

Standard Terms and Conditions for Maintenance Services Performed by Hawker Pacific Aerospace

These Standard Terms and Conditions apply to every Maintenance Service performed by Hawker Pacific Aerospace under a Customer Agreement concluded with a Customer.

O. Definitions and Abbreviations

The following terms, expressions and abbreviations used in these Standard Terms and Conditions shall have the following meanings:

Airworthiness An aircraft or Component is airworthy if it conforms with the applicable approved type, i.e. if it complies with the valid type certificate data sheet, which includes any supplemental type certificate (STC) and approved modifications incorporated into the aircraft and if any Maintenance Service was carried out in accordance with the applicable maintenance requirements and if the aircraft or Component was released to service.

Certificate of Release to Service The issuance of a Certificate of Release to Service by the maintenance organization approved by the competent authority confirming, unless otherwise specified, that the Maintenance Service listed therein has been carried out in conformity with the applicable requirements (e.g. EASA Part-145 requirements) by appropriate authorized personnel of the maintenance organization and in accordance with the applicable maintenance organization exposition, and that the Maintenance Object has been released to service.

Components Devices, modules or individual parts of an aircraft, including engine or flight equipment or emergency equipment. Components are always identified by a part number in the maintenance or operational documents issued by the respective aircraft or component design organization.

Customer A Person or legal entity who or which, when entering into a Customer Agreement with HPA, acts in exercise of his or its trade, business or profession.

Customer Agreement A contract between HPA and the Customer under which HPA agrees to perform a Maintenance Service on one or more Maintenance Object(s) in return for payment by the Customer.

Customer's Working Equipment Any technical equipment for use by HPA to perform the Maintenance Service which the Customer is obligated to provide to HPA under the Customer Agreement as specified in the Customer Agreement.

Flight Hour Each hour that the aircraft is airborne.

HPA Hawker Pacific Aerospace.

Maintenance Object Any aircraft or Component delivered to HPA by the Customer for a Maintenance Service to be performed by HPA.

Maintenance Service One or a combination of the following: overhaul, repair, inspection, testing, replacement, modification or rectification of an aircraft, an engine or a Component, as further specified in the order confirmation.

Place of Performance Has the meaning set forth in Article 4.

Subcontractor Any person or legal entity (other than employees of HPA), engaged by HPA to perform HPA's obligations under the Customer Agreement.

Vicarious Agents HPA's personnel and Subcontractors used by HPA to support HPA in the performance of its obligations under the Customer Agreement.

1. Scope and Exclusive Validity of these Terms and Conditions

1.1 These Standard Terms and Conditions shall exclusively apply to all Customer Agreements, unless HPA expressly waives their applicability in written form, and only as far as HPA and the Customer have not agreed on any other terms and conditions provided by HPA.

1.2 The Customer's standard terms and conditions shall not become part of the Customer Agreement, even if HPA has not expressly rejected their applicability. Further, if HPA replies to any communication of the Customer that refers to the Customer's standard terms and conditions or any other set of terms and conditions (each being "Other Terms and Conditions"), such reply shall not constitute an acceptance of such Other Terms and Conditions, nor shall it result in the acceptance of such Other Terms and Conditions.

2. Conclusion of Customer Agreement

2.1 Any offer submitted by HPA shall be non-binding.

2.2 Orders submitted by the Customer are binding for the Customer.

2.3 The Customer Agreement is concluded once HPA has submitted an order confirmation to Customer in writing (letter, fax or e-mail).

3. Scope of Maintenance Service

3.1 The scope of any Maintenance Service requested shall be stated in the order placed by the Customer and, if agreed, shall be confirmed in the order confirmation submitted by HPA.

3.2 HPA is entitled, without the prior consent of the Customer but at the Customer's expense, to perform additional services that HPA considers necessary for the proper performance of the Maintenance Service if (i) the Customer's prior consent cannot be obtained without causing a delay in the completion of the services and (ii) the price for the additional services does not exceed ten percent of the value of the original order.

3.3 The Maintenance Service shall be performed by HPA in accordance with the HPA Quality Manual and Procedures as approved by the competent authority unless otherwise agreed in writing between the Customer and HPA.

3.4 Any entries in the technical log book of an aircraft by HPA do not constitute any indication with respect to the Airworthiness of the aircraft as a whole. However, the signature does constitute a Certificate of Release to Service with respect to the scope of the Maintenance Service.

4. Place of Performance

The Place of Performance of the Maintenance Service shall be the HPA service facility site specified in the Customer Agreement. Should the Customer Agreement specify no particular HPA service facility, Place of Performance shall be the HPA facility at which HPA received the Maintenance Object.

