

## Altenrhein Aviation Ltd. (AAL)

### General Terms and Conditions (GTC) for Maintenance and Repair Orders

Revision 09 / August 2016

**NOTE:** UNLESS OTHERWISE AGREED IN WRITING, FOR ALL WORK PERFORMED BY ALTENRHEIN AVIATION LTD. HEREINAFTER REFERRED TO AS "AAL", THE LATEST REVISION OF THE GENERAL TERMS & CONDITIONS ("GTC") SHALL BE APPLICABLE. PRICES SHALL BE SUBJECT TO CHANGE WITH 1 MONTH PRIOR NOTICE. OVERTIME SHALL ONLY BE CHARGED ON PRIOR REQUEST AND APPROVAL BY CUSTOMER.

#### 1 General

1.1 Unless otherwise agreed in writing, these GTC shall be binding for all Customer Work Orders.

1.2 Any terms and conditions stipulated by Customer shall not be valid, even if AAL has not objected thereto explicitly.

1.3 These GTC shall apply exclusively to all services performed by AAL. Offers submitted by AAL shall be without obligation. Customer's Work Orders shall become binding only on written confirmation by AAL. Modifications to the provisions contained herein shall be valid only, if explicitly agreed by an authorized representative of AAL in writing.

#### 2 Scope of Services

2.1 AAL shall only perform maintenance and repair work, if Customer has placed a Work Order with AAL, based on AAL's quotation, and signed by an authorized representative of the Customer, and with confirmation that Customer has read, understood and accepted the then current GTC.

2.2 Unless otherwise agreed Customer is responsible for the correct and complete work scope in his RFQ.

2.3 AAL shall perform maintenance and repair work on aircraft and components including procurement of spare parts and equipment as necessary, in accordance with Customer work orders accepted by AAL in writing.

2.4 Customer commits to make available the aircraft or components to AAL for the work commencement date as agreed in the work order. AAL reserves the right to re-schedule Customer work orders, if the commencement date is not met by Customer.

2.5 AAL may subcontract the services in any part or in total, if contracted as per Part 145.A.70 (EASA Part-145), and with subcontractors included in AAL's MOE as per Part 145.A.75, without Customer's prior consent.

2.6 AAL shall carry out at Customer's cost and expense any unforeseen maintenance and repair works which are required in order to maintain the airworthiness of the aircraft, and in compliance with Part 145.A.50. AAL shall bring such new defects or incomplete maintenance to the attention of the customer to obtain agreement to rectify the defects or to complete missing elements.

2.7 If AAL identifies other repair work, which does not affect the airworthiness of the aircraft, AAL shall inform Customer immediately in writing of the extent of such work, including cost estimate and expected additional down time. Such work must be approved by Customer in writing before its commencement. If Customer decides not to perform the proposed work, AAL shall be exempt from any and all liability for any possible damage resulting from the omission of such repair work.

It is understood that the signature of AAL's certified engineer in the technical log of Customer's aircraft only certifies the correct performance of maintenance and repair work. AAL assumes no responsibility for the airworthiness of Customer's aircraft.

2.8 Customer shall provide all employees and subcontractors of AAL free and safe access to its/his/her aircraft.

2.9 Customer authorizes AAL to perform run-ups with licensed and qualified personnel, as deemed necessary by AAL.

2.10 Maintenance check flights shall be performed as required by the aircraft manufacturers instructions or authorities (NAA) following the type of maintenance performed by AAL, or as required by AAL Quality Assurance. Maintenance

check flights shall be carried out in accordance with the procedures specified in Customer's CAME under the full responsibility of Customer. Prior to any check flight AAL shall issue a release to service of the aircraft. Maintenance check flights shall only be performed by Customer with attendance of AAL engineers as required. Customer has to ensure full aircraft, personnel and third party liability insurance.

#### 3 Customer Supplied Material

3.1 It is at AAL's discretion to accept and to install Customer supplied material. AAL has the right to add a handling charge for the administrative processing and incoming inspection. Customer shall provide complete documentation and certificates with such material. AAL does not accept any liability for Customer supplied material, including any consequential damages which may occur as a result of any discrepancy, malfunction, or failure of such material.

#### 4 Parts and Components

4.1 All material offered in quotations is subject to prior sale.

4.2 Exchange parts prices/warranties offered are subject to suppliers acceptance of exchange cores. If cores are rejected or beyond economical repair, any resulting additional cost will be charged separately.

4.3 All items replaced by AAL during repair or maintenance work shall be retained by AAL for sixty (60) days for disposition instructions from Customer. Thereafter remaining items shall become the property of AAL.

