

Terms and Conditions of Business

1. DEFINITIONS AND INTERPRETATION

In these Conditions the following capitalised words and phrases shall have the following meanings:

• **"Conditions"** means these Terms and Conditions of Business.

• **"Contract"** means any contract agreed between Trade-Air and a Customer (through any Customer representative) for Service Exchange, Sale, Repair/Overhaul or Lease whether orally or in writing.

• **"Customer"** means any natural or legal person who enters into a Contract with Trade-Air and shall include any successor.

• **"Item"** means the item(s) (including any part(s) thereof) which are the subject of a Contract.

• **"Lease"** means a Lease Contract under Clause 6.

• **"Repair/Overhaul"** means a Repair/Overhaul Contract under Clause 5.

• **"Sale"** means a Sale Contract under Clause 4.

• **"Service Exchange"** means a Service Exchange Contract under Clause 3.

• **"Shipping Charges"** means all freight, transport, (haz)packing and related costs and charges, external and internal, in connection with performance of the relevant Contract as determined by Trade-Air.

• **"Termination Event"** means the Customer (A) has failed to pay any amount when due; (B) in the opinion of Trade-Air (1) has committed a material breach of its obligations or (2) is insolvent or appears to be in financial difficulties and so is unlikely to be able to honour its payment obligations; in each case under these Conditions and/or a Contract.

• **"Trade-Air"** means Trade-Air Airline Support Limited and/or its subsidiary and affiliated companies from time to time.

2. CONTRACTS

Trade-Air and the Customer shall enter into a Contract on the basis of a Service Exchange, Sale, Repair/Overhaul or Lease subject always to these Conditions. A representative purporting to act on behalf of the Customer is deemed to have full authority to enter into binding Contracts on behalf of the Customer. Trade-Air reserves the right to require all or part of Contract charges to be paid in advance by giving written notice to the Customer.

3. SERVICE EXCHANGE

A **"Service Exchange Contract"** is an agreement whereby, for the charges quoted by Trade-Air, the Customer shall request and Trade-Air will provide a serviceable Item (each a **"Serviceable Item"**) to the Customer and in exchange the Customer shall deliver to Trade-Air an unserviceable Item of the same part number (each an **"Unserviceable Item"**) which shall become the property of Trade-Air and shall be repaired/overhauled (as applicable) and certified at the cost of the Customer. The terms of this Clause 3 apply to each Service Exchange Contract.

3.1 Delivery Risk:

(A) The Serviceable Item will be despatched by Trade-Air to the location specified by the Customer and delivery to and passing of risk to the Customer shall occur when such Serviceable Item is despatched by Trade-Air (or collected by the Customer from Trade-Air);

(B) The Unserviceable Item will be delivered by the Customer at its expense to Trade-Air's designated premises within 15 days of Trade-Air despatching (or the Customer having collected) the exchanged Serviceable Item under sub-paragraph (A) above and risk in such Unserviceable Item will pass to Trade-Air upon delivery.

3.2 **Charges:** A Service Exchange shall be quoted and charged as a **"Plus Cost Exchange"** or **"Flat Exchange"**:

(A) **Plus Cost Exchange:** The Customer shall pay the aggregate of (1) an initial access fee for the Serviceable Item (**"Access Fee"**); (2) Trade-Air's charges for repair/overhaul and certification of the Unserviceable Item (**"Secondary Charges"**), it being accepted by the Customer that the amount initially quoted by Trade-Air for Secondary Charges may increase to reflect any increase in the cost of repair/overhaul of the Item to Trade-Air; and (3) Shipping Charges;

(B) **Flat Exchange:** The Customer shall pay the fixed amount quoted by Trade-Air (**"Flat Fee"**) and any Shipping Charges; provided that such Flat Fee is quoted on the assumption that the Item requires a standard repair/overhaul workscope in accordance with OEM guidelines and that if such Item requires additional work to be returned to serviceable condition the Customer shall pay such additional charges as determined by Trade-Air (**"Additional Charges"**).

3.3 Invoicing:

(A) **Plus Cost Exchange:** Trade-Air shall issue invoices to the Customer for the aggregate of (1) Access Fee; (2) Secondary Charges following completion of repair and/or overhaul of the Unserviceable Item; and (3) Shipping Charges;

(B) **Flat Exchange:** Trade-Air shall issue invoices to the Customer for the aggregate of (1) Fixed Fee; (2) Additional Charges; and (3) Shipping Charges.

