



AUSTRALIA - TERMS AND CONDITIONS WITH CUSTOMERS

1. Unless the context otherwise requires, the following terms shall have the meanings respectively ascribed to them.

“the Agreement” shall mean the agreement governing Hawker’s provision of the Services and/or supply, sale and/or fitting of the Parts to/for the Customer, being these terms and conditions unless the parties have agreed in writing to supplement such terms and conditions by others.

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

“the Equipment” shall mean any aircraft, part or component thereof, furnished by or on behalf of the Customer and upon which or in relation to which services are or are not to be performed by Hawker.

“the Customer” shall mean the customer named overleaf or referred to in other relevant documents and shall, unless the context otherwise requires, include its employees and agents.

“Hawker” shall mean **Hawker Pacific Pty Limited or as applicable, a related body corporate** (as defined in section 50 of the Corporations Act 2001), and shall unless the context otherwise requires, include its employees, agents, independent contractors and sub-contractors.

“the Services” shall mean work performed by Hawker on, or in relation to, the Equipment and shall include, but not be limited to the work authorised and such other unforeseen and additional work as Hawker may in its discretion consider necessary to render the equipment airworthy and / or serviceable, and all transport, freight, storage, hangarage, inspections, modifications and testing ancillary thereto.

“the Parts” shall mean all parts and / or components whether new or overhauled supplied by Hawker and fitted to the Equipment in performing the Services or the subject of any contract of sale by Hawker.

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

2. Hawker is hereby authorised and instructed to perform the Services and/or to supply and fit the Parts or to sell the Parts and the Customer hereby agrees to pay, without deduction, Hawker’s charges at that time and in that manner as Hawker may require. The Customer must notify Hawker in writing immediately of any error on an invoice. Where credit arrangements have been agreed by Hawker in writing, payment shall be made by the Customer within 30 days of the date of Hawker’s invoice unless otherwise agreed in writing by Hawker. The Customer agrees that and notwithstanding any provision in any subject agreement/s providing to the contrary, in the event that he shall fail to make payment as aforesaid or where any payment is overdue, Hawker shall be entitled to:
- a) charge a late payment fee on any overdue amount, from the date when it becomes due until the date payment is received, at a rate of 1.33% per month;

- b) stop supply immediately both under the Agreement and/or any other agreement with the Customer:
- (i) without being in breach of any such agreement/s and where applicable, the Customer releases Hawker from any obligation to pay liquidated damages and/or milestone penalties that would otherwise apply;
- (ii) without prejudice to any accrued rights and remedies of Hawker under any of the agreement/s; and
- (iii) payment will become immediately due to Hawker for all good and services supplied under any agreement with the Customer, with sub-clause (a) to apply if payment is not immediately received.
- c) sell or concur in selling all or any interest in the Equipment by public auction, private treaty or tender, for cash or on credit, in one lot or in parts, with or without special conditions as to title or the time and the mode of payment of purchase money, or on such terms as Hawker in its absolute discretion thinks fit. All monies received by Hawker as a result of the exercise of its rights under this provision may be applied in the following order: (i) in payment of all costs, charges, expenses and disbursements incurred in or incidental to the exercise or attempted exercise of Hawker’s rights under this provision; (ii) payment of monies owing to Hawker, and (iii) the surplus (if any) shall belong to the Customer but does not carry interest.

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

The parties agree that where a written and signed variation of any such agreement so referred here is necessary for that set out in this clause 2 to take effect, then either this clause 2 constitutes such variation or the parties agree to waive such requirement.

3. The Customer warrants to Hawker that, if the Customer is not the owner of the Equipment, he has the approval and consent of the owner as its agent to authorise both the performance of the Services and the supply and fitting of the Parts and compliance with these terms and conditions, and agrees to accept liability for payment of the Services supplied hereunder.
4. Hawker shall use its reasonable commercial endeavors to effect deliveries of Parts and to complete the Services and, notwithstanding any estimate of time, shall not be responsible for delays due to causes beyond its reasonable control, or for any consequential loss or damage to the Customer resulting therefrom. Without prejudice to the generality of the foregoing and for the avoidance of any doubt time shall not be of the essence under the terms of any agreement between Hawker and the Customer for the provision of Parts or Services to the Customer unless otherwise specifically agreed in writing by an Authorised Officer of Hawker.
5. (a) Where any price of the Parts is based upon trade-in of run-out units, such price is contingent upon run-out units being in normal run-out condition.
- (b) Title to any run-out units traded-in shall pass to Hawker forthwith upon replacement with new or overhauled units.
- (c) Any parts or components replaced by Hawker in the course of performing the Services and/or fitting of the Parts will be returned to the Customer only if specifically requested by the Customer in writing within 21 days of the date of the first instruction to Hawker to provide the Services and/or fitting the Parts. In the event that no such request is made, title to any such parts or components shall pass to Hawker upon fitting replacement parts or components to the Equipment.

