

# AUSTRALIA – TERMS AND CONDITIONS WITH CUSTOMERS

This is a legally binding Agreement between Hawker Pacific (HP) and the Customer and will apply to all Services and/or Parts provided by HP to the Customer, notwithstanding any other terms proposed by the Customer.

## 1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

**Agreement** is defined in clause 2.3.

**Australian Consumer Law** means the *Competition and Consumer Act 2010 (Cth)*.

**Costs** mean the costs specified in the Quotation.

**Customer** means the customer named in the Quotation and will, unless the context otherwise requires, include its employees and agents.

**Equipment** means any aircraft, part or component thereof, furnished by or on behalf of the Customer and upon which the Services are to be performed by HP.

**Force Majeure** means earthquakes, cyclones, floods, fires, lightning, storms or other acts of God, riots, civil disturbances, strikes, boycotts, orders, dispositions, decisions, orders or measures of governmental authorities of whatever nature or denomination, or any other event which is unpredictable, insurmountable and outside the control of the parties.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* and related tax imposition Acts of the Commonwealth of Australia.

**HP** means Hawker Pacific Pty Ltd ACN 001 540 316 or as applicable, a related body corporate (as defined in the *Corporations Act 2001 (Cth)*), and shall unless the context otherwise requires, include its directors, employees, agents, independent contractors and sub-contractors.

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

**Quotation** means the quotation issued by HP for the Parts and/or Services.

**Services** mean the work performed by HP on, or in relation to, the Equipment and/or services specified in the Quotation, and includes additional services as HP may in its discretion consider necessary to render the Equipment airworthy and/or serviceable and includes all transport, freight, storage, hangarage, inspection/s, modifications and testing ancillary to the services.

**Parts** mean all parts and/or components whether new or overhauled supplied by HP, fitted to the Equipment in performing the Services or supplied by HP, whether or not fitted to the Equipment.

**Warranty Period** means the 30 day period from the date the Parts and/or Services are delivered to the Customer.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing gender include all other genders;
- (c) words importing persons include all bodies and associates, corporate or unincorporated, and vice versa;
- (d) “includes” or “including” means without limitation;
- (e) references to any party include that party’s executors, administrators, substitutes, successors and permitted assigns;
- (f) references to days are to calendar days; and
- (g) References to “\$” or “dollar” is a reference to Australian dollars.

## 2. Quotation and Agreement

2.1 Any Quotation will be in writing and must be accepted by the Customer within the time stated in such Quotation but if not so stated, then 1 month from the date of Quotation, by completing and returning the appropriate authorisation to HP. HP may in its discretion accept the completed Quotation notwithstanding that it

was accepted by the Customer more than 1 month from the date of the Quotation.

2.2 HP reserves the right, at HP’s sole discretion to withdraw or amend the Quotation at any time prior to the Customer accepting the Quotation.

2.3 An agreement is formed when the Customer accepts the Quotation pursuant to clause 2.1, and consists of, the Quotation and these terms and conditions (**Agreement**).

## 3. Services

3.1 HP is authorised and instructed to perform the Services and to supply and/or fit the Parts.

3.2 HP will perform the Services and/or supply and/or fit the Parts in accordance with this Agreement.

3.3 The Customer must deliver the Equipment to HP’s nominated facility within 2 months from the date of Quotation.

3.4 Any parts or components replaced by HP in the course of performing the Services will be returned to the Customer at the Customer’s cost only if specifically requested by the Customer in writing within 21 days of the acceptance of the Quotation. If there is no such request, title to any such parts or components will pass to HP upon fitting replacement parts to the Equipment.

3.5 For any purpose incidental to the performance of the Services, the Customer authorises HP to:

- (a) test, taxi or fly the Equipment; and
- (b) transport or fly the Equipment to another hangar or facility on such terms as to cost as the parties may agree.