3.4 If the Unserviceable Item received by Trade-Air (whether or not damaged during transit) is deemed beyond economic repair by an FAA/EASA/CAAC approved organisation or the OEM, then the Customer shall be liable for Trade-Air's costs and charges associated with the following: (A) disposal of, or return of, such Unserviceable Item, to the Customer; and (B) (1) purchasing an equivalent used Item and procuring repair/overhaul and certification of the same to like condition of the Serviceable Item provided by Trade-Air under the Service Exchange; or (2) if no such equivalent used Item is readily available, Trade-Air shall purchase an equivalent new Item; and in each case if the lead time for delivery is over 30 days the Customer shall, in the case of a Plus Cost Exchange, pay from the 31st day an amount equal to the Access Fee divided by 30 per day until such Item is received by Trade-Air or, in the case of a Flat Exchange, such amount specified by Trade-Air up to 10% of the OEM's list price. Trade-Air shall issue supplemental invoices to the Customer in respect of the foregoing which may include a handling charge of up to 15% of the invoiced amount.

3.5 If the Unserviceable Item is not received by Trade-Air for any reason, the Customer shall deliver an equivalent Unserviceable Item to Trade-Air within 15 days of Trade-Air's request failing which the Customer shall be liable for Trade-Air's costs and charges associated with sub-paragraph 3.(B) above and Trade-Air shall issue supplemental invoices to the Customer in respect of the same which may include a handling charge of up to 15% of the invoiced amount.

3.6 **Title:** Title to a Serviceable Item (whether or not fitted to an aircraft) supplied under a Service Exchange Contract shall remain at all times with Trade-Air pending payment in full in cleared funds of the applicable charges pursuant to Clause 3.2 (whether or not the relevant invoices have been issued) whereupon title shall automatically pass to the Customer. Until such time as title passes to the Customer, the Customer shall not sell, charge, sublease, part with possession or otherwise dispose of the Item. Title to an Unserviceable Item delivered by the Customer to Trade-Air shall automatically pass to Trade-Air upon delivery.

4. SALE

A **"Sale Contract"** is an agreement whereby the Customer shall request and agree to purchase from Trade-Air a specified Item and Trade-Air will agree to sell to the Customer such Item for the price quoted by Trade-Air (**"Sale Charges"**). The terms of this Clause 4 apply to each Sale Contract.

4.1 **Delivery Risk:** The Item will be despatched by Trade-Air to the location specified by the Customer and delivery to and passing of risk to the Customer shall occur when such Item is despatched by Trade-Air (or collected by the Customer from Trade-Air).

4.2 **Charges:** The Customer shall pay the Sale Charges and related Shipping Charges. Trade-Air reserves the right (acting reasonably) to increase the Sale Charges to reflect any increase in the cost of the Item to Trade-Air upon giving notice to the Customer. If the Customer requests Items to be supplied without a price quotation the Customer shall pay Trade-Air's standard prices.

4.3 **Invoicing:** Trade-Air shall issue invoices to the Customer for (A) Sale Charges; and (B) Shipping Charges.

4.4 **Title:** Title to an Item (whether or not fitted to an aircraft) supplied under a Sale Contract shall remain at all times with Trade-Air pending payment in full in cleared funds of the applicable charges pursuant to Clause 4.2 (whether or not the relevant invoices have been issued) whereupon title shall automatically pass to the Customer. Until such time as title passes to the Customer, the Customer shall not sell, charge, sublease, part with possession or otherwise dispose of the Item.

5. REPAIR/OVERHAUL

A **"Repair/Overhaul Contract"** is an agreement whereby the Customer shall request Trade-Air to procure repair/overhaul of an Item supplied by the Customer for the charges quoted by Trade-Air (**"Repair Charges"**). The terms of this Clause 5 apply to each Repair/Overhaul Contract.

5.1 **Delivery Risk:** The Item to be repaired/overhauled will be delivered by the Customer at its expense to Trade-Air's designated premises. Upon completion of the repair/overhaul the Item will be despatched by Trade-Air to the location specified by the Customer and delivery to the Customer shall occur when such Item is despatched by Trade-Air (or collected by the Customer from Trade-Air). For the duration of the Contract the Item will remain at the risk of the Customer whether or not in the actual possession and control of Trade-Air (including when in possession of a shipper or third party service provider). The Customer takes the risk of any refusal by a OEM or servicer to honour a free-of-charge warranty for any reason.

