



NEW ZEALAND - TERMS AND CONDITIONS WITH CUSTOMERS

1. Definitions

1.1 "the Agreement" shall mean the agreement governing Hawker's provision of the Services and/or supply of the Goods to the Customer, being these terms and conditions unless the parties have agreed in writing to supplement such terms and conditions by others.

1.2 "Authorised Officer" shall mean any director, secretary or position within Hawker whose title includes the word "general manager" or "vice-president" or any person approved of by the board of directors of Hawker to act as an authorised officer and identified as such to the customer;

1.2 "Asset" shall mean any aircraft, part or component thereof, furnished by or on behalf of the Customer and upon which or in relation to which Services are to be performed by Hawker.

1.4 "Hawker" shall mean **Hawker Pacific NZ Ltd or as applicable, a related body corporate** (defined in this Agreement as a subsidiary or a holding company of Hawker Pacific Asia NZ Ltd. or being a subsidiary of a holding company of Hawker Pacific NZ Ltd.), its successors and assigns or any person acting on behalf of and with the authority of Hawker Pacific NZ Ltd.

1.5 "Customer" shall mean the customer (or any person acting on behalf of the customer) as described on any quotation, work authorisation or other form as provided by Hawker to the customer.

1.6 "Equipment" shall mean any equipment supplied on hire by Hawker to the Customer and are as described on the invoices, quotation, work authorisation or any other forms as provided by Hawker to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).

1.7 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.

1.8 "Goods" shall mean those goods, parts and/or components supplied by Hawker to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes goods described on any invoices, quotation, work authorisation or any other forms as provided by Hawker to the Customer.

1.9 "Services" shall mean all services supplied by and work performed by Hawker to/for the Customer and includes but is not limited to any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above), and work authorised and such other unforeseen and additional work as Hawker may in its discretion consider necessary, acting reasonably, and all transport, freight, storage, hangarage, inspections, modifications and testing ancillary thereto.

1.10 "Price" shall mean the price payable for the Goods as agreed between Hawker and the Customer in accordance with clause 3 of this contract.

In these terms and conditions unless the context otherwise requires: (i) words importing the singular include the plural and vice versa; (ii) words importing gender include all other genders; (iii) words importing persons include all bodies and associates, corporate or unincorporated, and vice versa; (iv) references to any party include that party's executors, administrators, substitutes, successors and permitted assigns; and (v) references to days are to calendar days.

2. Acceptance

2.1 Any instructions received by Hawker from the Customer for the supply of Goods and/or Services and/or the hiring of the Equipment shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Hawker.

2.4 The Customer shall give Hawker not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Hawker as a result of the Customer's failure to comply with this clause.

3. Price And Payment

3.1 At Hawker's sole discretion the Price shall be either:

- (a) as indicated on invoices provided by Hawker to the Customer; or
- (b) Hawker's quoted price (subject to clause 3.2) which shall be binding upon Hawker provided that the Customer instructs Hawker to proceed with the supply of the Goods and/or provision of the Services and/or hiring of the Equipment, being the subject of the quote.

3.2 Hawker reserves the right to change the Price in the event of a variation to Hawker's quotation.

3.3 At Hawker's sole discretion a deposit may be required.

3.4 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

3.5 Hawker is hereby authorised and instructed to perform the Services and/or to supply the Goods and/or to hire the Equipment to the Customer and the Customer hereby agrees to pay, without deduction, Hawker's charges at that time and in that manner as Hawker may require. The Customer must notify Hawker in writing immediately of any error on an invoice. Where credit arrangements have been agreed by Hawker in writing, payment shall be made by the Customer within 30 days of the date of Hawker's invoice unless otherwise agreed in writing by Hawker.

3.6 The Customer warrants to Hawker that, if the Customer is not the owner of the Asset on which Services are to be provided and/or Goods fitted on and/or provided for, he has the approval and consent of the owner as its agent to authorise both the performance of the Services and/or the supply of the Goods and/or hiring of the Equipment in compliance with this Agreement, and agrees to accept liability for payment of the Services provided and/or Goods supplied and/or Equipment hired pursuant to this Agreement.