6. Hawker is hereby authorised for any purpose incidental to performance of the Services :-
- a. to test, taxi or fly the Equipment; and
 - b. on such terms as to cost as the Customer and Hawker may agree, to transport or fly the Equipment to another hangar or facility.
7. The Customer agrees that, in the event that the Equipment is not collected following notification by Hawker to the Customer at the Customer's address, that the Services have been completed, Hawker may charge reasonable hangarage or storage charges in respect thereof from the date of such notification until collection. Hawker reserves the right to terminate any storage or hangarage arrangement upon the giving of seven (7) calendar days notice to the Customer.
8. Any quotation by Hawker shall be in writing and :
- a. shall relate only to the work and or the supply of parts and components specifically itemised in the quotation ;
 - b. may be accepted by the Customer within one month from the date of quotation by duly completing and returning the appropriate authorisation to Hawker's facility issuing the quotation ;
 - c. in respect of Services, shall be subject to the Customer delivering the Equipment within two months from the date of quotation to Hawker's facility issuing the quotation or such other facility as Hawker may in writing agree;
 - d. in respect of Services, shall unless Hawker otherwise agrees in writing be subject to Hawker completing the work and supplying the parts and components itemised in the quotation within three months from the date of quotation and in the event that the work and or supply of parts and components itemised in the quotation shall take more than three months from the date of the quotation for any reason beyond Hawker's reasonable control, Hawker shall be entitled to charge the Customer for any increases in Hawker's labour rates for work carried out and prices for parts and components supplied after that period ;
 - e. is based upon [i] current rates of pay and conditions of employment at Hawker's facilities ; [ii] prevailing prices of raw materials and sub-contracted parts and services ; [iii] suppliers' prevailing prices for Parts not manufactured by Hawker and [iv] the present ruling rates of overseas exchange, current freight and insurance charges and the present methods of the Customs Department in calculating and ascertaining the rate of duty and primage or any other government tax on imported goods. In the event of any change to any of these bases for pricing after provision of the quotation by Hawker or acceptance by the Customer, Hawker reserves the right to adjust the price, acting reasonably, to take into account such change/s and such new pricing to apply immediately following notification in writing by Hawker to the Customer; and
 - f. unless otherwise expressly stated, any goods and services tax (GST) or any other tax or impost which may be levied or in any way arising out of Hawker's provision of the Services and/or supply, sale and/or fitting of the Parts to/for the Customer shall be borne by the Customer, excluding taxes specifically and solely levied on Hawker's earnings and revenue.
9. Subject to clause 10, the Customer agrees to indemnify, and to keep indemnified, Hawker against any action, claim, proceeding, demand, damages, cost, expense liability or loss (including but not limited to costs on a solicitor/client basis and any indirect/consequential and such loss arising in any manner in consequence of any hidden or latent defect in the Equipment), which Hawker may suffer or incur arising out of or connected with the
- Agreement between the parties, the Services, Equipment and/or Part.
10. Except for damage to, or loss of, the Equipment occasioned by the willful misconduct or gross negligence of Hawker and with reckless disregard of the known consequences of such an act, decision or commission,, the Equipment shall at all times, while in the care, custody or control of Hawker, be at the risk of the Customer.
11. (I) To the extent permitted by law, all conditions, warranties and undertakings, express or implied, statutory or otherwise, are expressly excluded and the liability of Hawker relating to and/or arising from the provision of the Services and/or supply, sale and/or fitting of the Parts to/for the Customer, whether arising in or claimed on the basis of negligence or any other tort whatsoever, breach of contract, breach of a condition, warranty or undertaking or otherwise, is limited to such of the remedies set out in Section 68A of the Trade Practices Act, 1974 (as amended) as Hawker may elect, as follows:
- (A) in the case of goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (iv) the payment of the cost of having the goods repaired; or
 - (B) in the case of services-
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again,
- (II) Insofar as their exclusion or limitation may have survived the previous provisions of this clause 11, for the avoidance of doubt and without prejudice to the generality of the foregoing, Hawker shall have no liability whatsoever to the Customer for or in respect of any indirect, consequential, economic or incidental losses or damages of any kind or nature (arising directly or indirectly, whether past, present or future, whether or not foreseeable at the date the parties agreed for the Services to be performed and/or the supply and/or fitting of the Parts, and whether or not arising out of the negligence of Hawker or its breach of contract, bailment, negligence or the commission of any other tort by Hawker) including but not limited to any loss of profits (real or expected), loss of trade and business interruption, whether arising directly or indirectly out of the performance by Hawker of the Services, the supply and/or fitting of any Part hereunder or the breach of the Agreement.
12. Ownership of and title in exchange items and/or Parts will not pass to the customer until full payment of all invoices plus any supplementary charges (i) corresponding to such exchange items and/or Parts, and (ii) any other invoices due and payable by the Customer under any other agreement between the parties is made; the Customer being liable for loss or damage, in transit, or during period of use. In the event of failure to pay by due date Hawker will be entitled to repossess the said parts, the Customer being further liable for any additional costs incurred in removing and recovering the parts.
13. The Customer shall inspect and examine the Equipment or Parts on delivery and subject to the rights and remedies herein no claim shall be recognised unless received by Hawker in writing, within fourteen (14) days of the date of delivery of or date of invoice corresponding to the Equipment or Parts, whichever is earlier. Such