5. Customer's Obligations

5.1 The Customer shall supply HPA with the Customer's Working Equipment and with all documents on the operation, maintenance and repair history of the Maintenance Object necessary for completing the Maintenance Service (including without limitation all relevant instruction manuals and special documentation not at HPA's disposal).

5.2 If the Customer fails to supply HPA with the documents as per Article 5.1 above or if such documents are incomprehensible or incomplete, HPA may request that the Customer supply any such documents, and any relevant undocumented information, within a reasonable period of time. For the purposes of this Article 5 "documents" include both printed documents and data in all other formats, including without limitation electronic formats.

5.3 If the Customer does not comply with the request according to Article 5.2 in due time, HPA is entitled to terminate the Customer Agreement with immediate effect. In such case, HPA shall be entitled to claim payment for the Maintenance Service to the extent it was performed prior to the date of termination.

5.4 Articles 5.1, 5.2 and 5.3 do not in any way limit HPA's legal and contractual rights or claims.

5.5 Customer shall treat as strictly confidential any information disclosed by HPA relating to the Customer Agreement, including the document itself as well as individual provisions contained therein ("Confidential Information"). Confidential Information shall include, but not be limited to, the contents of the negotiations leading up to the Customer Agreement, any business, technical and strategic data disclosed by HPA or its Subcontractors at any time for any reason, comprising any and all such information in oral or visual form and including but not limited to prices for materials and Maintenance Services, the scope of Maintenance Services offered, legal provisions, turnaround times and man-hours needed.

6. Delivery

The delivery of each Maintenance Object and the Customer's Working Equipment to the Place of Performance of the Maintenance Service shall be at the Customer's risk and expense, unless otherwise agreed in the Customer Agreement.

7. Redelivery Dates

7.1 Unless they have been explicitly and in writing declared as binding, redelivery dates indicated by HPA are provisional, non-binding, and shall serve as general information only.

7.2 If HPA becomes aware that it is likely to miss the redelivery date, HPA will promptly notify the Customer.

8. Redelivery

8.1 Redelivery of the Maintenance Object shall be effected free carrier (FCA, Incoterms 2020) the Place of Performance excluding packing material.

8.2 No later than one week after (i) HPA has notified the Customer that the Maintenance Service has been completed or (ii) the date of termination of the Customer Agreement, whichever may occur first, the Customer shall exercise best efforts to immediately collect the Maintenance Object at the Place of Performance.

8.3 If the Customer fails to comply with Article 8.2, the Customer shall compensate HPA for any costs and expenses it incurs in connection with the storage of the Maintenance Object according to HPA's then current price list.

8.4 The Customer may request that HPA supports Customer in arranging for shipment of the Maintenance Object to another place as the one specified in Article 8.1. Any shipment arrangements made by HPA shall be in the name and on behalf of Customer. The Customer shall bear all shipping cost including the cost for packing material.

9. Warranty

9.1 A defect shall only be subject to warranty if it arises within twelve months or within one thousand Flight Hours after redelivery, whichever may occur first.

9.2 A warranty claim must be raised by Customer within thirty days after the defect has or could have become reasonably apparent and HPA must be provided at the Place of Performance with the defective part for inspection and repair within additional thirty days after the warranty claim has been raised. If a defect arises on a non-removable part of an aircraft, the Parties shall in good faith agree how to remedy such defect in a way convenient for Customer and reasonably acceptable for HPA.

9.3 HPA's warranty shall be excluded (i) if the defect has been caused because the Maintenance Object has been altered, overhauled or repaired during the warranty period by any party other than HPA, or (ii) if the defect has been caused by the Customer's Working Equipment or any material supplied by Customer, or (iii) if the Customer has not taken all reasonable precautions to prevent an aggravation of the defect or damage, or (iv) if the Customer does not comply with operating instructions provided by HPA or the respective aircraft or Component design authorization. As long as the Customer is in default with its payment obligations, HPA may exercise its right of retention and may therefore refuse to meet warranty claims until full payment has been made.

9.4 Provided that suppliers grant HPA warranty rights for material or services beyond the scope of HPA's warranty as set forth in Article 9.1 and 9.2 above, customer may request HPA to assign any such warranty rights. Further, upon request, HPA shall support Customer in pursuing such warranty rights.

9.5 Material provided by the Customer must at all times have been stored, handled and operated in accordance with the manufacturer's recommendations.