4. Delivery Of Goods

4.1 At Hawker's sole discretion delivery of the Goods shall take place when:

- (a) the Customer takes possession of the Goods at Hawker's nominated address; or
- (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Hawker or Hawker's nominated carrier); or
- (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.

4.2 The costs of delivery are in addition to the Price; and for the Customer's account.

4.3 The Customer shall make all arrangements necessary to take delivery of the Goods and/or Asset whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods and/or Asset following notification by Hawker to the Customer to do so or that the Services have been completed, then Hawker shall be entitled to charge a reasonable fee for redelivery and may charge reasonable hangarage or storage charges in respect thereof from the date of such notification until collection.

Hawker reserves the right to terminate any storage or hangarage arrangement upon the giving of seven (7) calendar days notice to the Customer.

4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

4.5 Hawker may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

4.6 The failure of Hawker to deliver shall not entitle either party to treat this contract as repudiated.

4.7 Hawker shall not be liable for any loss or damage whatever due to failure by Hawker to deliver the Goods (or any of them) promptly or at all.

5. Risk

5.1 If Hawker retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Hawker is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Hawker is sufficient evidence of Hawker's rights to receive the insurance proceeds without the need for any person dealing with Hawker to make further enquiries.

6. Title

6.1 Hawker and Customer agree that ownership of the Goods shall not pass until:

(a) the Customer has paid Hawker all amounts owing for the particular Goods; and

(b) the Customer has met all other obligations due by the Customer to Hawker in respect of all contracts between Hawker and the Customer.

6.2 Receipt by Hawker of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Hawker's ownership or rights in respect of the Goods shall continue.

6.3 It is further agreed that:

(a) where practicable the Goods shall be kept separate and identifiable until Hawker shall have received payment and all other obligations of the Customer are met; and

(b) until such time as ownership of the Goods shall pass from Hawker to the Customer Hawker may give notice in writing to the Customer to return the Goods or any of them to Hawker. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and

(c) the Customer is only a bailee of the Goods and until such time as Hawker has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for Hawker; and

(d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Hawker will be the owner of the end products; and

(e) if the Customer fails to return the Goods to Hawker then Hawker or Hawker's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and Hawker will not be liable for any reasonable loss or damage suffered as a result of any action by Hawker under this clause.

7. Personal Property Securities Act 1999 ("PPSA")

7.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

(b) a security interest is taken in all Goods previously supplied by Hawker to the Customer (if any) and all Goods that will be supplied in the future by Hawker to the Customer.

7.2 The Customer undertakes to:

(a) sign any further documents and/or provide any further

information (such information to be complete, accurate and up-to-date in all respects) which Hawker may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and

(b) indemnify, and upon demand reimburse, Hawker for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; and

(c) not register a financing change statement or a change demand without the prior written consent of Hawker; and

(d) immediately advise Hawker of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

7.3 Hawker and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

7.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

7.5 Unless otherwise agreed to in writing by Hawker, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

7.6 The Customer shall unconditionally ratify any actions taken by Hawker under clauses 7.1 to 7.5.

8.

8.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Hawker or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by Hawker and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

8.2 Notwithstanding any provision in any subject agreement/s providing to the contrary, the Customer agrees to indemnify, and to keep indemnified, Hawker against any action, claim, proceeding, demand, damages, cost, expense liability or loss (including but not limited to costs on a solicitor/client basis and any indirect/consequential and such loss arising in any manner), which Hawker may suffer or incur arising out of or connected with the Agreement between the parties, the provision of the Services and/or supply of the Goods and/or the hiring of the Equipment.

9. Defects

9.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify Hawker of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Hawker an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Hawker has agreed in writing that the Customer is entitled to reject, Hawker's liability is limited to either (at Hawker's discretion) replacing the Goods or repairing the Goods.