- claim notification shall be accompanied by the evidence that proves Hawker's faulty workmanship. The Customer shall at all times follow Hawker's instructions and procedures in respect of the disposition and return of any parts or Equipment the subject of any claim hereunder.
14. All costs of cartage, freight and insurance of Parts and Equipment from Hawker's facilities and premises including the charges of Hawker, shall, unless otherwise agreed, be for the account of and payable by the Customer.
15. All Parts and Equipment shall be available for collection by the Customer at Hawker's designated facility. Hawker shall not be liable for any loss, damage, or non-receipt of Parts or Equipment after such Parts or Equipment leave Hawker's facility whether or not they are delivered by Hawker, its agents or employees.
16. The Customer assumes responsibility for all transport charges in respect of the disposition and return of any Parts or Equipment the subject of any claim hereunder and the supply by Hawker of any substitute parts.
17. Any intellectual property rights in, or relating to, the Services or the Parts remain in or vest upon its creation, as applicable, in Hawker (or where relevant, third parties) unless otherwise agreed in writing by an Authorised Officer of Hawker. For the avoidance of doubt, this clause 17 does not derogate from any existing intellectual property right the Customer may have prior to the commencement of the Services.
18. No variation of these terms and conditions shall be valid unless specifically agreed in writing by an Authorised Officer of Hawker, but Hawker reserves the right to review and amend these terms and conditions at any time in its discretion. In the event of any conflict between these terms and conditions and any terms or conditions set forth in any purchase order from the Customer or any other document that purports to govern Hawker's provision of the Services and/or the supply, sale and/or fitting of the Parts to/for the Customer, these terms and conditions shall prevail, and any provision in such purchase order or document that claims that the Customer's terms and conditions shall prevail shall be treated and construed as void and of no effect.
19. These terms and conditions supersede and override any earlier set of terms and conditions issued by Hawker, and shall continue to have full force and effect notwithstanding any breach thereof by either party. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by these terms and conditions. If any provision of these terms and conditions or its application to any person or circumstances is void or voidable by either party, illegal or unenforceable, the provision shall be read down to the extent that it is no longer void or voidable, illegal or unenforceable. Where such provision cannot be read down, that fact shall not affect any other provision of these terms and conditions which shall be construed as if the void or voidable, invalid or unenforceable provision was omitted.
20. Failure by Hawker in any circumstances whatsoever to compel performance of any term or condition set out here does not constitute a waiver of that term or condition in the absence of an express and specific statement in writing by an Authorised Officer of Hawker that Hawker has waived the said performance and does not impair the right of Hawker to enforce it at a later time or to pursue remedies that it may have for any subsequent breach of that term or condition.
21. Save as otherwise herein provided, these terms and conditions shall be construed in accordance with the laws of New South Wales and the Courts of that State shall have exclusive jurisdiction.
22. Any notice required to be given to the Customer shall be delivered to the Customer, at or forwarded by pre-paid post or facsimile to the Customer's address and any such notice shall be deemed to have been given when, in the ordinary course of transmission, it would have been received by the Customer.

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