with the relevant approvals granted by the NAA and shall maintain such approvals for the duration of the Term.
- 3.6 The Company will update the Airworthiness Data and submit this to the Customer following the performance of the Services in addition to an original CRS.
- 3.7 The Company may amend the delivery dates, redelivery dates, forecasts and other schedules from time to time as reasonably required.

### **4 OBLIGATIONS OF CUSTOMER**

- 4.1 The Customer warrants and undertakes that as at the date of commencement of the Term and as at all other times during the Term:
- 4.1.1 It has or shall have obtained any relevant dispensations required from the appropriate NAA, following proper applications, to allow for the performance of the Services;
  - 4.1.2 Each Aircraft has or shall have been maintained in accordance with the relevant AMP and the requirements of the appropriate NAA, and that all the airworthiness requirements have been complied with; and

4.1.3 Each Aircraft is presented to the Company in a timely manner and in appropriate condition for the accomplishment of the prescribed tasks and that all known defects on the Aircraft are notified to the Company.

4.2 The Customer undertakes to the Company that, at the Customer's risk and expense:

4.2.1 The Customer shall maintain responsibility for the continuing airworthiness and maintenance management control of the Aircraft;

4.2.2 The Customer shall respond with its decision on all matters referred to it by the Company within such time as the Company shall reasonably specify so as not to delay the provision of the Services;

4.2.3 The Customer shall use the Airworthiness Data for the purposes of these Terms and provide, prior to any Aircraft delivery, access to the Airworthiness Data in respect of such Aircraft in accordance with the Customer's NAA approved maintenance planning document; and

4.2.4 The Customer's employees, agents, representatives and subcontractors will abide by all of the Company's applicable policies, procedures and safety protocols when present on or around the Company's premises, as well as applicable policies, procedures and safety protocols of the airport authority.

4.3 The Customer shall supply the Company with sufficient information and instructions to enable the Company to perform the Services.

4.4 No less than 6 hours prior to the arrival of the Aircraft at the Facility, the Customer may request that upon such arrival an inventory be carried out jointly by one representative from each of the Customer the Company in respect of the Customer Property on board the Aircraft, which shall be signed by both Parties. In the absence of an inventory, the Company will not be liable for any missing Customer Property.

## **5 WARRANTY**

5.1 The Company shall have no liability whatsoever or howsoever following the performance of the Services save as expressly provided herein.

5.2 General Warranty

5.2.1 The Company warrants that the Services will be free from defects in workmanship for the period of 90 days or 100 flying hours from the Completion Date, whichever occurs earlier, subject to any other periods specified in the Quotation.

5.2.2 In the event of a discovery of a suspected defect in workmanship arising under this clause 5.2, within twenty (20) days of such discovery the Customer shall:

5.2.2.1 Provide written notification of any claim to the Company;

5.2.2.2 Provide to the Company a detailed report of the defect in workmanship observed, giving the reasons, circumstances and conditions of such defect; and

5.2.2.3 Provide to the Company full access to the Aircraft and its records in order to inspect the suspected defect in workmanship.

5.2.3 The Company reserves the right to inspect the Aircraft and test any Parts for evidence of defect in workmanship arising pursuant to this Clause 5.2. If the Company determines that a Part is not defective or that the defect is not within the Warranty then the Customer will pay for the tests performed and the costs of inspection.

5.2.4 If a Warranty claim is accepted by the Company, the Company's sole obligation and the Customer's sole remedy are expressly limited to the rectification of defects in workmanship. Any Part which is replaced or repaired will be in new or otherwise comparable in function and performance of the original part.

5.3 The Company is not responsible for any costs or expenses or risks associated with transporting the Aircraft or the warranted items to any repair facility. Gyroscopic-type instruments will only be accepted for work pursuant to this clause 5 if shipped via airfreight. In the case of a defective Part, the Company reserves the right in any case to determine whether the defect requires repair or replacement.