10. Returns

10.1 Returns will only be accepted provided that:

(a) the Customer has complied with the provisions of clause 9; and

(b) Hawker has agreed in writing to accept the return of the Goods; and

(c) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date; and

(d) Hawker will not be liable for Goods which have not been stored or used in a proper manner; and

(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

10.2 Hawker may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.

11. Warranty

11.1 Subject to that set out in sub-clauses 11.2 and 11.4, no claim shall be recognised unless received by Hawker in writing, within fourteen (14) days of the date of delivery of the Goods or Asset worked on by Hawker or performance of the Services. Such claim notification shall be accompanied by the evidence that proves Hawker's faulty workmanship or deficient services. The Customer shall at all times follow Hawker's instructions and procedures in respect of the disposition and return of Goods or Asset the subject of any claim hereunder Hawker's liability is limited to either (at Hawker's sole discretion) replace or remedy the workmanship.

11.2 The conditions applicable to the warranty given by Clause 11.1 are:

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

- (i) failure on the part of the Customer to properly maintain the Goods and/or Asset; or
- (ii) failure on the part of the Customer to follow any instruction or guideline provided by Hawker; or
- (iii) any use of the Goods and/or Asset otherwise than for any application specified on the corresponding quote or order form; or
- (iv) the continued use of the Goods and/or Asset after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and Hawker shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship subject of the claim is repaired, altered or overhauled without Hawker's prior written consent.

(c) in respect of all claims Hawker shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

11.3 For Goods not manufactured by Hawker, the warranty shall be the current warranty provided by the manufacturer of the Goods. Hawker shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

11.4 In the case of refurbished Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Hawker as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Hawker shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

12. Contractual Remedies Act 1979

12.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.

13. Consumer Guarantees Act 1993

13.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Hawker to the Customer.

14. Default & Consequences Of Default

14.1 The Customer agrees that and notwithstanding any provision in any subject agreement/s providing to the contrary, in the event that he shall fail to make payment as aforesaid or where any payment is overdue, Hawker shall be entitled to:

- a) charge a late payment fee on any overdue amount, from the date when it becomes due until the date payment is received, at a rate of 1.33% per month;
- b) stop supply immediately both under the Agreement and/or any other agreement with the Customer:
 - (i) without being in breach of any such agreement/s and where applicable, the Customer releases Hawker from any obligation to pay liquidated damages and/or milestone penalties that would otherwise apply;
 - (ii) without prejudice to any accrued rights and remedies of Hawker under any of the agreement/s; and

(iii) payment will become immediately due to Hawker for all good and services supplied under any agreement with the Customer, with sub-clause (a) to apply if payment is not immediately received.

- c) sell or concur in selling all or any interest in the Asset by public auction, private treaty or tender, for cash or on credit, in one lot or in parts, with or without special conditions as to title or the time and the mode of payment of purchase money, or on such terms as Hawker in its absolute discretion thinks fit. All monies received by Hawker as a result of the exercise of its rights under this provision may be applied in the following order: (i) in payment of all costs, charges, expenses and disbursements incurred in or incidental to the exercise or attempted exercise of Hawker's rights under this provision; (ii) payment of monies owing to Hawker, and (iii) the surplus (if any) shall belong to the Customer but does not carry interest.

For the avoidance of doubt, if any part of the monies due to Hawker remains outstanding after applying the proceeds of any sale of the Asset in accordance with this sub-clause, Hawker may take further action against the Customer as Hawker deems necessary to procure the payment of such part of monies owing to Hawker.

The parties agree that where a written and signed variation of any such agreement so referred here is necessary for that set out in this sub-clause 14.1 to take effect, then either this clause 14.1 constitutes such variation or the parties agree to waive such requirement.

14.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Hawker from and against all costs and disbursements incurred by Hawker in pursuing the debt including legal costs on a solicitor and client basis and Hawker's collection agency costs.

14.3 Hawker will not be liable to the Customer for any loss or damage the Customer suffers because Hawker has exercised its rights under this clause.

