

**APPH AVIATION SERVICES LIMITED
CONDITIONS OF SALE AND SUPPLY**

1. Definitions

In these conditions "Supplier" means APPH Aviation Services Limited; "Buyer" means the individual, firm or company placing an order on the Supplier relative to the Goods or the Services; "Special Conditions" means any terms set out overleaf; "Contract Conditions" means these conditions and the Special Conditions together; "Buyer's Gear" means any aircraft landing gear or any sub-assembly thereof owned by the Buyer or a third party; "Goods" means the aircraft landing gear, any sub-assembly thereof or any components relating thereto owned by the Supplier and to be supplied to the Buyer pursuant to a Contract; "Services" means the overhaul and repair services to be provided by the Supplier relative to Buyer's Gear pursuant to a Contract; "Contract" means the agreement (incorporating the Contract Conditions) between the Supplier and the Buyer as to the sale of the Goods or the provision of the Services; "Overhauled Gear" means the Buyer's Gear having been subjected to the Services; "Shipment" means Goods and/or Overhauled Gear; "Regulatory Requirement" means any requirement of an aviation regulatory authority named in the Special Conditions; "Warranty Period" means the period of 12 months commencing on the date on which any Shipment is despatched by the Supplier or made available for the Buyer's collection; "1979 Act" means the Sale of Goods Act 1979; "1982 Act" means the Supply of Goods and Services Act 1982; "1987 Act" means the Consumer Protection Act 1987.

2. Status of Conditions

Unless otherwise agreed in writing by the Supplier, the Contract Conditions shall override any terms or conditions proposed, stipulated or referred to by the Buyer in correspondence, in its order form or elsewhere and accordingly shall be incorporated in all Contracts made at any time hereafter. None of the Supplier's agents or employees are authorised to conclude agreements with the Buyer orally or over the telephone.

3. Quotations, Variations and Buyer's Representations

Quotations and price lists issued by the Supplier shall not constitute an offer to sell the Goods. No variation to the Contract Conditions shall be binding unless agreed in writing by authorised representatives of both parties. Any representation made by the Buyer prior to the Contract relative to the intended destination of the Goods shall be deemed repeated in the Contract.

4. Delivery and Temporary Use of Aircraft Landing Gear

(a) If a delivery period is specified in the Special Conditions such period shall run from the last of (i) the date the Supplier receives the Buyer's Gear, and, where appropriate, all data, drawings, tooling, moulds and other equipment necessary to enable manufacture of the Goods or performance of the Services to proceed without interruption (ii) the date the Contract arises and (iii) the date the Supplier accepts in writing any variation to the Contract. The period so specified (if any) shall be taken as an estimate made by the Supplier in good faith and the Supplier shall not be liable for any loss or damage sustained by the Buyer in consequence of any reasonable delay in delivery. Where the Supplier is found liable under this condition its liability shall not in any circumstance exceed the contract price of the Goods the delivery of which or the Services the performance of which has been delayed.

(b) Delivery of the Shipment will be made by the Buyer collecting it at the Supplier's premises at any time after the Supplier has notified the Buyer that it is ready for collection unless some other place is stipulated in the Special Conditions for delivery when the Supplier shall either deliver the Shipment to that place itself or commit it, marked with that place as its destination, to the custody of an independent carrier. Section 32 of the 1979 Act shall apply.

(c) If at the time delivery is to be made there exist circumstances which entitle the Supplier to terminate the contract under Condition 17 or any payment is due by the Buyer to the Supplier on any account whatsoever or the Buyer refuses delivery then the Supplier may withhold delivery of the Shipment, store the Shipment at the Buyer's risk and, where any payment in question remains unpaid or where the Buyer continues to refuse delivery for a further 42 days, may sell the Goods so withheld to a third party and retain all the resultant proceeds without liability to the Buyer or, in the case of Overhauled Gear, proceed to strip that gear down so as to recover those of its own components which have been fixed to the gear in the course of performing the Services and take those components back into its stocks.

(d) The delivery of a greater or lesser quantity of the Goods than the quantity ordered, of other goods not ordered, or of Goods only some of which are defective, shall not entitle the Buyer to reject Goods that were ordered and are not defective. Where a greater or lesser quantity of the Goods than the quantity ordered is delivered the Buyer must notify the Supplier of such excess or shortfall within 7 days of receipt of the covering despatch note, If such notification is not given the Supplier shall not be obliged to recover the excess or make good the shortfall.