5.4 The Warranty will not apply where:

5.4.1 The Customer has directly or through a third party tried to rectify any defects in workmanship without the prior authorization of the Company;

5.4.2 The Customer does not comply with any operating instructions provided by the Company, the applicable manufacturer or relevant regulatory bodies or agencies;

5.4.3 The Aircraft or any Part has been operated otherwise than in accordance with the flight manual, maintenance manual or component maintenance manual and/or any other applicable instruction whether of the manufacturer or otherwise, which has been subject to any accident, abuse or misapplication, or use in development or experimental running, or subject to interference;

5.4.4 The Customer has not paid any invoices which are due and payable to the Company; or

5.4.5 The Customer has failed to comply with any of the provisions of clause 5.2.

5.5 The Warranty is subject to the following conditions:

5.5.1 The Warranty shall only be applicable in respect of work actually carried out by the Company;



- 5.5.2 The defective Aircraft , Engine or Part subject to the claim shall be delivered to the Company with all transport charges paid by the Customer and on the basis that the Customer shall assume the cost of returning the Aircraft, Engine or Part to the Customer;
  - 5.5.3 The Warranty period of any remedial work shall be limited to the unexpired portion of the Warranty period; and
  - 5.5.4 All ADs and mandatory SBs have been properly and fully fitted and complied with by the Customer.
- 5.6 The Company gives no warranty relating to Parts or Materials in performing the Services save that the Company will use its reasonable endeavors to:
  - 5.6.1 Arrange for the purchase of such Parts or Materials with suppliers approved by the NAA; and
  - 5.6.2 Receive, store and handle Parts or Materials in accordance with accepted aviation practice.
- 5.7 The Company will assign to the Customer, to the extent they are assignable, the benefit of any warranty provided by any third party in respect of Parts or Materials.
- 5.8 Subject to clause 6.6 below, the provisions of this clause 5 exclude all other warranties, expressed or implied, including but not limited to fitness for purpose, quality, standard of workmanship or otherwise and, save as provided herein, the Company shall not be liable in negligence or any other tort, in contract, product liability, statute or otherwise in law, to the Customer at any time for loss of, or damage to any Aircraft, the Customer's property or any Parts or Materials, whatsoever or howsoever arising out of the performance or non-performance of the Services and subsequent use thereafter. The obligation and liability of the Company under this clause 5 shall be in lieu of and shall expressly exclude any other liability to the Customer for direct, indirect, incidental or consequential damages (including without limitation loss of revenue and/or loss of profits and/or loss of contracts and/or loss of goodwill and/or reputation) regardless of whether any claim for such damages shall be based upon or in negligence or any other tort, in contract, statute or otherwise at law.
- 5.9 The Customer and the Company agree that the provisions of this clause 5 have been discussed and fully understood and further agree that the charges for the Services, Parts and Materials have been negotiated and determined having taken into account the provisions of this clause 5.

## **6 INDEMNITY AND LIABILITY**

- 6.1 The Aircraft and the Customer's property shall at all times be and remain at the Customer's risk.
- 6.2 Without prejudice to the provisions of clause 5, the Customer shall indemnify and hold harmless the Indemnified Parties from and against the following:

- 6.2.1 Any and all claims, costs, liabilities, damages, losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other costs and expenses); proceedings however arising and of whatever nature whether in negligence or any other tort, in contract, product liability, statute or otherwise at law in respect of loss of or damage to any property, (including, but not limited to, the Aircraft, the Customer's property and the Company's property) and death of or injury to any person (including, but not limited to, the Indemnified Parties, the Customer's personnel, the personnel of the Customer's agents and subcontractors) whilst at the Facility or elsewhere or otherwise arising out of or in connection with the performance of the Services.
  - 6.2.2 Any infringement of third party rights arising from the performance of the Services to the extent that the Services are based on information or materials supplied by the Customer; and
  - 6.2.3 Any and all claims for Taxes arising out of, or in connection with, the provision of the Services, including but not limited to Taxes arising out of or in connection with the importation of the Aircraft into the UK, whether arising intentionally or not.
- 6.3 The indemnity provisions of clause 6.2 above shall apply regardless of any breach of contract, negligence or breach of duty of any of the Indemnified Parties.
- 6.4 The Indemnified Parties shall not be liable for any consequential damages or loss (including but not limited to loss of profit or business opportunity or loss of goodwill or reputation).
- 6.5 Subject to clause 6.6 the Company's total aggregate liability to the Customer in respect of all loss or damage arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed USD \$1,000,000 (one million USD).
- 6.6 Nothing in this Agreement shall limit or exclude the Company's liability for:
- 6.6.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
  - 6.6.2 fraud or fraudulent misrepresentation; or
  - 6.6.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 6.7 For the purpose of enabling the Indemnified Parties, other than the Company, to take the benefit of this clause 6 the Company shall be deemed to be contracting not only for itself but also as agent and trustee for each of such other Indemnified Parties.
- 6.8 In the event that the Customer, for any reason, does not collect any Aircraft from the Facility on the Completion Date, the Company shall be entitled to charge the Customer

