

Standard Terms & Conditions For MRO Services

1. Interpretation

In these conditions the following definitions shall apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

Buyer: the individual, firm or company placing an order on the Supplier relative to the Goods and/or the Services;

Buyer's Gear: any aircraft landing gear or any sub-assembly or component thereof supplied by the Buyer for the purpose of receiving Services;

Conditions: these terms and conditions and the Special Conditions together;

Contract: the contract between the Supplier and the Buyer for the sale and purchase of the Goods and/or the Services, which shall be formed in accordance with these Conditions;

Deliverables: the release note, airworthiness tag, the relevant log card for "lified" items and, where requested by the Buyer, the Supplier's report on the stripping down of the Buyer's Gear during the performance of the Services;

Goods: any components relating to the Buyer's Gear owned by the Supplier and to be supplied to the Buyer or incorporated into the Buyer's Gear pursuant to a Contract;

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Order: the Buyer's order for Goods and/or Services as set out in the Buyer's purchase order form, or the Buyer's written acceptance of a quotation by the Supplier, or overleaf, as the case may be;

Overhauled Gear: the Buyer's Gear having been subjected to the Services;

Regulatory Requirement: any relevant requirement of an aviation regulatory authority;

Services: the overhaul and repair services to be provided by the Supplier relative to Buyer's Gear, including the Deliverables, pursuant to a Contract;

Special Conditions: any terms expressly agreed between the Buyer and the Supplier;

Specification: the description or specification of the Services as set out in the Supplier's quotation;

Supplier: APPH Limited or any company acting as an agent or subcontractor.

Warranty Period: the period of 12 months commencing on the date on which the Overhauled Gear is despatched by the Supplier or made available for the Buyer's collection.

2. Basis of Contract

- 2.1 The Order constitutes an offer by the Buyer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 Acceptance of the Buyer's Order is subject to applicable export control regulations. At the Buyer's request, the Supplier will apply for any necessary export permits or approvals but the Buyer acknowledges that the Supplier is not responsible for their issuance or renewal.
- 2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 The Conditions apply to the exclusion of any other terms or conditions that the Buyer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. None of the Supplier's agents or employees are authorised to conclude agreements with the Buyer orally or over the telephone.
- 2.6 Any quotations or price lists issued by the Supplier shall not constitute an offer and are only valid for a period of 30 Business Days from its date of issue.

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3. The Services and Goods

- 3.1 The Supplier shall supply the Services to the Buyer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.3 The Supplier warrants that the Goods:
- (a) if of its own manufacture will be free from defects in materials and workmanship and will be in compliance with the Regulatory Requirement;
 - (b) otherwise to have been received under cover of approved certificates or release notes and to be in the same condition as when received.
- 3.4 The Supplier warrants that the Services will be carried out with all reasonable skill and care and will be in compliance with the Regulatory Requirement. The Buyer acknowledges 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.
- 3.5 The warranties set out in Condition 3.3 and Condition 3.4 shall be subject to the following conditions (so far as applicable):
- (a) 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;
 - (b) the Supplier shall not be under any liability relative to defects in the Overhauled Gear 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;
 - (c) 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 Overhauled Gear in question to those premises;
 - (d) the Goods and/or Services which are allegedly defective shall have been paid for in accordance with Condition 5 and the Goods and/or Overhauled Gear shall at all times have been stored, handled and used in a proper fashion, in accordance with any instruction provided by the Supplier and under normal working conditions;
 - (e) the Buyer shall have ensured that use of the Goods and/or Overhauled Gear ceased immediately on the alleged defect coming to its attention.
- 3.6 In the event that a warranty claim in relation to the Goods is accepted by the Supplier then the Supplier will repair or replace such Goods or, at the Supplier's discretion, refund to the Buyer the contract price of the Goods.
- 3.7 In the event that a warranty claim in relation to the Services is accepted by the Supplier then the Supplier will re-perform the Services in order to repair the Overhauled Gear (or the part in question) free of charge (and any replacement of the Overhauled Gear shall be subject to these conditions) or, at the Supplier's discretion, refund to the Buyer the contract price of the Services (or a proportionate part of the price relative to the defective Services).

4. Buyer's obligations

- 4.1 The Buyer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) provide the Supplier with such instructions (including in relation to the incorporation of any Goods into the Buyer's Gear to replace existing components that it is determined during the performance of the Services require replacement), information, materials, tooling, moulds or other equipment as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (c) If the Buyer fails to provide instructions in accordance with paragraph 4.1 (b) within 30 days of Supplier's request, the Supplier may either:
 - (i) return the Buyer's Gear at Buyer's expense and levy any charges already incurred, or
 - (ii) store the Buyer's Gear at a cost of £100 per day.

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- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("Buyer Default"):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Condition 4.1; and
 - (c) the Buyer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Buyer Default.