## 4. Costs and Payment

4.1 In consideration of HP’s provision of the Services and/or supply of the Parts, the Customer agrees to pay, without deduction or set off, the Costs within 30 days of the date of HP’s invoice unless otherwise agreed in writing by a HP Authorised Officer.

4.2 The Customer acknowledges and agrees that if the Costs are not paid by the due date, HP shall be entitled to:

- (a) charge interest on overdue amounts from the date when it becomes due until the date payment is received, at a rate of 1.33% per month; and/or
- (b) stop supply and/or cease to perform any Services immediately under the Agreement in which event, HP will incur no liability to the Customer, and the Customer releases HP from any obligation to pay liquidated damages and/or milestone penalties that would otherwise apply; and/or
- (c) exercise a lien over the Equipment until all outstanding Costs owing on any account whatsoever, are paid in full; and/or
- (d) recover from the Customer all costs and legal costs (including Solicitor’s costs on a full indemnity basis) which HP may incur should HP take any steps to recover any money owing to HP pursuant to this Agreement or to enforce its rights pursuant to this Agreement

4.3 All amounts payable under this Agreement are expressed on a GST exclusive basis. If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in this Agreement plus GST. The parties must provide each other with all documentation required to claim any Input Tax Credit, set off, rebate or refund for or in relation to any GST included in any payment made under this Contract. In this clause 4.3, the terms “GST”, “Taxable Supply”, “Input Tax Credit” and “Tax Invoice” have the meaning given in the GST Law.

## 5. Title and Risk

5.1 Title in all Parts supplied by HP (whether fitted to the equipment or not) remains with HP and no legal or equitable interest or property in any Parts supplied by HP will pass to the customer, until the Costs and all other amounts owing by the Customer to HP on any account whatsoever have been paid and there is no

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money owing by the Customer to HP for any other Parts delivered by HP<sub>1</sub> or on any account whatsoever.

5.2 Where HP has supplied Parts to the Customer and the delivery to the Customer has taken place, the Customer will hold the Parts in a fiduciary capacity as the bailee for and on behalf of HP. The Customer will store the part separately from other goods owned by the Customer and shall identify them as Parts owned by HP. If the Parts (or any part of them) have been sold by the Customer prior to all monies due to HP having been paid, then the proceeds of the sale of the Parts (or any part of them) will be the property of HP and shall be held on a fiduciary basis and retained in a separate account payable to HP on demand.

5.3 The risk in the Parts will pass to the Customer on dispatch from HP's facility.

5.4 Title in the Equipment (but not the Parts) remains with the Customer at all times. The Equipment shall at all times, while in the care, custody or control of HP, be at the risk of the Customer.

### 6. Personal Property Securities Act 2009 ("PPSA")

6.1 For the purposes of this clause 6, the terms 'financing statement', 'financing change statement', 'security agreement' and 'security interest' have the meanings set out in the PPSA.

6.2 The Customer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Parts previously supplied by HP to the Customer (if any) and all Parts that will be supplied in the future by HP to the Customer;
- (c) the security interest granted by the Customer to HP pursuant to these terms and conditions constitute a purchase money security interest as defined in section 14 of the PPSA.

6.3 The Customer agrees to do anything (including obtaining consents, signing or producing any further documents, and/or providing any further information) which HP asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- (b) enabling HP to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or
- (c) enabling HP to exercise rights in connection with the security interest.

6.4 Everything that HP is required to do under this clause 6 is at the Customer's expense.

6.5 The Customer waives any rights it may have:

- (a) to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 134(1) and 135 of the PSSA;
- (b) under sections 137(2), 142 and 143 of the PPSA; and
- (c) to receive notice of the verification statement under section 157(1)(a).

6.6 The parties agree that sections 96 and 117 of the PPSA do not apply to these terms and conditions.

6.7 The Customer agrees that where HP has rights in addition to those under the PPSA, those rights will continue to apply.

6.8 The Customer acknowledges that it has received value as at the date the Parts are supplied by HP or the date the Parts are fitted and there is no agreement to postpone the time for the attachment of the security interest (as defined in the PPSA) granted to HP pursuant to the Agreement.