9.6 If upon Customer's special request HPA or its Subcontractors perform a provisional repair, the materials used and the Maintenance Services performed during such repair are not subject to any warranty.

9.7 HPA shall correct any defect covered by this warranty at its own cost and expense at the Place of Performance or at any other place Customer and HPA may agree upon from time to time. If the Customer requests HPA to correct the defect of a Component at another location as the Place of Performance, the Customer shall arrange at its own risk and expense for the removal and transport of the defective Component and for the removal of the location where the repair shall be made and for the reinstallation of the respective Component.

9.8 The warranty set forth in this Article 9 shall be the exclusive and sole remedy for Customer in case of any defect.

9.9 Articles 9.1 and 9.2 shall not apply to a possible claim for damages. Articles 9.1 and 9.2 shall also not apply if HPA has concealed the defect intentionally or has given a written durability guarantee or warranted certain properties of the repair.

9.10 Articles 9.1, 9.2, 9.3 and 9.5 shall not affect any other limitations of HPA's liability, or restrictions of the Customer's rights and claims against HPA in these Standard Terms and Conditions and/or under applicable law.

10. Limitation of Liability for Damages

10.1 HPA's liability for damages in case of slight negligence (so-called "leichte Fahrlässigkeit") of HPA, its statutory representatives and Vicarious Agents shall be excluded, provided such liability does not result from the violation of any material contractual obligations of particular significance for the purpose of the Customer Agreement which the Customer may rely on, damages arising from injury to life, limb or health or from violation of a guarantee. HPA's liability under the Product Liability Act shall remain unaffected.

10.2 To the extent HPA is liable in accordance with Article 10.1, HPA's liability shall be further limited as follows: HPA shall not be liable for non-foreseeable damages which are not typical for Maintenance Services of the kind constituting the Maintenance Service under the relevant Customer Agreement and which are neither based upon a violation of a guarantee, nor upon intentional acts (or upon intentional acts of HPA's statutory representatives or its Vicarious Agents), nor are caused by injury to life, limb or health, nor are damages to be compensated in accordance with the Product Liability Act.

11. Insurance

11.1 The Customer agrees to obtain and maintain in full force during the term of the Customer Agreement the following insurances:

- Hull All Risks Insurance as well as an All Risk Property Insurance including war risks containing a waiver of subrogation in favour of HPA, its personnel and its Subcontractors.
- Comprehensive Airline Legal Liability Insurance including aircraft third party, passenger and war risk liability with a combined single limit in accordance with article 7 Regulation (EC) No. 785/2004 naming HPA, its personnel and its Subcontractors as additional insured parties.

11.2 If the Customer has ordered the Maintenance Service from HPA on behalf of a third party, the Customer shall ensure that such third party obtains and maintains the insurances specified according to Article 11.1.

12. Prices and Payments

12.1 HPA shall issue a preliminary invoice on the basis of the cost estimate as per Customer Agreement and the Customer shall pay such amount latest upon delivery of the Maintenance Object to HPA. Any difference between the preliminary invoice and the invoice issued after redelivery of the Maintenance Object to Customer shall be reimbursed by HPA or paid by Customer – as the case may be. Any payment of such difference shall be made by Customer to HPA no later than 7 days from receipt of the invoice issued after redelivery.

12.2 All prices are quoted as net prices. Any tax (including, but not limited to, value added tax), duty, fee or other public charges whatsoever imposed on the invoiced prices shall be borne by the Customer or shall be refunded by the Customer to HPA. In the event any such tax or duty is recoverable, HPA shall use reasonable efforts to recover such tax or duty paid.

12.3 Customer agrees that any dispute with regard to a payment obligation and any claim for reimbursement shall be made within one month after receipt of the invoice as per Article 12.1. After this period has lapsed, Customer shall not be entitled to assert any such claims.

12.4 Customer shall make payment in the contractually agreed currency. Any payment made in any currency other than the contractually agreed shall be exchanged at the exchange rate on the date the payment is valued to HPA's account. Customer remains liable for any shortfall to the amount owed resulting from such exchange.

12.5 The Customer shall not be entitled to set off any claims against HPA's claims, unless such claims are determined by the final decision of a court or are undisputed. The Customer may only exercise a right of retention if its counterclaim has been determined by the final decision of a court or is undisputed.

12.6 In the event that Customer is a member of the IATA, Customer hereby irrevocably authorizes HPA to take all steps necessary for the collection of late payments via IATA Clearing House. HPA is entitled to such collection for all late payments including late payment charges.