5. Charges and Payment

- 5.1 The prices shall be as set out on the Order.
- 5.2 All prices quoted are exclusive of Value Added Tax (VAT) and any other duties or taxes levied on the Supplier in the Buyer's country for which the Buyer shall be additionally liable.
- 5.3 The price shall be fixed but the Supplier reserves the right to increase the price should:
- (a) variations to the Contract be requested by the Buyer;
 - (i) any delay in the manufacture or sourcing 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;
 - (ii) the need for the replacement of a major component of the Buyer's Gear be discovered by the Supplier in the course of performing the Services; or
 - (iii) additional work be required as a result of concession, service bulletin, service information leaflet or airworthiness directive.
- 5.4 The Supplier shall give the Buyer one month's written notice of any price increase in accordance with Condition 5.3. If such increase is not acceptable to the Buyer, it shall notify the Supplier in writing within two weeks of the date of the Supplier's notice and the Supplier shall have the right, without limiting its other rights or remedies, to terminate the Contract by giving four weeks written notice to the Buyer. In the event of such termination, 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.
- 5.5 Payment for the Services and the Goods shall be made in pounds sterling to the Supplier no later than thirty (30) days following the date of the relevant invoice unless the Supplier agrees otherwise. Payment shall be made in cleared funds to the bank account nominated by the Supplier in writing. Time of payment is of the essence.
- 5.6 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 the Contract whether by way of set-off, counter claim or otherwise.
- 5.7 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of VAT chargeable for the time being. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.8 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:
- (a) suspend any further deliveries or work under the Contract or any other contract between the parties;
 - (b) appropriate any payment made by the Buyer to such of the Services and/or the Goods (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);
 - (c) 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

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(d) 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.

- 5.9 Save as aforesaid payments shall be applied to invoices in the order in which they were issued.
- 5.10 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.
- 5.11 All payments for the Services and/or the Goods 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 15.

6. Intellectual Property Rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 6.2 The Goods do not, to the Supplier's knowledge, infringe any UK or foreign patent or other Intellectual 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.

7. Performance period

- 7.1 If a performance period is specified in the Contract, such period shall run from the last of:
- (a) the date the Supplier receives the Buyer's Gear, and, where appropriate, all data, drawings, tooling, moulds and other equipment necessary to enable performance of the Services to proceed without interruption; or
 - (b) the date the Contract arises; or
 - (c) the date the Supplier accepts in writing any variation to the Contract.
- 7.2 The performance period so specified (if any) shall be taken as an estimate made by the Supplier in good faith only and time shall not be of the essence for performance of the Services and the Supplier shall not be liable for any loss or damage sustained by the Buyer in consequence of any reasonable delay in delivery.
- 7.3 Delivery of the Overhauled Gear will be Ex-Works (Incoterms 2010) at any time after the Supplier has notified the Buyer that it is ready for collection, unless otherwise stipulated in the Contract.
- 7.4 If at the time delivery is to be made there exist circumstances which entitle the Supplier to terminate the contract under Condition 15 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 Overhauled Gear, store the Overhauled Gear 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, as agent for and at the expense of the Buyer, sell the Overhauled Gear so withheld to a third party and apply the resultant proceeds towards payment of all outstanding sums upon giving 30 days' notice in writing 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.
- 7.5 Each Overhauled Gear shall be accompanied by the Deliverables. An advice note shall be despatched under separate cover simultaneously with despatch of the Overhauled Gear to which it relates.

8. Goods in Transit

- 8.1 Unless express provision to the contrary is made in the Contract, the method of transport shall be at the sole discretion of the Supplier.
- 8.2 Where Conditions 7.3 or 9.1 operate such that the Overhauled Gear remains at the Supplier's risk during transit, no claim by the Buyer for loss of or damage to the Overhauled Gear while in transit will be entertained 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.

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9. Property and Risk

- 9.1 Risk of damage or loss to the Overhauled Gear shall pass to the Buyer on delivery (as set out in Condition 7.3).
- 9.2 Despite being delivered and/or installed by the Supplier, until the Supplier has been paid in full for the Services and the Goods, the Supplier shall retain full legal and beneficial ownership of the Goods.
- 9.3 Until the Buyer acquires title to the Goods it shall have possession of the Goods solely as bailee and fiduciary for the Supplier.
- 9.5 If any payment for the Services and/or the Goods is overdue in whole or in part, the Supplier may in addition to its other rights retain, stop in transit and/or repossess the relevant Overhauled Gear and, as agent for and at the expense of the Buyer, may sell it and may enter upon the Buyer's premises for this purpose. The proceeds of any such sale shall be applied towards payment of all outstanding sums upon giving 30 days' notice in writing to the Buyer.

10. Limitation of Liability

- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1982
- 10.2 Subject to Condition 10.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
 - (b) the Supplier's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price paid for the Services and the Goods.
- 10.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 This Condition 10 shall survive termination of the Contract.

11. Buyer's Indemnity to Supplier

- 11.1 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 Intellectual Property Right of a third party.

12. 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; be and remain the property of the Buyer and shall be clearly marked by the Buyer as such;
- (b) be and remain at the Buyer's risk until commencement of unloading at the Supplier's premises;
- (c) 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.

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13. Cancellation

- 13.1 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 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.

14. Force Majeure

- 14.1 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.
- 14.2 Notwithstanding any other provision of the 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.
- 14.3 If either party claims force majeure and is relieved under Condition 14.2 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 Conditions, terminate the Contract by giving to the party which has claimed force majeure not less than 21 days written notice.
- 14.4 In the event of termination by either party under Condition 14.3 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.

15. Termination

- 15.1 Without prejudice to any other right of termination granted to the Supplier hereunder the Supplier shall be entitled to terminate the Contract 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 material breach of any of its obligations under the Contract (which is not remedied within 30 days of notice of breach) or if the Supplier reasonably believes any of the said events is likely to occur.
- 15.2 On termination of the Contract for any reason:
- the Buyer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
 - the Buyer shall return all of the Deliverables which have not been fully paid for. If the Buyer fails to do so, then the Supplier may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

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16. General

- 16.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 16.2 The Buyer shall not be entitled to assign the benefit of the Contract without the prior written consent of the Supplier.
- 16.3 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.
- 16.4 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.
- 16.5 The headings used in these conditions are for convenience only and shall not affect the construction or interpretation of these conditions in any way.
- 16.6 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.
- 16.7 Notices
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 16.7(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
 - (c) The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.
- 16.8 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.