parking charges at the prevailing rate charged at Hong Kong International Airport until such time as the Aircraft is removed from the Company's premises. Such amounts shall be due and owing to the Company as soon as they are notified to the Customer and as such, the Company is entitled to rely on any remedy under this Agreement including but not limited to the remedies contained in clauses 7.7 and 10. The Customer shall indemnify the Company against any and all claims arising from the Aircraft being parked at the Facility other than any loss or claim arising out of the willful misconduct of the Company, its agents, sub-contractors or employees. In particular the Customer accepts any and all obligations to the owner of the Aircraft in its capacity as bailee including any involuntary obligations.

6.9 The Customer and the Company agree that the provisions of this clause 6 have been discussed and fully understood and further agree that the price of the Services, Parts and Materials have been negotiated and determined having taken into account the provisions of this clause 6.

## **7 CHARGES AND PAYMENT**

7.1 The Company will charge the Customer for (a) the Services at the rates specified in the TAE Standard Labor Rates unless otherwise specified in the Work Order Acknowledgment or Quotation (whichever is applicable) and (b) the Parts and Materials at the rates specified in the Work Order Acknowledgment or Quotation (whichever is applicable) or, if such rates are not ascertained at the time of providing the Quotation or Work Authorization at TAE Standard Labor Rates. The Customer shall make payments according to the progress payment schedule as set out in the Work Order Acknowledgment or Quotation or as outlined in Clause 7.2 below, as applicable.

7.2 The Company will charge the Customer for the agreed Services and the Customer will make payments in accordance with the following schedule:

7.2.1 50% of the Work Order Acknowledgment or Quotation (whichever is applicable) charges at the time the Work Order Acknowledgment or Quotation is signed by the Customer.

7.2.2 Additional 50% of the Work Order Acknowledgment or Quotation (whichever is applicable) charges prior to the delivery of the aircraft to the Company's Facility.

7.2.3 All additional charges arising out of the Services for defect rectification, material, shipping, component repair and any other charges associated with providing the Services, post aircraft delivery to the Customer.

7.2.4 If the customer does not have sufficient credit with TAE, then the estimated balance of the project will be due upon aircraft delivery.

7.2.5 In addition the Company may invoice the Customer for stage payments for any additional charges, costs and expenses including but not limited to defect rectification and supplied Parts. Any such stage payments for defect rectification will be in accordance with the signed 'defect estimate' spread sheet sent by the Company and signed by both parties.

7.2.6 With respect to External Services the Company may require the Customer to contract with the supplier as principal in which event the Company will act

as the Customer's agent. In such circumstances the Customer will be invoiced directly by the supplier of the External Services.

- 7.3 The Customer accepts liability for and agrees and undertakes to pay all amounts due to the Company within ten (10) days of the date of any invoice, after which point the Customer agrees that any amount subject of such invoice becomes immediately due and owing.
- 7.4 Where the whole or any portion of any quoted price is either directly or indirectly affected by variations in the rate of exchange, including, but not limited to currency devaluations any increase or decrease occasioned by any such variations and devaluations shall be for the Customer's account.
- 7.5 In the case of imported Parts or Materials, the rate of exchange applicable thereto shall be the official rate of exchange ruling at the time of importation as indicated on the relevant clearance document.
- 7.6 In the event that the Customer disputes any portion of the invoice, the Customer will provide written details of the disputed element within ten (10) days of receipt of the invoice and will pay all undisputed amounts in accordance with clause 7.3.
- 7.7 In the event that the Customer fails to make payment of any amount within the due date as provided in clause 7.2, 7.3 and 7.6 the Customer shall pay the Company interest on each overdue amount from the due date for payment at the rate of 1.5% per month or part thereof pro-rata until the actual date of payment. The Company has the right to immediately cease to carry out the Services until such time as the Customer has paid the outstanding amounts in accordance with this clause 7.
- 7.8 In the event the Customer cancels a request for Services after executing the Work Order Acknowledgement or Quotation (whichever is applicable) the Company reserves the right to charge the Customer for each of the following:
- 7.8.1 all expenses incurred by the Company in preparation for the Services and 15% of any deposit received;
  - 7.8.2 33% of any deposit received for cancellation of a Slot Reservation.
- 7.9 All payments to be made by the Customer shall be made without set off or counterclaim and free and clear of and without deduction for or on account of any present or future taxes, charges, levies, imposts, duties. If the Customer is compelled by law to make the deduction the Customer will ensure that the deduction does not exceed the minimum legal liability therefore and the Customer shall pay to the Company such additional amounts as may be necessary to ensure that the Company receives a net amount equal to the full amount that would have been received had the payment not been made subject to such deduction.
- 7.10 Any Taxes (other than those assessed upon or chargeable by reference to income or profits), duties, or other impositions or levies imposed by competent fiscal authorities upon any charge, matter or thing arising under the Terms (including, without limitation, value added tax) shall be chargeable to the Customer.
- 7.11 Payment is deemed made when irrevocably credited to the Company's account.