#### 5 Aircraft Downtime / Turn Times

5.1 Aircraft and component maintenance and repair turn times stated by AAL shall be provisional and serve as general information unless they have been explicitly declared as binding by AAL in writing.

5.2 AAL shall notify Customer as early as possible of any delay in delivery or completion of work orders, and AAL shall agree with Customer a reasonable adjustment of the completion date.

#### 6 Delay and Failure to Perform

6.1 AAL cannot be held responsible for any failure or delay in performance resulting from causes beyond AAL's reasonable control. These may include, but are not limited to, events such as acts of government, court orders, civil unrest, sabotage, adverse weather conditions, labour trouble, and shortage of materials or services. AAL shall notify Customer of such events and will endeavour to avoid or remove the cause and resume performance with minimum delay.

#### 7 Transportation

7.1 Customer shall deliver the aircraft, or components, parts or equipment at its sole risk and expense to AAL's facility.

7.2 Re-delivery of components, parts or equipment will be effected ex works (EXW Incoterms 2000), excluding packing material.

7.3 If Customer fails to pick up its/his/her aircraft or component later than two (2) calendar days following AAL's notification of completion, the risk of damage to or loss of Customer's aircraft or component shall pass to Customer and Customer shall pay a reasonable storage fee, aircraft parking or hangar usage fee, notwithstanding any further claims of AAL.

If formal redelivery and/or acceptance has not occurred due to work stoppage by AAL for whatever reason and the aircraft remains parked at AAL, or if after formal redelivery and/or acceptance the aircraft remains at the AAL facility for a prolonged

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period, then it is the sole responsibility of the Customer to formally place a Work Order with AAL (which may be accepted by AAL if sufficient funds have been transferred or deposited) regarding preventive or preservative maintenance measures and/or long term storage to be applied to the aircraft and engines during such extended grounding period of the aircraft to ensure continuing airworthiness for use of the aircraft and to avoid any damage due to corrosion.

AAL HEREBY EXPRESSIVELY EXCLUDES ANY LIABILITY FOR ANY DAMAGE OF THE AIRCRAFT DURING PROLONGED GROUNDING PERIOD OF THE AIRCRAFT.

#### **8 Technical Documentation**

8.1 Customer shall supply all current documentation and all applicable safety and other regulations, required for the performance of the agreed services by AAL.

It is Customer's responsibility to ensure that the conditions of AAL in these GTC are acceptable to its appropriate authorities.

8.2 AAL shall prepare written work reports specifying all works performed and parts replaced, repaired or exchanged.

#### **9 Warranty**

9.1 AAL warrants that maintenance and repair works carried out by it shall be free from any defects in workmanship for a period of thirty (30) days after the completion of maintenance and/or repair work on the aircraft but in no event exceeding fifty (50) flight hours.

9.2 The warranty of AAL shall expire if (i) Customer does not inform AAL in writing within eight (8) days from the discovery of the defect, (ii) Customer does not give AAL immediate access to the aircraft in order to inspect such defect, (iii) Customer or a third party appointed by Customer have tried to repair the defect without the prior inspection and authorization by AAL, (iv) Customer has not taken all precautions to prevent an aggravation of the defect, (v) Customer does not comply with instructions given by AAL, or (vi) the aircraft is not operated in accordance with all applicable operating directions.

9.3 In case that any defect results from faulty workmanship of maintenance and/or repair work performed by AAL, the sole remedy available to Customer shall be the immediate remedy of such defect by AAL by repairing and/or replacing any defective parts and/or workmanship in its own facilities at no cost for Customer.

9.4 If the repair or replacement of defective parts cannot be carried out in the facilities of AAL, Customer shall bear all costs and expenses incurred in connection with the travel of AAL personnel, transportation of spare parts, return of defective parts etc.

9.5 In case of defects on equipment and spare parts which are used in the maintenance or repair of the aircraft as well as for services performed by third parties, AAL will assign to Customer its own rights and claims (if any) against the manufacturer, supplier or vendor.

9.6 Excluded from this warranty of AAL are all deficiencies which cannot be proved to have their origin in bad material used, faulty processes or poor workmanship, by AAL, and which have their origin in other causes beyond the control of AAL. Warranty claims may not be assigned or otherwise be transferred by Customer.