14.4 Without prejudice to Hawker's other remedies at law Hawker shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Hawker shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to Hawker becomes overdue, or in Hawker's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. Security And Charge

15.1 Despite anything to the contrary contained herein or any other rights which Hawker may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is the owner of any asset (including, but not limited to, aircraft or aircraft parts) capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said asset to Hawker or Hawker's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Hawker (or Hawker's nominee) shall be entitled to lodge where appropriate a caveat or interest, which shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Hawker elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Hawker from and against all Hawker's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Hawker or Hawker's nominee as the Customer's and/or Guarantor's true and lawful attorney to

perform all necessary acts to give effect to the provisions of this clause 15.1.

16. Cancellation

16.1 Hawker may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Hawker shall repay to the Customer any sums paid in respect of the Price. Hawker shall not be liable for any loss or damage whatever arising from such cancellation.

16.2 In the event that the Customer cancels delivery of Goods or Equipment, the Customer shall be liable for any loss incurred by Hawker (including, but not limited to, any loss of profits) up to the time of cancellation.

17. Privacy Act 1993

17.1 The Customer and the Guarantor/s (if separate to the Customer) authorises Hawker to:

(a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
(b) disclose information about the Customer, whether collected by Hawker from the Customer directly or obtained by Hawker from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

17.2 Where the Customer and/or Guarantors are an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.

17.3 The Customer and/or Guarantors shall have the right to request Hawker for a copy of the information about the Customer and/or Guarantors retained by Hawker and the right to request Hawker to correct any incorrect information about the Customer and/or Guarantors held by Hawker.

18. Unpaid Seller's Rights

18.1 Where the Customer has left any item, including but not limited to an Asset, with Hawker for repair, modification, exchange or for Hawker to perform any other Service in relation to the item and Hawker has not received or been tendered the whole of the Price, or the payment has been dishonoured, Hawker shall have:

(a) a lien on such item/s;
(b) the right to retain the item for the Price while Hawker is in possession of the item;
(c) a right to sell the item; and
(d) the right to retain all or part of the proceeds of the sale of the item in payment of the Price and any interest due to Hawker and any costs associated with such sale.

18.2 The lien of Hawker shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

19. Equipment Hire

19.1 The Equipment shall at all times remain the property of Hawker and is returnable on demand by Hawker. In the event that the Equipment is not returned to Hawker in the condition in which it was delivered Hawker retains the right to, at its discretion, charge the price of repair or replacement of the Equipment.

19.2 The Customer shall;

(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Hawker to the Customer.

19.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, Hawker's interest in the Equipment and agrees to indemnify Hawker against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual

risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

20. General

20.1 These terms and conditions supersede and override any earlier set of terms and conditions issued by Hawker, and shall continue to have full force and effect notwithstanding any breach thereof by either party. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by these terms and conditions. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the provision shall be read down to the extent that it is no longer void or voidable, illegal or unenforceable. Where such provision cannot be read down, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and these terms and conditions shall be construed as if the void or voidable, illegal or unenforceable provision was omitted.

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the exclusive jurisdiction of the courts of New Zealand.

20.3 Notwithstanding any provision in this Agreement or any subject agreement/s providing to the contrary, Hawker shall not be liable to the Customer for any consequential, economic, incidental or indirect loss, damage and/or expense of any kind or nature (whether or not foreseeable at any time and whether past, present or future, including but not limited to loss of profit (real or expected), loss of trade and/or business interruption) suffered by the Customer arising directly or indirectly out of a breach by Hawker of this Agreement, bailment, negligence, the commission of any other tort by Hawker, and generally from the supply of the Goods, provision of the Services or hiring of the Equipment.

20.4 In the event of any breach of this contract by Hawker the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

20.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Hawker.

20.6 Hawker may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

20.7 Hawker reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Hawker notifies the Customer of such change.

20.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.

20.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party, except that this sub-clause 20.9 does not apply to any obligation on the part of the Customer to pay Hawker, including but not limited to that in clause 3.

20.10 The failure by Hawker in any circumstance whatsoever to enforce any provision of this Agreement shall not be treated as a waiver of that provision in the absence of an express and specific statement in writing by an Authorised Officer of Hawker that Hawker has waived the said performance, nor shall it affect Hawker's right to subsequently enforce that provision.