## 8 INSURANCE

- 8.1 The Customer shall provide evidence acceptable to the Company that it has in full force and effect insurance in amounts and on terms acceptable to the Company in respect of the Aircraft, Parts, Materials, property or other goods subject to the Services. Such insurance shall specifically accept the provisions of clause 6 and shall provide for insurers to waive any and all rights of subrogation against the Indemnified Parties and shall include:
- 8.1.1 Aircraft Third Party, passenger, (and as appropriate passenger baggage, cargo and mail) legal liability insurance;
  - 8.1.2 Hull All and War Risks of Loss or Damage whilst flying and on the ground;
  - 8.1.3 All Risk and War Third Party legal liability insurance; and
  - 8.1.4 Premises liability coverage insuring against liability for bodily injury or death to persons and damage to or loss of property.
- 8.2 The Customer hereby warrants that it will maintain in full force and effect such insurance as described in this Clause 8 for the duration of the Term, and for two years after its termination, and will, on demand, provide evidence acceptable to the Company of the maintenance of such insurance.
- 8.3 Such insurance shall name the Company and (if required by the Company) other Indemnified Parties as additional insured for its respective rights and interests subject to a severability of interest clause and shall provide that:
- 8.3.1 That the Indemnified Parties shall not be prejudiced by any breach of warranty or other act or omissions by the Customer which may render a claim by the Customer under the policy void or voidable; and
  - 8.3.2 Such insurance shall be first to react and primary to any other similar cover already held by the Indemnified Parties.
- 8.4 The Company shall not be responsible for payment, set-off or assessment of any kind or for any premiums in connection with the policies described in this clause 8.
- 8.5 The Customer shall be responsible for any deductible payable under the insurance detailed above.
- 8.6 The Company shall, at the time of signing of the Work Order Acknowledgment or Quotation (whichever is applicable) provide evidence to the Customer that it has in full force and effect insurance in respect of hangar keepers and aircraft product liability insurance.
- 8.7 The parties agree that each insurance policy specified in clauses 8.1 and 8.6 above shall provide in the form of AVS 103, in the event of separate insurances being arranged to cover "All Risk" hull insurance and the "War-Risk and related insurance, that the underwriter subscribing to such insurances will agree to a 50/50 claims funding arrangement in the event of a dispute as to which insurance is applicable.

## **9 FORCE MAJEURE**

- 9.1 Neither party shall be liable for any failure to perform its obligations (excluding payment obligations) under these Terms where such failure is due to an event of Force Majeure.
- 9.2 Should a party be prevented from fulfilling any of its obligations pursuant to these Terms as a result of an event of Force Majeure, then:
- 9.2.1 Those obligations shall be deemed to have been suspended to the extent that, and for so long as, the Affected Party is so prevented from fulfilling them and the corresponding obligations of the Unaffected Party shall be suspended to the corresponding extent;
  - 9.2.2 The Affected Party shall promptly notify the Unaffected Party in writing of such event of Force Majeure and such notice shall include an estimation of the approximate period of suspension. Such estimate shall not be binding on the Affected Party; and
  - 9.2.3 The duration of the Term as well as each period within which and each date by which any obligation is required to be performed pursuant to these Terms shall be extended or postponed, as the case may be, by the period of suspension in terms of clause 9.2.1.
- 9.3 If an event of Force Majeure continues for more than thirty (30) days after the date of the notice referred to in clause 9.2.2 then the Unaffected Party shall be entitled to terminate by giving not less than thirty (30) days' written notice to the Affected Party to that effect.