(e) Each Shipment shall be accompanied by a release note and airworthiness tag together, in the case of Overhauled Gear only, with the relevant log card for "lifer" items and, where requested by the Buyer, the Supplier's report on the stripping down of the Buyer's Gear in question during the performance of the Services. An advice note shall be despatched under separate cover simultaneously with despatch of the Shipment to which it relates.

(f) Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with the Contract Conditions shall not entitle the Buyer to treat the Contract as a whole as repudiated.

(g) Subject to (i) the contract and an advance payment of an appropriate usage fee and (ii) availability of the appropriate landing gear, the Supplier shall at the Buyer's request allow the Buyer to use a set of landing gear pending completion of the Services on terms that:-

(i) other than when that gear is in the Supplier's possession it is at the Buyer's risk;

(ii) fair wear and tear excepted the Buyer shall indemnify the Supplier against any deterioration in the condition of that gear whilst it is at the Buyer's risk;

(iii) that gear is not subjected whilst at the Buyer's risk to any storage, handling or use which is abnormal or not in accordance with the Supplier's instructions;

(iv) the Buyer at its own cost returns that gear to the Supplier as soon as practicable after the Supplier notifies the Buyer that the Services are complete.

5. Goods in Transit

Unless express provision to the contrary is made in the Special Conditions, the method of transport shall be at the sole discretion of the Supplier. Where Conditions 4(b) and 6(a) operate such that the Shipment remains at the Supplier's risk during transit no claim for loss of or damage to the Shipment while in transit will be entertained by the Supplier unless the same be communicated in writing to both the Supplier and any relevant carrier within 7 days of the date of the Buyer's receipt of the relevant despatch note. Where such a claim is made within that time and accepted by the Supplier its liability shall not exceed the contract price of the Shipment lost or damaged as stated in the Contract.

6. Property and Risk

(a) Risk of damage or loss to the Shipment shall pass to the Buyer on delivery (as fixed by Condition 4 (b)) unless the sale is to an overseas Buyer in which event the passing of risk shall be determined by the nature of the Contract as specified in the Special Conditions (with reference to the then current edition of INCOTERMS).

(b) Until the Supplier has been paid in full for the Goods and for any other goods the subject of a contract of sale between the Supplier and the Buyer, the Supplier shall retain full legal and beneficial ownership of the Goods.

(c) Until the Buyer acquires title to the Goods it shall have possession of the Goods solely as bailee and fiduciary for the Supplier and shall keep the Goods separate from its own property and the property of any third party and shall mark the Goods as being the property of the Supplier.

(d) If any payment for the Goods or the Services is overdue in whole or in part the Supplier may in addition to its other rights stop in transit and/or repossess the relevant Shipment and, in the case of the Goods, resell them or any of them and may enter upon the Buyer's premises for this purpose. All the proceeds of any such sale shall be for the Supplier's account.

(e) All payments for Goods and Services shall become immediately due and payable on the happening of any event, act or proceeding which, in the Supplier's opinion, calls the Buyer's solvency into question, including the occurrence of any of the events, acts or proceedings described in Condition 17.

7. Prices and VAT

(a) The price shall be fixed but shall cease to be binding on the Supplier should:- (i) variations to the Contract be requested by the Buyer; (ii) any delay in the manufacture of the Goods or performance of the Services be caused by the Buyer's failure to provide instructions, information, tooling, moulds or other equipment promptly; and (iii) the need for the replacement of a major component of the Buyer's Gear be discovered by the Supplier in the course of the Services. All prices quoted are exclusive of value added tax and any other duties or taxes levied on the Supplier in the Buyer's country for which the Buyer shall be additionally liable.

(b) If on the occurrence of any of the events set out in Condition 7(a) a revised price cannot be agreed, the Supplier shall be relieved of any further performance under the Contract unless the Buyer requires the scrapping of any Buyer's Gear then in the Supplier's possession and the Buyer shall pay the Supplier for that part of the Contract already performed on a quantum meruit basis.

8. Payment

(a) Payment for the Goods and the Services shall be made in pounds sterling to the Supplier no later than the thirtieth day following the date of the relevant invoice unless the Special Conditions provide otherwise.

(b) Method of payment shall be at the Buyer's discretion unless the Special Conditions state otherwise.

(c) Time of payment shall be of the essence. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to suspend any further deliveries or work under the Contract or any other contract between them, appropriate any payment made by the Buyer to such of the Goods or Services (or the goods or services supplied under any other contract between the Buyer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Buyer), charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 3 per cent per annum above Lloyds Bank plc base rate from time to time and exercise a lien over the Buyer's Gear and any other property of the Buyer then in its possession, until payment in full is made.

(d) Save as aforesaid payments shall be applied to invoices in the order in which they were issued.