5.2 **Charges:** The Customer shall pay the Repair Charges and Shipping Charges. Trade-Air reserves the right (acting reasonably) to increase the Repair Charges to reflect any increase in the cost of repair/overhaul of the Item to Trade-Air upon giving notice to the Customer.

5.3 **Invoicing:** Trade-Air shall issue invoices to the Customer for (A) Repair Charges; and (B) Shipping Charges.

5.4 If an Item is deemed beyond economic repair by a reputable FAA/EASA/CAAC approved organisation or the OEM such Item will, at the Customer's option and expense, be returned to the Customer or disposed of by Trade-Air and the Customer shall pay Trade-Air's invoiced charges in relation thereto.

5.5 **Title:** Title to an Item subject to a Repair/Overhaul Contract shall remain with the Customer (subject to Clause 9.5).

6. LEASE

A **"Lease Contract"** is an agreement whereby the Customer shall request and agree to lease/loan from Trade-Air a specified Item and Trade-Air will agree to lease/loan to the Customer such Item for the agreed term for the daily or weekly charges quoted by Trade-Air (**"Lease Charges"**). The terms of this Clause 6 apply to each Lease Contract.

6.1 **Delivery Risk:** The Item will be despatched to the location specified by the Customer and delivery to and passing of risk in the Item to the Customer shall occur when such Item is despatched by Trade-Air (or collected by the Customer from Trade-Air). At the expiry of the term of a Lease Contract risk in the Item shall pass to Trade-Air upon redelivery.

6.2 **Charges:** The Customer shall pay the Lease Charges and Shipping Charges. Trade-Air reserves the right (acting reasonably) to increase Lease Charges at any time to reflect any increase in market rates (as assessed by Trade-Air) upon giving notice to the Customer. Lease Charges shall be equal to or greater than applicable standard IATA rates.

6.3 **Invoicing:** Trade-Air shall issue invoices to the Customer for (A) Lease Charges; (B) Shipping Charges.

6.4 **Term:** The term of the leasing of an Item pursuant to a Lease Contract shall (A) commence upon despatch of the Item to the Customer under Clause 6.1 and continue for a term of up to a maximum of 60 days unless otherwise agreed between Trade-Air and the Customer (the last date of such term being the **"Expiration Date"**); (B) expire upon the later of (1) the Expiration Date, provided that the Item has been returned to Trade-Air on the Expiration Date in the condition required by Clause 6.5; or (2) if the Item is not returned in the condition required by Clause 6.5 on the Expiration Date, the date when the Customer has complied with its obligations under Clause 6.5, sub-paragraphs (A) or (B), as applicable.

6.5 **Return:** On the Expiration Date or upon termination of the Lease Contract by Trade-Air under Clause 9.6, the Customer shall return the Item to Trade-Air clean in good serviceable condition (fair wear and tear excepted) and Trade-Air shall test the Item to determine compliance with this Clause 6.5. If the Customer (A) fails to return the Item within 15 days of the Expiration Date (or the date of termination by Trade-Air under Clause 9.6) the Customer shall pay such amount as determined by Trade-Air shall compensate Trade-Air for the non return of such Item; (B) returns the Item within 15 days of the Expiration Date (or the date of termination by Trade-Air under Clause 9.6) but the Item is not in the condition required by Clause 6.5, the Customer shall pay Trade-Air's invoiced charges for any bench checking, repair/overhaul and/or re-certification of such Item necessary in order that the same is put into the condition required by this Clause 6.5.

6.6 **Use; Insurance:** The Customer shall use the Item in a proper manner and in accordance with any operating instructions and limitations issued by the OEM. The Customer shall maintain the Item clean and in good working condition (fair wear and tear excepted). Throughout the term of the Lease Contract the Customer shall keep the Item insured against all risks of loss or damage for the full replacement value; and in the case of (A) damage to an Item, the Customer shall repair the Item in order that the same is put into substantially the same condition as it was prior to such damage; (B) loss of an Item, procure the transfer of title to Trade-Air of an equivalent part of equal or better value and utility than the Item immediately prior to its loss; in each case at the Customer's expense.

6.7 **Title:** Title to an Item (whether or not fitted to an aircraft) leased under a Lease Contract shall remain at all times with Trade-Air and the Customer shall not sell, charge, sublease, part with possession or otherwise dispose of the Item at any time during the Lease Contract (save as to permit redelivery to Trade-Air upon Lease expiry). The Customer shall notify the owner of any aircraft/engine to which a leased Item is affixed that such Item is leased from Trade-Air.