## **10 LIEN**

- 10.1 All Aircraft, Aircraft engines, Parts and Materials which come into the possession of or under the control of the Company shall be subject to a special and general lien and pledge for all monies due by the Customer to the Company in respect of work in progress; Services being rendered; Parts and Materials supplied or fitted; and for every other indebtedness of any nature whatsoever and howsoever arising owed by the Customer at any time.
- 10.2 The provisions of clause 10.1 hereof shall be in addition to and without prejudice to any other rights which the Company may have.
- 10.3 The Parties agree that any lien arising by virtue of this clause 10, or otherwise, may constitute a "non-consensual interest" within the meaning of Chapter X (10) of the Convention on International Interests in Mobile Equipment and the applicable Protocol thereto.
- 10.4 In the event the Company exercises a right to retain possession of the Aircraft or any part thereof pursuant to any lien or pledge the Company shall not be liable to the Customer for any claims, losses or liabilities incurred by the Customer which may arise in connection with the exercise of such right by the Company.

## **11 STORAGE FEES**

- 11.1 In the event of the Customer failing to comply with any of the Terms or failing to accept delivery of the Aircraft, Aircraft engine, Parts or Materials concerned within twenty-four (24) hours following completion of the Services and after being called upon the Company to do so, the Customer shall be required to reimburse the Company for any hangarage fees or rental and storage/parking charges incurred by the Company and in accordance with the prevailing charges levied at Hong Kong International Airport.
- 11.2 The Company may also charge the prevailing day rate for storage of aircraft for idle time caused due to pending Customer approval following completion of inspection or examination, provided such idle time is not otherwise caused by the Company. Unless otherwise expressly agreed in writing, the Company is under no obligation to provide any maintenance services whatsoever to the Aircraft while being stored under this provision. Any deterioration of the Aircraft pursuant to this provision will be Customer's sole responsibility.
- 11.3 For the sake of good order, the Company confirms that it is not obliged to provide hangar space for the Aircraft.

## **12 SUB-CONTRACTORS**

- 12.1 The Company is entitled to delegate any of its obligations to sub-contractors. It is understood that, in this case, the Company shall nevertheless be responsible to the Customer for the proper rendering of such services as if they had been performed by the Company itself.
- 12.2 The Customer shall not appoint any other person, company or organization to provide the Services which the Company has agreed to provide, except if mutually agreed between the Parties.
- 12.3 Unless otherwise agreed in writing, the Customer shall not sub-contract any third party to carry out work on the Aircraft whilst the Aircraft has an open work order with TAG Asia Engineering.
- 12.4 The Customer shall be responsible for any additional costs incurred by the Company in connection with any sub-contracted services including, but not limited to, audit costs and quality evaluation costs applied by the sub-contractor.
- 12.5 In addition, the Customer shall be responsible for any additional costs incurred by the Company in the event of the Customer specifically requesting that certain services be sub-contracted to a sub-contractor not featured on the Company's approved vendors listing.

## **13 TITLE AND PROPERTY RIGHTS**

- 13.1 Title to all materials installed on the Aircraft or otherwise provided to Customer, whether on their own or as part of the performance of Services under this Agreement will remain with the Company until the Company receives payment in full for all materials and Services supplied in accordance with clause 7, notwithstanding delivery of the Aircraft to which Parts and Materials have been fitted by the Customer.

- 13.2 Until title to all materials passes to Customer, Customer will keep the materials readily identifiable as the Company's property and will notify the Company, at the Company's request, of their whereabouts at any time.
- 13.3 All Parts that the Company removes or replaces become the property of the Company and can be scrapped, repaired or overhauled as reasonably determined by the Company.
- 13.4 Any resale by Customer of materials on which title has not passed to Customer pursuant to these provisions will, as between Customer and the Company, be made by the Customer as agent for the Company.
- 13.5 Subject to the provisions of this clause 13, all drawings, specifications and other data supplied by the Company to the Customer, and any intellectual property contained therein, shall remain at all times the property and copyright of the Company. The Customer shall not use, copy or allow to be copied to the benefit of any third party, any drawings, specification, or other information or data supplied by, or produced by the Company for the Customer in connection with the Services performed without the express written permission of the Company.