13. Property and IP Rights

13.1 Title to all material supplied by HPA under the Customer Agreement shall remain with HPA until complete payment of all amounts due under the Customer Agreement has been effected.

13.2 Title to all intellectual property rights (including, but not limited to copyrights, trademarks, patents, inventions, utility patents registered design rights or design rights – "IP Rights") disclosed in documents or data (including but not limited to plans, drawings, patterns or designs) supplied by HPA to Customer under the Customer Agreement, shall remain with HPA or any third party which is entitled to such IP Rights.

14. Lien and Right of Retention

14.1 Provided that the German statute on rights in aircrafts (Gesetz über Rechte an Luftfahrzeugen) does not apply, HPA has by virtue of the Maintenance Service performed a contractual lien with respect to the Maintenance Object in its custody as well as with respect to other items of Customer in HPA's custody to secure any claims of HPA against Customer out of or in connection with the Customer Agreement as well as to secure any claims of affiliates of HPA against Customer. Such right may also be asserted for services previously performed or materials previously supplied and lien with respect to claims resulting from a contractual relationship of Customer and Deutsche Lufthansa AG and/or any of its affiliates. The contractual lien shall entitle HPA and/or any of its affiliates to publicly offer the Maintenance Object for sale no earlier than one month after advising the Customer of its intent to do so. To effect such sale HPA shall not be required to obtain an enforceable title or to comply with the regulations governing forced sale.

14.2 Further, HPA has by virtue of the Maintenance Service performed a right of retention with respect to the Maintenance Object in its custody as well as with respect to any other items of Customer in HPA's custody to secure any claims of HPA against Customer out of or in connection with the Customer Agreement as well as to secure any claims of affiliates of HPA against Customer. Such right as well as a set-off right may also be asserted for services previously performed or materials previously supplied. The right of retention as well as a right to set off any due claims of HPA against Customer with claims of Customer against HPA may also be exercised with respect to claims resulting from a contractual relationship of Customer and Deutsche Lufthansa AG and/or any of its affiliates.

14.3 HPA shall also have the right to cease any ongoing Maintenance Service without notice until all payments due under the Customer Agreement or any other contractual relationship between Customer and HPA or Customer and Deutsche Lufthansa AG and/or any of its affiliates have been made.

15. Customs Clearance

According to applicable laws of the European Union the Customer is obligated to perform the customs clearance for import (to be defined as the entry into the customs territory of the European Union) and export (to be defined as exit from the customs territory of the European Union) of any aircraft (or parts thereof) and any other goods. The Customer is obligated to comply with all existing import and export prohibitions and restrictions of the European Union. If assigned and agreed in writing, HPA will perform the necessary customs clearance in the name and on behalf of the Customer or on behalf of HPA. In the event of a Customs clearance process, the Customer is obligated to provide HPA with all necessary information and documentation (especially any required licenses regarding prohibitions and restrictions). HPA shall not be liable for any delay due to the late delivery of information and documentation by Customer or due to delays in the customs clearance process. All duties and taxes that may occur due to the importation or exportation (defined above) have to be borne by the Customer or will be charged by HPA to Customer.

16. Export Clause

Customer shall comply with all applicable domestic and foreign export compliance requirements, including applicable US export laws and regulations (e.g. ITAR, EAR and OFAC sanctions regulations) and those of other relevant foreign jurisdictions. Upon HPA's request, Customer shall promptly provide HPA with appropriate certifications as required by such applicable export laws and regulations, or as necessary to ensure continuing compliance with such laws and regulations.

17. Applicable Law and Venue

17.1 The Customer Agreement and these Standard Terms and Conditions and any legal relationship with the Customer that may arise therefrom shall be exclusively subject to and construed exclusively in accordance with the laws of the Federal Republic of Germany excluding their conflict of laws rules. The United Nations Convention on the International Sale of Goods (CISG) shall not apply. In the event of a conflict between the English and the German meaning of any expressions used in these Standard Terms and Conditions or any part thereof the German legal meaning shall prevail.

17.2 The courts of Hamburg, Germany, shall have jurisdiction. In case of any claims asserted against HPA this jurisdiction shall be exclusive.

18. Waiver of Sovereign Immunity

HPA and Customer hereby agrees that Customer Agreement and any legal relationship that may arise therefrom are commercial transactions and Customer undertakes not to claim any immunity from suit, execution, pre-judgment or post-judgment attachment or other legal process in any jurisdiction.

19. Amendments

Any amendments to these Standard Terms and Conditions including this clause and the Customer Agreement need to be agreed upon between HPA and the Customer in writing.