#### **10 Limitation of Liability / Indemnification**

10.1 THE LIABILITY OF AAL, INCLUDING WITHOUT LIMITATION FOR DAMAGE TO OR LOSS OF THE AIRCRAFT, ITS COMPONENTS, PARTS OR EQUIPMENT, SHALL BE LIMITED TO THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF AAL, ITS PERSONNEL, AGENTS AND SUBCONTRACTORS. FURTHERMORE, AS FAR AS PERMITTED BY MANDATORY

LAW, AAL SHALL NOT BE LIABLE FOR NON-FORESEEABLE DAMAGES WHICH ARE NOT TYPICAL FOR THE RESPECTIVE TYPE OF WORK ORDER, NOR FOR ANY INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES WHATSOEVER, SUCH AS LOSS OF PROFIT, LOSS OF ORDERS, LOSS OF USE OR PRODUCTION, INOPERABILITY OF THE AIRCRAFT, NOR FOR ANY OTHER OCCURRENCES OR DAMAGES.

10.2 CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS AAL, ITS PERSONNEL, AGENTS AND SUBCONTRACTORS FROM ANY CLAIMS, INCLUDING THIRD PARTY CLAIMS, UNLESS SUCH CLAIM IS CAUSED BY THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF AAL, ITS PERSONNEL, AGENTS AND/OR SUBCONTRACTORS.

10.3 EXCEPT FOR THE OBLIGATIONS EXPRESSLY UNDERTAKEN BY AAL IN THESE GTC, CUSTOMER HEREBY WAIVES AND RELEASES ALL RIGHTS, CLAIMS AND REMEDIES WITH RESPECT TO ANY AND ALL LIABILITIES AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY. IN PARTICULAR, THE CUSTOMER SHALL NOT HAVE ANY CLAIM FOR ANY PRICE REDUCTION, TERMINATION OF CONTRACT, ETC.

10.4 IN NO EVENT SHALL AAL BE LIABLE TOWARDS CUSTOMER FOR ANY DAMAGE TO, OR LOSS OF, GOODS AND/OR PERSONNEL ARISING FROM ACTS OF WAR, HI-JACKING, TERRORIST ACTS AND OTHER PERILS.

#### **11 Insurance**

11.1 Customer agrees to effect and maintain in full force and to provide AAL on request with a certificate of the following insurances:

a) Hull all risks insurance as well as a risk all property insurance containing a waiver of subrogation and a waiver of any transfer of rights of recourse, in favour of AAL, its personnel and its subcontractors. The coverage shall include war and terror risks while under the care and custody of AAL.

b) Comprehensive legal liability insurance (including aircraft third party liability insurance) including AAL, its personnel and its subcontractors as additional insured parties.

11.2 If Customer has ordered services from AAL on behalf of a third party, Customer guarantees that such third party effects and maintains the above stated insurance coverage.

#### **12 Prices**

12.1 Unless otherwise stated, prices offered by AAL are estimates only for budgetary purposes, and will be invoiced as per actuals, depending on the final work scope performed.

12.2 Fixed prices that have been agreed upon by the parties in writing shall only be adjusted if and to the extent that (i) the prices and/or exchange rates for any required spare parts, customs duties or other charges related thereto are increased, and/or (ii) any other reasons beyond the reasonable control of AAL.

12.3 All AAL prices are quoted on a net basis ex works AAL. Any and all charges such as but not limited to freight charges, insurance, certification and acceptance fees, taxes, levies, customs duties and similar charges imposed in connection with services performed hereunder shall be borne by the Customer.

12.4 Customer shall inform AAL of its/his/her Sales Tax Identification Number. If there are any charges for services subject to VAT in accordance with EU regulations for Customers outside of Switzerland, such charges will always be invoiced separately.

12.5 Depending on Customer's individual credit limit, AAL may request pre-payment before commencing the work, and/or down payments depending work in process. Further down payments may become due for additional work identified during work in process. Furthermore, AAL reserves the right to request full payment of the final invoice prior to delivery of the completed aircraft or component. The payment terms as stated in AAL's quote or agreed otherwise in writing apply.

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12.6 Payment of fee amounts quoted/invoiced to the customer is deemed to be an acceptance of the quote itself, services performed and/or parts delivered by AAL.

12.7 Customer herewith irrevocably agrees that all items marked as „warranty“ in the Work Order may be directly claimed by AAL from the (i) OEM, (ii) vendor or (iii) service provider, of an airframe and/or engine care/service program/plan, as the case may be. Customer shall inform AAL of any and all valid care or service programs/plans and provide AAL with a copy thereof and shall inform and instruct the OEM, vendor or service provider of AAL's right of direct claim. Should the OEM, vendor or service provider refuse the claim for any reason whatsoever and AAL has performed the work according to the Work Order, Customer shall be fully liable for all cost in connection with the Work Order.

### 13 Payment

13.1 Invoices of AAL are due and immediately payable without any deduction. Unless otherwise agreed in writing, Customer shall make advance payments as agreed with the Work Order without delay. All costs of money transfer, especially fees charged by a bank, shall be paid by Customer.