7. ACCEPTANCE AND REFUNDS; CANCELLATION

7.1 Any Item received by the Customer from Trade-Air under a Contract shall be deemed to be accepted by the Customer as being in satisfactory condition and meeting any specification unless the Customer notifies Trade-Air in writing within 7 days of receipt. In such a case the Customer shall return the relevant Item to Trade-Air at the Customer's expense. Trade-Air reserves the right to test such Item for serviceability and if Trade-Air determines such Item (A) is defective, a refund (less Shipping Charges) will be issued to the Customer; (B) is serviceable, no refund will be issued and the costs of testing will be charged to the Customer. The foregoing is without prejudice to Clauses 3.1, 4.1, 5.1 and 6.1.

7.2 A Contract cannot be cancelled by the Customer unless agreed in writing by Trade-Air. If the Customer wishes to cancel a Contract the Customer shall notify Trade-Air and Trade-Air shall stipulate the conditions and charges which shall be payable by the Customer upon such cancellation. If the Customer proceeds with the cancellation such conditions and charges shall be binding on the Customer and Trade-Air will issue invoice(s) therefor.

8. WARRANTIES; EXCLUSION AND LIMITATION OF LIABILITY; GENERAL INDEMNITY

8.1 Trade-Air shall so far as it is reasonably able so to do assign to the Customer the benefit of any guarantee or warranty issued by the supplier or OEM or repairer (other than Trade-Air) of an Item. Trade-Air itself gives no warranty or representation whatsoever in connection with an Item, its fitness for any purpose, quality, value, merchantability, use, description, specification or otherwise and all warranties, conditions and representations express or implied by law are excluded to the maximum extent permitted by law. Except in respect of death or personal injury caused by Trade-Air's negligence, Trade-Air shall not be liable to the Customer or any officer or representative of the Customer for any loss or damage, consequential and economic loss, costs, expenses or other liability whatsoever which arises out of or in

connection with the performance or non-performance of a Contract and/or use of any Item by the Customer or any other person or any exercise or enforcement of Trade-Air's rights under these Conditions.

8.2 The Customer agrees to assume liability for and does hereby indemnify, protect, save and hold harmless Trade-Air from and against any and all loss, damage, liability, demands, suits, penalties, judgments or causes of action and any costs and expenses in connection therewith (including legal fees and expenses) (together, **"Losses"**) which arise out of or in connection with the condition, ownership, manufacture, construction, design (including latent and other defects whether or not discoverable), importation, exportation, possession, use or operation of an Item either in the air or on the ground, or arising from the material or any article used therein, which accrue or are suffered or incurred subsequent to despatch of an Item to the Customer and prior to actual redelivery of an Item to Trade-Air. The foregoing includes Losses relating to loss or damage to property or death or injury of, or other Losses of whatsoever nature suffered by, any person caused by, relating to, or arising from, any of the matters set out in this Clause.

8.3 The Customer irrevocably consents to Trade-Air sending an Item to third party service providers for the purpose of a Contract. When an Item is outside of Trade-Air's actual possession Trade-Air shall have no liability to the Customer for any damage to or loss of an Item.

8.4 Until such time as title to an Item passes to the Customer under a Contract the Customer shall remain responsible to account to Trade-Air for any loss of or damage to such Item howsoever occurring. To the extent that any of Clauses 3.6, 4.5 or 6.7 are frustrated by title annexation and/or the application of the lex situs in respect of an Item the Customer shall procure transfer of title back to Trade-Air pending payment in full of the relevant invoiced amounts.

9. MISCELLANEOUS

9.1 **Delivery Up; Repossession:** If the Customer fails to pay amounts when due under invoices relating to an Item: (A) the Customer shall upon Trade-Air's request deliver up such Item to Trade-Air in the same condition as it was when first supplied to the Customer at such location specified by Trade-Air; (B) Trade-Air shall be entitled to enter upon any land and/or premises owned by or under the control of the Customer or to which the Customer has or may secure access for any person, with or without vehicles and equipment, where such Item may be located and to repossess such Item (whether or not fitted to an aircraft) without liability to the Customer for any loss or damage and the Customer shall indemnify Trade-Air in respect of any (1) costs and charges incurred by Trade-Air in the exercise of such rights (including legal fees and expenses); and (2) liability of Trade-Air to third parties arising out of the exercise of such rights.