#### **14 PARTS SUPPLIED, EXCHANGED OR LOANED**

- 14.1 If the Customer is supplied with exchange parts (the "Exchange Parts") for use while the comparable part on Customer's aircraft is being repaired, Customer will return the Exchange Parts to the Company within five (5) days of receipt. The Company will determine and notify Customer regarding the costs of the exchange in advance. If the expense of repairing the returned Exchange Parts exceeds the cost of the exchange, the Company will charge Customer the difference by supplemental invoice.
- 14.2 Should the Customer thereafter return unused a Part provided by the Company, the Company will accept the returned Part, provided that: (i) it is serviceable in the Company's reasonable opinion; and (ii) Customer pays a restocking and recertification fee, plus 15% handling fee. If the Company thereafter finds that the Part is defective, the Customer will pay for the cost of repair and recertification by supplemental invoice issued by the Company. If the part is not repairable in the Company's reasonable opinion, the Customer will pay the full list price plus 15% handling fee.

#### **15 EXPORT CONTROL**

- 15.1 The Customer shall at all times comply with the provisions and requirements of all export or import control laws, regulations or obligations in the Hong Kong, and any other country insofar as they are applicable.
- 15.2 The Customer shall be responsible for securing and complying with any non-EU or other governmental export or import licenses and/or authorizations, including import or export of the Aircraft, as may be required as a result of any purchase of goods or services from the Company.
- 15.3 To the extent the Company may be required to obtain export or import licenses or authorizations, Customer will assist the Company in obtaining any such license or required authorization. For the avoidance of doubt, the Company may refuse any order if, in the Company's sole but reasonable discretion, the sale or delivery of any goods or services



hereunder may cause a violation of any non-EU or other governmental export or import law.

- 15.4 The Customer shall indemnify and hold harmless the Company from and against any and all claims, losses, damages, expenses, costs, demands, liabilities and proceedings suffered or incurred by the Customer and arising from or in respect of non-compliance with any of the requirements specified in this clause 15.

## **16 TERMINATION**

- 16.1 Either party may terminate the Agreement by written notice to take immediate effect if:

16.1.1 The other party makes or offers to make any arrangement or composition with or for the benefit of its creditors generally or ceases or threatens to cease to carry on business or suspends or threatens to suspend all of its operations (other than temporarily by reason of a strike) or suspends payment of its debts or is or becomes unable to pay its debts as they fall due or commits any act of insolvency or bankruptcy or a petition or resolution for the making of an administration order or for the bankruptcy, winding up, or dissolution of the other party (other than a winding up for the purposes of reconstruction or amalgamation of a solvent company) is presented or passed or the other party files a voluntary petition in bankruptcy or insolvency or a liquidator, trustee, supervisor, receiver, administrator, administrative receiver or encumbrancer takes possession of or is appointed over the whole or any part of the assets of the other party.

16.1.2 Any action is taken or procedure is commenced in any jurisdiction by or in relation to the other party, which is similar to or analogous with any above mentioned action or procedure.

16.1.3 The other party commits a material breach of the Agreement, which is not remedied within fourteen (14) days after written demand for such remedy is given by the innocent party to the defaulting party.

- 16.2 Upon termination as provided for in clause 16.1 the Company shall provide the Customer with all relevant technical records data relating to the Aircraft at the date of termination (or withdrawal as appropriate). In addition, the Company shall meet all reasonable demands for additional information relating to work carried out on the Aircraft during the period they were under the Company's control, subject to the Company receiving full payment for the Services provided until the date of termination.

- 16.3 As an alternative to termination, where it would otherwise be entitled to do so under clause 16, the Company may by prior notice and at its sole discretion, suspend the performance of any or all of the Company's obligations under the Agreement on such terms as the Company may determine and notify to the Customer. In particular the Company may suspend the performance of any part or all of the Services in relation to any one or more of the Aircraft. Any such suspension shall not be deemed a waiver of the Company's right to terminate at a later date if the circumstances described in clause 16.1 are continuing.