13.2 Payments shall be made by the Customer always against specific invoices by making reference to the invoice- and work order number.

13.3 Payments shall always be made in the currency as quoted and agreed with the purchase order, and as invoiced by AAL. If payments are made by the Customer in a different currency, Customer accepts that such payments are exchanged at receipt by AAL into the quoted/invoiced currency at the then current exchange rate.

13.4 AAL shall have the right to charge a daily interest rate equal to twelve (12) percent *per annum* on a 365 day per year basis on all invoices not settled by the customer within thirty (30) days from the issuing date.

13.5 Complaints regarding invoices must be made not later than thirty (30) days after the invoice issuing date. Afterwards, any such complaints will be excluded. Any such dispute shall not affect Customer's obligation to immediate payment of the undisputed parts of AAL's invoice. Such dispute deductions are only accepted up to a maximum of ten (10) percent of the total invoice value.

13.6 Customer is not entitled to set off any claims against AAL's claims and credit balance.

13.7 Payments shall be made to the following AAL bank accounts at:

UBS AG, Postfach CH-8098 Zürich / Switzerland

a) Payments in Swiss Francs (CHF):

Account No. 230-398433.01K  
IBAN CH36 0023 0230 3984 3301 K  
BIC UBSWCHZH80A

b) Payments in Euros (EUR):

Account No. 230-398433.60U  
IBAN CH31 0023 0230 3984 3360 U  
BIC UBSWCHZH80A

c) Payments in US Dollars (USD):

Account No. 230-398433.61A  
IBAN CH05 0023 0230 3984 3361 A  
BIC UBSWCHZH80A

### 14 Force Majeure

14.1 Either party hereto shall be released from the performance of its(his/her obligations under the work order to the extent and for so long as the performance is impeded by reason of *Force*

*Majeure*. The party hereto claiming that an event of *Force Majeure* has occurred shall give prompt notice of the commencement and cessation of any such event. For the purposes of this clause the expression "*Force Majeure*" means, but shall not be limited to, labour dispute, fire, mobilization, seizure of the aircraft, embargo, insurrection, lack of means of transport, restriction of the use of energy, bankruptcy or delay of a subcontractor, and generally any circumstances which are beyond the control of the parties hereto and hinder performance by one party hereto of its/his/her obligations hereunder. If an event of *Force Majeure* continues for a period exceeding three (3) months either party hereto shall be entitled to terminate the order by notice in writing without incurring any further liability.

### 15 Termination of Orders

15.1 AAL may terminate Customer orders at any time by written notice, if Customer commences winding-up, becomes insolvent, commits any act of bankruptcy or if a receiver, trustee or custodian is appointed of the Customer property. On termination AAL will have no further obligation to the Customer under the order, and the Customer will reimburse AAL's termination cost including a reasonable allowance for profit.

15.2 In the event of a cancellation by the Customer of a confirmed slot or work order, AAL reserves the right to invoice all accumulated preparation costs.

### 16 Securities

16.1 AAL reserves its ownership rights on all parts supplied or installed until full payment of all invoices under the respective contract has been made.

16.2 Until full payment of the price for the respective order is made, AAL is entitled to a right of retention of the part and/ or aircraft on the subject matter which was delivered to AAL to perform its services. This right to retention will be also established to secure any AAL claims from previous orders or from the total business relationship. In case of non-payment by Customer, both parties agree herewith that AAL shall have a contractual lien on the subject matter delivered to AAL to perform its services in addition to the right of retention. This contractual lien will be also established to secure any AAL claims from previous orders or from the total business relationship.

### 17 Governing Law and Jurisdiction

17.1 AAL and Customer agree that the provisions and these GTC, all transactions executed hereunder and all relationships between the parties hereto in this connection shall be construed under, governed and interpreted in all respects by the **laws of Switzerland**; the Convention on the International Sale of Goods (CISG) shall not apply.

17.2 All disputes, controversies or differences, which may arise between AAL and Customer out of or in relation to or in connection with these GTC, or breach thereof, shall be exclusively and finally settled by the **Commercial Court of the Kanton of St.Gallen (Handelsgericht), Switzerland**.

17.3 However, the courts of general jurisdiction may, on request of a party hereto, order provisional protective measures in exclusive jurisdiction. The competent court has to specify a certain period of time within which the action to prosecute the claim must be brought to the agreed Commercial Court of the Kanton of St. Gallen (*Handelsgericht*).

17.4 In case individual provisions of these GTC shall be or become invalid, the validity of the remaining clauses of the GTC will not be affected thereby.