(e) Any payment made by the Buyer (whether purporting to be in full and final satisfaction or not) of a lesser sum than that demanded by the Supplier shall always be treated as a payment on account of the sum demanded.

9. Exclusion of Deductions etc.

The Buyer shall not be entitled to make any deduction or withhold any sum from any payment from time to time due from it under a Contract whether by way of set-off, counter claim or otherwise.

10. Warranties

(a) The Supplier warrants the Goods- (i) if of its own manufacture to be free from defects in materials and workmanship and in compliance with the Regulatory Requirement; (ii) otherwise to have been received under cover of approved certificates or release notes and to be in the same condition as when received.

(b) The Supplier warrants the Services to have been carried out with all reasonable skill and care and to be in compliance with the Regulatory Requirement the Buyer acknowledging that the Supplier's inspection of the Buyer's Gear shall be limited to those parts of that gear which become reasonably capable of inspection in the course of the Services.

(c) Each of the warranties in Conditions 10(a) and (b) shall be subject to the following conditions (so far as applicable):- (i) the Supplier shall not be under any liability relative to defects in the Shipment attributable to any drawing, design, specification, tooling, mould or other equipment supplied by the Buyer or relative to deviations from the Contract's requirements which have been the subject of a concession granted by the relevant design authority and disclosed to the Buyer; (ii) the Buyer shall notify the Supplier of the alleged defect within 14 days of the same coming to the Buyer's attention and shall allow the Supplier a reasonable opportunity of verification at the Supplier's premises and the Buyer shall at its own risk and cost return the Shipment in question to those premises; (iii) the Shipment which is allegedly defective shall have been paid for in accordance with Condition 8(a) and shall have at all times been stored, handled and used in a proper fashion, in accordance with any instruction provided by the Supplier and under normal working conditions; (iv) the Buyer shall have ensured that use of the Shipment ceased immediately on the alleged defect coming to its attention and shall in the case of the warranties in Condition 10(a)(i) and (b) be subject to the further condition that the Supplier shall have no liability under those warranties other than in respect of claims notified to it in writing before the end of the Warranty Period.

(d) In the event that a warranty claim is accepted by the Supplier then the Supplier will at its own option either repair or replace the Shipment (or the part in question) free of charge (and any replacement of the Shipment shall be subject to these conditions) or refund to the Buyer the contract price of the Shipment (or a proportionate part of the price) but the Supplier shall have no further liability to the Buyer

(e) Save as aforesaid and under section 12 of the 1979 Act all express or implied conditions or warranties statutory or otherwise as to the state, quality, fitness or performance of the Shipment are expressly excluded and the Buyer, acknowledges that it will satisfy itself of the suitability of the Goods for the purpose for which they are purchased. Further the Supplier shall not be liable in any manner whatsoever whether in contract, tort, under statute, in negligence or otherwise for any loss damage or injury suffered by the Buyer howsoever caused and whether consequential or otherwise and which relates to or arises out of the supply of the Shipment or which is attributable directly or indirectly to the acts defaults or negligence of the Supplier or any of the Supplier's servants or agents other than death or personal injury caused by the Supplier's negligence or in respect of liability under the 1987 Act. In the event that notwithstanding sub-conditions (c), (d) and (e) above the Supplier is found liable for any loss or damage suffered by the Buyer that liability shall not exceed a sum equal to 10% of the invoiced value or the sales made by the Supplier to the Buyer (whether in its own right or as agent for a third party) in the immediately preceding calendar year.

11. Technical Advice

If the Supplier at the request of the Buyer gives technical or operational advice in connection with the Goods or its performance of the Services, the Supplier shall not make any representation regarding nor incur any liability whether in contract, tort, negligence, under statute or otherwise for that advice or the use of it which it is put.

12. Patents etc

The Goods do not to the Supplier's knowledge infringe any UK or foreign patent or other industrial property right but the Supplier gives no contractual or other undertaking in that regard and shall not be liable to the Buyer in any circumstances whatsoever for the infringement of such rights.

13. Indemnity to Supplier

The Buyer shall indemnify the Supplier in respect of all damage injury or loss arising directly or indirectly from the negligence of the Buyer and his servants contractors or agents or from the use by the Supplier of the Buyer's Gear or any design, drawing, data, specification, tooling, mould or other equipment provided by the Buyer or by any breach by the Buyer of either its obligations to the Supplier hereunder or of any patent, design or other industrial property right of a third party.