- 16.4 Notwithstanding the provisions set out at clauses 16.1 to 16.3 the Company reserves the right to terminate due to its own operational requirements upon the provision of ninety (90) days' written notice.
- 16.5 If either party terminates pursuant to clause 16.1 the Company shall immediately cease to carry out the Services upon receiving such notice of termination and notwithstanding that it may not have invoiced the Customer for the Services provided, it shall be entitled to invoice and require immediate payment for the same for any Services completed prior to termination such payment.
- 16.6 Upon termination for any reason whatsoever;
- 16.6.1 Any amounts owed by the Customer to the Company shall immediately become due and payable;
- 16.6.2 The Company may retake possession of any goods in respect of which ownership has not passed to the Customer; and
- 16.6.3 The Company shall be entitled to cancel any further deliveries and/or services pursuant to the Agreement or any other agreement with the Customer.

## **17 CONFIDENTIALITY**

- 17.1 The Agreement and all information including propriety information becoming available or coming into the possession or knowledge of either party shall at all times be treated by the parties hereto as confidential and shall not be published, disclosed or circulated except (and only insofar as is necessary) in connection with the performance by the parties hereto of their obligations under the Agreement or as required by the statutory authorities or for the purpose of legal proceedings relating thereto.
- 17.2 Both parties shall ensure that the obligation of confidentiality contained in this clause shall be brought to the notice of all employees, servants and agents engaged upon work in connection with the Agreement.
- 17.3 The obligations of the parties under this clause 17 shall survive and continue after termination and shall be binding on authorized assignees and successors in title of the Company and the Customer.

## **18 NOTICES**

All notices shall be in writing and shall be served by: (i) personal delivery; or (ii) by prepaid recorded delivery; or (iii) email and shall be deemed to have been received by the addressee: (i) immediately if served by personal delivery; or (ii) within seventy-two (72) hours of posting if served by prepaid recorded delivery; or (iii) twenty-four (24) hours if sent email to the correct email address and the relevant address details for the service of notices will be set out in the Quotation.

**19 NON WAIVER**

No failure at any time by either party to enforce any of the terms of the Agreement shall either constitute a waiver of such provision or prejudice the right of such party to enforce such provision at any subsequent time.

**20 ALTERATION**

No alterations to the Agreement shall be effective unless contained in a written document signed by the authorized representatives of both parties.

**21 ASSIGNMENT**

Neither party shall have the right to assign any of its rights hereunder without the prior written consent of the other.

**22 THIRD PARTY RIGHTS**

22.1 Unless expressly agreed by the Customer and the Company, no third party shall have any rights under or in connection with it by virtue of the *Contracts (Rights of Third Parties) Act 1999*.

22.2 The rights of the parties to terminate, rescind or agree any amendment, variation, waiver or settlement under the Agreement are not subject to the consent of any third party.

**23 ENTIRE AGREEMENT**

23.1 The Agreement represents the entire agreement of the parties hereto in relation to the Services and supersedes all previous negotiations, statements or agreements whether written or oral in relation to such Services.

23.2 The Customer and the Company consequently agree that neither party shall be entitled to place any reliance whatsoever on any representation, agreement, statement or understanding other than those expressly incorporated in the Agreement.

23.3 If any of the terms of the Agreement, or any part thereof are not enforceable for any reason whatsoever, the remaining conditions shall continue in full force and effect.

**24 SURVIVAL**

In case of termination or expiration of the Agreement as provided herein, the provisions of this Agreement which have been stated to survive termination shall last for the duration of the rights and obligations they contain, notwithstanding such termination or expiration, including (but not limited to) this clause 24 and clauses 18 and 26.

**25 CURRENCY**

25.1 Unless otherwise agreed in the Quotation, all payments under this Agreement shall be in United States Dollars.

## **26 LAW AND JURISDICTION**

- 26.1 The terms of the Agreement will in all respects be governed by and construed in accordance with the Laws of Hong Kong.
- 26.2 Any dispute or difference arising out of or in connection with the Agreement, including any question regarding existence, validity or termination or the legal relationships established, may be referred to arbitration under the HKIAC rules, which are deemed to be incorporated by reference into this clause. It is agreed as follows:
- 26.2.1 the number of arbitrators shall be one;
  - 26.2.2 the seat, or legal place, of the arbitration shall be in Hong Kong; and
  - 26.2.3 the language used in the arbitral proceedings shall be English.
- 26.3 The Company shall be entitled to recover from the Customer all legal expenses, hangarage fees, storage charges and all other fees and charges incurred with lawyers or collection agents, whether legal action has been commenced or not, provided such expenses have been incurred in consequences of a default by the Customer.