9.2 **Deemed Value:** The value of any Item in respect of which full payment has not been made and which has been delivered up to or repossessed by Trade-Air shall be deemed to be the market value for such Item "as removed" as determined by Trade-Air and the Customer shall be liable for (A) any difference between such value and the amounts invoiced in respect of such Item; or, at Trade-Air's option (B) Trade-Air's costs and charges for restoring such Item to the same condition as it was when first supplied to the Customer.

9.3 **Certifications:** An authorised release certificate/airworthiness approval tag will be supplied with all new, serviceable, repaired and overhauled parts supplied by Trade-Air (unless otherwise agreed); provided that inferior aircraft parts (including IFE, galley items) and other special items will only be supplied with the same where the original equipment OEM has the ability to do so.

9.4 **Storage:** The Customer shall pay for Trade-Air's charges relating to storage of Items on behalf of the Customer.

9.5 **Lien:** Trade-Air shall have a contractual lien, both general and particular, over any Item delivered by the Customer to Trade-Air under a Contract for all costs, charges and other liabilities which are due and payable by the Customer to Trade-Air under any Contract. Any such lien shall not be lost by reason of the Item not being in the possession of Trade-Air. In exercise of its rights in respect of such lien Trade-Air shall be entitled to sell the Item with no liability to account to the Customer save to the extent the sale proceeds exceed amounts due to Trade-Air under any Contract.

9.6 **Termination:** Upon the occurrence of a Termination Event Trade-Air shall be entitled to terminate a Contract and/or suspend the provision of all services to a Customer by giving written notice and without incurring any liability.

9.7 **Payments; Interest:** All payments by the Customer to Trade-Air will be made within 30 days of the date of an invoice or other request in cleared funds in US Dollars unless otherwise specified in the relevant invoice by electronic transfer to Trade-Air's specified bank account without withholding, set-off, counterclaim or deduction. If the Customer fails to make any payment by the due date for payment ("due date") the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the base rate from time to time of Barclays Bank plc accruing on a daily basis from the due date until the date of actual payment of the overdue amount whether before or after judgment.

9.8 **Entire Agreement:** For each Contract these Conditions and the relevant invoices shall constitute the entire agreement between Trade-Air and the Customer and shall supersede and extinguish any previous agreements, representations, correspondence, arrangements and understandings between them, whether written or oral, relating to its subject matter.

9.9 **Time of the essence:** The time stipulated in these Conditions for payments by the Customer and performance of its other obligations is of the essence.

9.10 **Assignment; Confidentiality; Set-off:** The Customer may not assign its rights under a Contract. The Customer has no right to inspection of any internal Trade-Air documents. The Customer may not set off any liability of Trade-Air to the Customer against any liability of the Customer to Trade-Air.

9.11 **Waiver; Variation:** No delay or indulgence on the part of Trade-Air in enforcing the terms hereof shall be construed as a waiver thereof nor prejudice the rights and remedies available to Trade-Air. No variation to these Conditions shall be binding on Trade-Air unless agreed in writing.

9.12 **Force Majeure; Severability:** Trade-Air shall not be liable by reason of any delay or failure to perform any of its obligations hereunder resulting from causes beyond its reasonable control. If a term of these Conditions is or becomes illegal, invalid or unenforceable in any jurisdiction that will not invalidate the remaining provisions or affect the legality, validity or enforceability of that or any other provision in any other jurisdiction.

9.13 **Legal Expenses:** The Customer shall reimburse Trade-Air for reasonable legal fees and expenses incurred by Trade-Air for the purpose of (A) seeking to collect any past due amounts payable by the Customer under any Contract and/or invoices or (B) repossessing an Item under Clause 9.1.

9.14 **Notices:** Any notice or communication given under a Contract shall be in writing and delivered personally, sent by reputable courier, fax or email to an address/number recently used by the receiving party and shall be deemed received: if delivered personally or by courier, upon delivery; or if sent by fax or email 1 business day after sending.

9.15 **Law and Jurisdiction:** (A) These Conditions/each Contract and any non-contractual rights or obligations connected with them are governed by English law without application of conflict of laws rules which refer to other laws and regulations; and (B) the Customer agrees for the benefit of Trade-Air that the English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with the same and the Customer submits to the jurisdiction of the English courts with respect to such disputes. Nothing in this Clause shall limit Trade-Air's right to take proceedings against the Customer in any other court of competent jurisdiction nor shall the taking of proceedings in one jurisdiction preclude Trade-Air from taking proceedings against the Customer in any other jurisdiction, whether concurrently or not. © Trade-Air 2013