

MT HUTT AVIATION LIMITED

TERMS OF TRADE

1. Interpretation

- 1.1. These Terms of Trade are entered into by the Buyer and are intended to bind and be for the benefit of the Supplier and the Supplier's successors and assignees.
- 1.2. In these conditions:

"Supplier" means Mt Hutt Aviation Limited.
"Buyer" means the person or company buying the Services from the Supplier.
"Contract" means the contract between the Supplier and the Buyer for the maintenance of the Aircraft.
"Contract Price" means the price of the Services as agreed between the Supplier and the Buyer, subject to any variation in accordance with clauses 2 and 3.
"Due Date" means the date the Services are estimated to be finished under the Contract.
"Services" means all services (including associated materials) supplied or to be supplied by or through the Supplier to the Buyer from time to time.
"Aircraft" means the aircraft provided by the Buyer on which the services will be provided.

2. Order

- 2.1. A contract will come into existence and will be governed by these Terms of Trade once the Buyer has accepted a quotation from the Supplier. Any additional terms included in the quotation will form part of the contract between the Buyer and the Supplier for the relevant Services.
- 2.2. The Supplier will use their reasonable endeavours to complete all orders by the Buyer and quoted by the Supplier within a reasonable time.

3. Price

- 3.1. This price contained in the Contract is based upon rates and costs as at the date of the Contract or where the Contract arises from a quotation or estimated price including materials, transport, labour, customs duty, insurance, other rates and costs.
- 3.2. The price may be increased by the amount of any increase in the cost of the Services or any other factors that may arise between the above-mentioned date and the Delivery Date.

4. Taxes and Duties

- 4.1. Unless expressly included in any quotation given by the Supplier, GST is not included in the price and is the responsibility of the Buyer.

5. Payment

- 5.1. Subject to any provision to the contrary in the Contract, all payments for Services are due (without deduction) prior to the Buyer collecting their Aircraft, unless otherwise agreed between the Parties.
- 5.2. Any additional payments due by the Buyer pursuant to any of the provisions of the Contract must be paid at the time provided in the Contract or, if no time is provided, within 30 days of the date the Supplier invoices the Buyer (time being of the essence).
- 5.3. If the Supplier at any time deems the credit of the Buyer to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under the Contract, until the provision of sufficient security. All costs and expenses of or incurred by the Supplier as a result of such suspension and any re-commencement are payable by the Buyer upon demand.
- 5.4. The Buyer is not entitled to withhold payment, set off counterclaim or to make any deductions from the Contract Price without the prior written consent of the Supplier.

- 5.5. Receipt of cash or cleared funds or other negotiable instrument by the Supplier whether before or after judgement will not constitute payment and the Buyer remains liable for the full Contract Price until such cash or cleared funds or negotiable instrument is paid in full.
- 5.6. The Buyer is required to pay a deposit equal to 50 percent of the Contract Price, for all orders where the Contract Price is equal to or exceeds \$1,000.00.

6. Interest for Late Payment

- 6.1. Interest at 2% per month, calculated on a daily basis, is payable on any monies outstanding under the Contract from the date payment was due, until the date payment is received by the Supplier whether before or after judgement but without prejudice to the Supplier's other rights in respect of non-payment or late payment.

7. Delay

- 7.1. If the supply or delivery of the Services is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, the Supplier may, without prejudice to its other right and remedies, require payment by the Buyer of such portion of the Contract as represents the extent to which the Supplier has performed the Contract up to the date such payment is required together with any expenses or additional costs incurred by the Supplier as a result of such delay. In the event of such delay continuing beyond a reasonable time, the Supplier may, without prejudice to its other remedies, terminate the contract.

8. Exclusion of Warranty & Liability

- 8.1. Except as expressly set out in this document, all representations, conditions and warranties (express or implied) applying between the Supplier and the Buyer, whether statutory or otherwise are excluded as far as the law allows.
- 8.2. The entire liability of the Supplier to the Buyer, or any other person, whether statutory, contractual, tortious or otherwise, is limited to the value of the Contract or \$250,000.00 (including GST) whichever is the lesser.
- 8.3. Clause 8.2 sets out the Buyer's sole rights to compensation/remedies from the Supplier for any matter involving these Terms of Trade, the Contract or any other matter. The Supplier will not be liable in any way (including negligence, tort and equity) to the Buyer or to any other person in connection with this or any other contract or the purported exercise of the Supplier's rights under these Terms for any:
 - a. Loss whatsoever including loss of income, profits, savings or goodwill or any indirect or consequential loss or special or exemplary damages;
 - b. In relation to any claim or series of related claims any amount exceeding \$250,000.00;
 - c. Issues or claims not made within 90 days of the Buyer becoming aware of the circumstances giving rise to this claim;