6.9 To the extent permitted by law, this clause will survive the

termination of any agreement between HP and the Customer.

### 7. Confidentiality

The terms of this Agreement and all information which is made available to or obtained by Customer from or in connection with this Agreement and which is not a matter of public knowledge or lawfully available from any other source will be and will remain confidential and will not, without the prior written consent of HP, be disclosed to any third person other than as may be required by law.

### 8. Delivery and Storage

8.1 HP is not obliged to make available for collection by the Customer any Parts and/or Equipment until such time as the Customer has made payment to HP in full of all Costs and any other amount owing by the Customer to HP pursuant to the Agreement.

8.2 If the Customer requests HP to deliver the Parts and Equipment, HP will not be liable for any loss, damage, delay or non-delivery of the Parts and Equipment after such Parts and Equipment leave HP's facility whether or not they are delivered by HP, its agents or employees, however caused.

8.3 If the Parts and Equipment are not collected following notification pursuant to clause 8.1, HP may charge reasonable hangarage or storage charges from the date of such notification until collection. HP reserves the right to terminate any storage or hangarage arrangement upon the giving of 2 days' notice to the Customer.

8.4 The Customer assumes responsibility for all costs of cartage, freight and insurance of Parts and Equipment from HP's facilities including the charges of HP.

### 9. Acceptance

9.1 Acceptance of the Parts and Equipment by the Customer will be deemed to have occurred upon delivery in accordance with clause 8.2.

9.2 If upon inspection the Customer finds any of the Services and/or Parts are not in conformity with this Agreement, it may within 14 days after delivery of the Services and/or Parts, acting reasonably:

- (a) reject the Services and/or Parts that are defective by notifying HP in writing, accompanied by evidence of the alleged defect; and/or
- (b) for a "major failure" (as defined under Australian Consumer Law): (i) request a refund for the reduced value of the Services and/or Parts; or (ii) request HP to refund or replace the defective Services and/or Parts no additional charge to the Customer; or
- (c) for a "non-major failure" (as defined under Australian Consumer Law), request HP to repair the defective Services and/or Parts (or pay the cost of such repair).

9.3 The Customer must at all times follow HP's instructions and procedures in respect of the disposition and return of any Parts or Equipment the subject of any claim pursuant to clause 9.2.

### 10. Intellectual Property

Any intellectual property rights in, or relating to, the Parts or the Services remain in or vest upon its creation, as applicable, in HP (or where relevant, third parties) unless otherwise agreed in writing by a HP Authorised Officer. For the avoidance of doubt, this clause 10 does not derogate from any existing intellectual property right the Customer may have prior to the commencement of the Services.

### 11. Warranties

11.1 The Customer warrants to HP that, if the Customer is not the owner of the Equipment, the Customer has the approval and consent of the owner as its agent to authorise both the performance of the Services and the fitting of the Parts, and agrees to accept liability for payment of the Services provided and/or Parts supplied under this Agreement.