14. Free Issue Equipment

The Buyer's Gear and any other article provided by the Buyer to the Supplier for the purposes of any Contract shall: (a) be warranted by the Buyer (the Buyer's Gear apart) as being free from defects in material and workmanship and fit for its purpose; (b) be and remain the property of the Buyer and shall be clearly marked by the Buyer as such, (c) be and remain at the Buyer's risk until commencement of unloading at the Supplier's premises; (d) be (unless the Supplier agrees to the contrary) accompanied by comprehensive instruction manuals as to its operation and maintenance, such manuals to be kept up-to-date by the Buyer.

15. Cancellation

The Contract may be cancelled by the Buyer only with the Supplier's written consent which, if given, shall be on the express condition that the Buyer shall pay to the Supplier in advance of the Supplier's release of the Buyer's Gear or the partly manufactured Goods a cancellation charge commensurate with the Supplier's costs incurred up to the date of cancellation plus the Supplier's loss of profit on the Contract as a whole.

16. Force Majeure

(a) If either party is affected by any circumstance beyond its reasonable control which shall include but not be limited to any act of God fire flood earthquake explosion tempest riot civil commotion strike lock out or other industrial action (but only at the Supplier's premises) then it shall notify the other party of the nature and extent of the circumstance in question.

(b) Notwithstanding any other provision of the Contract Conditions neither party shall be deemed to be in breach of the Contract or otherwise be liable to the other for any delay in performance or non-performance of any of its obligations under the Contract to the extent that the delay or non-performance is due to any force majeure of which it has notified the other party and the time for performance of that obligation shall be extended by that number of days for which the force majeure prevails.

(c) If either party claims force majeure and is relieved under Condition 16(b) above from performing any of its obligations for a continuous period in excess of 180 days or for an aggregate period of 180 days in any period of 365 consecutive days then the other party may, notwithstanding any other provision of the Contract Conditions, terminate the Contract by giving to the party which has claimed force majeure not less than 21 days written notice.

(d) In the event of termination by either party under Condition 16(c) above the Supplier shall be entitled to invoice the Buyer for all costs (including the cost of all labour and materials used) and expenses incurred up to the date of termination.

17. Termination

Without prejudice to any other right of termination granted to the Supplier hereunder the Supplier shall be entitled to terminate the Contract and all other contracts between the Supplier and the Buyer if the Buyer compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order made against it, or being a company enters into voluntary or compulsory liquidation, or has presented against it a petition for its winding-up, or has an administrator or administrative receiver or manager appointed over all or part of its assets, or has presented against it an application for the appointment of such an administrator, or takes or suffers any similar action in consequence of indebtedness, or becomes insolvent, or suffers any analogous proceeding or takes any like action in the country of its incorporation or residence, or commits a breach of any of its obligations under the Contract or any other contract between the Supplier and the Buyer-or if the Supplier reasonably believes any of the said events is likely to occur.

18. General

(a) The Buyer shall not be entitled to assign the benefit of the Contract without the prior written consent of the supplier.

(b) Any termination of the Contract shall not prejudice the accrued rights of the Supplier and the Buyer at the date of termination.

(c) Any waiver by either party of a breach of any provision of the Contract shall not be considered as a waiver of any subsequent breach of the same or any other provision.

(d) Any failure to or delay in enforcing any provision of the Contract by either party shall not be construed as a waiver by that party of the right afforded to it by that provision.

(e) The headings used in these conditions are for convenience only and shall not affect the construction or interpretation of these conditions in any way.

(f) The Contract Conditions shall constitute the entire agreement between the Supplier and Buyer relative to the sale and purchase of the Goods and the provision of the Services and any other implied conditions, warranties or terms are excluded to the fullest extent permitted in law. The Buyer acknowledges it shall have no remedy in respect of pre-contractual representations of the Supplier save where those representations have become terms of the Contract, in which case the Buyer's remedies shall be limited to those prescribed by the Contract Conditions.

(g) Any Special Conditions shall prevail in the event of a conflict with these conditions.

(h) Should any term of the Contract be found to be unenforceable or void then that term shall be severed from the remainder of the Contract which shall continue in full force and effect.

(i) Any notice required by the Contract Conditions shall be properly given if delivered to the registered office of the recipient, being a company, or, otherwise, to its address set out on the relevant order and delivery shall be deemed to occur at the time of delivery if effected by hand, 24 hours after being posted properly addressed first class postage pre-paid if effected by post and on receipt on the sender's machine of a report confirming effective transmission if effected by facsimile or telex.

(j) The Contract shall be governed by the laws of England, and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

WARNING:

A Buyer may incur liability should it mislead the Supplier as to the use to which the Goods are to be put or the intended destination of the Shipment or any other material particular relative to the Goods or Services.