9. Default

- 9.1. If the Buyer defaults in the due payment of any monies payable to the Supplier under the contract, or if the Buyer commits any act of bankruptcy or insolvency, or enters into any composition or arrangement with its creditors or (in the case of a company) does any act which would render it liable to be wound up or have a receiver appointed over its property or the Supplier reasonably believes that the Buyer is unlikely to be able to immediately pay any sums due or owing, or supply information to the Supplier. The Supplier, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the Contract, and payment for the Services performed up to the date of such suspension or termination and any other monies payable hereunder will immediately become due and payable.
- 9.2. The Supplier shall be under no obligation to complete any Contract or to deal with the Buyer until they are entirely satisfied all defaults have been remedied and the Supplier is confident the Buyer will be able to perform their obligations under the Contract.

- 9.3. The Buyer acknowledges and agrees to pay all the Suppliers' costs (including legal costs on a solicitor/ client basis) incurred by the Supplier in connection with any default by the Buyer or enforcement action taken by the Supplier.
- 9.4. In consideration of the Supplier agreeing to supply the Services, the Buyer charges all its right, title and interest (whether joint or several) in any land owned by the Buyer, either now or in the future, to secure the performance by the Buyer of its obligations under the Contract.
- 9.5. The Buyer indemnifies the Supplier from and against all the Suppliers costs and disbursements including legal costs, incurred by the Supplier in enforcing its rights under the Contract and any cost of storage for the aircraft under clause 9.6.
- 9.6. The Buyer acknowledges that should they be unable to pay the Contract Price at the time of collection of their aircraft, the Supplier may hold the aircraft until payment has occurred. Should the Buyer not be able to pay the Contract Price after a reasonable period, the Supplier may publicly list the aircraft for sale by auction, providing the Buyer with notice at least one week prior to the auction by way listed in s342 of the Contract and Commercial Law Act 2017.
- 10. Contract**
- 10.1. The items contained in the Supplier's quotation, any supply contract made between the parties together with these Terms of Trade are the conditions of the Contract.
- 10.2. The Buyer acknowledges and agrees that in the case of any conflict between an order submitted by the Buyer and the Supplier's quotation, Contract and these Terms of Trade, the Supplier's quotation, supply contract or order and these Terms of Trade prevail.
- 11. No Assignment**
- 11.1. The Buyer may not assign all or any of the Buyer's rights or obligations under the Contract without the prior written consent of the Supplier.
- 12. Law and Jurisdiction**
- 12.1. The Contract in all respects is deemed to be a contract made in New Zealand and is governed exclusively by New Zealand law.
- 12.2. The Contract and these Terms of Trade are the entire Agreement between the Buyer and the Supplier, and supersede all representations, agreements and other communication.
- 13. Privacy Act 2020**
- 13.1. The Buyer authorises any person or company to provide the Supplier with information, in response to its credit enquiries. The Buyer further authorises the Supplier to furnish to any third-party details of the application of which these conditions of sale form part and any subsequent dealings that the Buyer may have with the Supplier.
- 14. Force Majeure**
- 14.1. The Supplier shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control, or as a result of an Act of God, war, terrorism, strike, lockout, fire, flood, storm, earthquake or any Local or Central Government requirement.
- 15. Waiver**
- 15.1. All the rights, exemptions and remedies of the Supplier remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.
- 15.2. The Supplier is not deemed to have waived any condition unless such waiver is in writing.
- 16. Security and Charge**
- 16.1. In consideration of the Supplier agreeing to supply the Services, the Buyer charges all of its right, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Buyer either now or in the future to secure the performance by the Buyer of its obligations under these Terms of Trade (including but not limited to the payment of any money). This security shall be recorded under an ADLS General Security Agreement.
- 16.2. The Buyer agrees that the Supplier has the right to mortgage the Buyer's land to protect their security under 16.1.
- 16.3. The Buyer indemnifies the Supplier from and against all the Suppliers costs and disbursements including legal costs incurred in exercising of the Suppliers rights under this clause.
- 16.4. The Buyer irrevocably appoints the Supplier, and each director of the Supplier, the Buyers true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Buyers behalf.