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- 11.2 HP warrants that the Parts will be of an acceptable quality.
- 11.3 HP will perform the Services with due skill and care.
- 11.4 The warranties provided under this clause 11 will not be honoured where:
- (a) any failure to conform is not notified to HP in writing within 14 days following supply of the Parts or completion of the Services;
  - (b) the defect in material or fault in manufacture of the Parts is not notified to HP in writing within the Warranty Period;
  - (c) the Customer causes them to become of unacceptable quality or fails to prevent them from becoming of unacceptable quality and they are damaged by abnormal use;
  - (d) the Customer before acquiring the Parts examines them and that examination ought reasonably to have revealed that the Parts were not of acceptable quality;
  - (e) the Parts are used, other than for the purpose stated in this Agreement;
  - (f) the Parts are altered or modified without HP's prior approval; and
  - (g) the Parts are serviced other than by HP's authorised personnel.
- 11.5 The Customer is responsible for the cost of all transport charges in respect of the return of any Parts and/or Equipment the subject of any claim pursuant to this clause 11 and the supply by HP of any substitute parts.
- 11.6 These warranties are in addition to other rights and remedies that are available to the Customer at law. The Parts come with guarantees and/or warranties from the manufacturer that cannot be excluded under the Australian Consumer Law.
- 12. Indemnity and Liability**
- 12.1 The Customer agrees to save, indemnify, defend and hold harmless HP against any action, claim, proceeding, demand, damages, cost, expense liability or loss (including costs on a solicitor/client basis), which HP may suffer or incur arising out of or in connection with this Agreement.
- 12.2 Notwithstanding any other clause in this Agreement, HP's total liability in connection with this Agreement, whether based upon warranty, contract, statute, tort (including negligence) or otherwise,
- (a) is limited at HP's option to one of the following:
    - (i) in the case of the supply of Parts:
      - (A) the replacement, repair or refund of the Parts or the supply of equivalent Parts; or
      - (B) the cost of replacing or repairing the Parts;
    - (ii) in the case of the supply of Services:
      - (A) the supplying of the Services again; or
      - (B) the cost of supplying the Services again,
  - (b) but will not exceed the Fees paid by the Customer to HP in respect of the particular Parts or Services from which the claim arose, and the Customer will to the fullest extent permitted by law save, indemnify, defend and hold harmless HP from any claim or liability exceeding this amount, regardless of cause.
- 12.3 HP is not responsible to the Customer or any other party for any loss of revenue and profit, loss of anticipated revenue and profit, loss of business opportunity, loss of reputation, loss or goodwill, direct, indirect, consequential or inconsequential injury, loss or damage whatsoever by reason of any delay in delivery, deterioration, deficiency or other fault or harm in the Parts and/or Services supplied by or on behalf of or in any arrangement with HP and whether or not due to the negligence of HP, its servants or agents.
- 13. Force Majeure**
- 13.1 If HP is prevented or hindered or delayed in performing its duties under this Agreement as a direct result of Force Majeure, such non-performance will not be considered a breach of this Agreement for the duration of the Force Majeure. In the case of Force Majeure, the parties will:
- (a) use their best efforts to remedy the situation to the extent possible; and
  - (b) extend any timeframes specified in the Quotation or this Agreement to accommodate the delay.
- 13.2 HP will be entitled to deliver, and the Customer must take and pay for such part of the Parts and/or Services as can be delivered, while the Force Majeure event exists.
- 14. Termination**
- 14.1 HP may terminate this Agreement:
- (a) immediately on written notice if the Customer is in default of this Agreement and the default is not remedied within 14 days of receiving written notice to remedy the default; or
  - (b) immediately on written notice if the Customer becomes bankrupt, is ordered to wind up, passes into liquidation or administration or has a receiver, manager or administrator appointed.
- 14.2 Upon termination of this Contract in accordance with clauses 14.1(a) and 14.1(b), the Customer must pay HP all amounts owing to HP up to the date of termination of this Agreement, including reasonable costs incurred by HP as a result of the termination of this Agreement (including third party cancellation fees and administrative costs).
- 14.3 The Customer may only terminate this Agreement or cancel all or part of an order with the written consent of HP.
- 15. General**
- 15.1 This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes all prior communications.
- 15.2 Nothing in this Agreement will be taken as giving rise to a relationship of employment, agency or partnership.
- 15.3 This Agreement cannot be varied except in writing and signed by the parties, where a HP Authorised Officer has signed for HP.
- 15.4 The failure of either party to enforce any provisions under this Agreement will not waive the right of such party thereafter to enforce any such provisions.
- 15.5 If any term or provision of this Agreement is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from this Agreement and the remaining terms and conditions will be unaffected.
- 15.6 All notices and consents relating to this Agreement must be in writing.
- 15.7 This Agreement is governed by, and construed in accordance with the laws of New South Wales. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from this Agreement.