

TERMS AND CONDITIONS

It is agreed:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions:

In this Agreement, unless the contrary intention appears:

AAE means "Australian Aerospace Engineering Pty Ltd";

Agreement means this document and includes any schedules, annexures, Order Confirmations, Invoices, Certificate of Conformances/Delivery Notes provided against the Customer's requirements;

CASA means the "Civil Aviation Safety Authority" of Australia;

Certificate of Conformance/Delivery Note means the controlled document Form - Certificate of Conformance /Delivery Note.

Component means an assembly of one or more Parts;

Costs mean the costs specified on the invoice or quotation;

Customer means the Customer named in Schedule 1;

Date of Agreement means the date listed in Schedule 1;

EO means "Engineering Order";

Estimate means an estimated cost for the Products or Services not a fixed-price quotation whereby the eventual cost may be different from the estimate;

Equipment means the Aircraft, Component or part thereof provided by the Customer for the provision of Services by AAE;

Fixed Price Quotation means a price that shall not vary for the specific parts and/or services except in accordance with authorised variations;

GST means goods and services tax or similar value added tax levied or imposed in Australia under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or otherwise on a supply;

IAW means "in accordance with";

Invoice means the AAE Tax invoice;

MITCOM means "manufactured in the course of maintenance";

FITCOM means "Fabricated In The Course Of Maintenance";

Order Confirmation means the AAE controlled document, Form -Order Confirmation or if the order is placed through www.aaestore.com.au the automatically generated 'New order' notification email.

Products mean all parts, materials or components supplied by AAE or by the Customer, fitted to the Equipment during the carrying out of Services or supplied by AAE whether or not fitted to the Equipment i.e. direct sale;

Payment Schedule means either the payment schedule in Schedule 3 to this Agreement or for a direct sale the schedule specified on the controlled document Form- Tax Invoice;

Quotation means the fixed price quotation for Products or Services;

Schedule 1 means Schedule 1 to this Agreement;

Schedule 2 means the Schedule of Services in Schedule 2 to this Agreement;

Schedule 3 means the Payment Schedule in Schedule 3 to this Agreement;

Schedule of Services means the schedule of services in Schedule 2 to this Agreement;

Services means maintenance, manufacturing or other service activities set out in Schedule 2;

STC means 'Supplemental Type Certificate';

Terms and Conditions means the terms and conditions of this Agreement

Work Scope means the work scope set out in Schedule 2 specific to the provision of services.

1.2 Interpretation

In this Agreement unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation of this Agreement;
- (b) the singular includes the plural, and vice versa;
- (c) a gender includes all genders;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (f) a reference to a clause or Schedule is a reference to a clause of or a Schedule to this Agreement;
- (g) a reference to an Agreement or document (including a reference to this Agreement) is to the Agreement or document as amended, supplemented, notated or replaced from time to time;
- (h) a reference to a party to this Agreement or another Agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (i) a reference to anything (including any right) includes a part of that thing, but nothing in this paragraph implies that performance of part of an obligation constitutes performance of the obligation;
- (j) a reference to a statute, regulation, proclamation, ordinance or bylaw includes all statutes, regulations, proclamations, ordinances or bylaws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances or bylaws issued under that statute;
- (k) a reference to \$, A\$ and AUD\$ is to Australian currency;
- (l) a reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately); and
- (m) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the provision of this Agreement or that provision.

2 PROVISION OF PRODUCTS AND SERVICES

2.1 Agreement

- 2.1.1 AAE agrees to provide the Customer with the Products and/or Services as agreed either by:
- i. formal agreement for the supply of Products and Services; or
 - ii. where the Customer accepts a quotation that is confirmed via provision of an Order Confirmation.
- 2.1.2 In consideration of the provision of Products and/or Services the Customer agrees to the Terms and Conditions in this Agreement.

2.2 Fixed Price Quotation or Estimate

- 2.2.1 A fixed-price quotation provided by AAE will be a fixed-price for the Products and/or Services which shall only vary in accordance with authorised variations.
- 2.2.2 A fixed-price quotation for Services will be valid for 30 days from the date of this Agreement.
- 2.2.3 A fixed-price quotation for Products will be valid for 30 days from the quotation date subject to prior sale.
- 2.2.4 An Estimate is not a fixed-price quotation and will be subject to variations caused by, but not limited to, variation in the:
- i. cost of Products, cost of consumables, cost of amenities, CPI, exchange rate, the work scope, discovered defects in the Equipment; additional Products required or circumstances found during the carrying out of the Services.
- 2.2.5 The Estimate is to provide the Customer with the opportunity to plan and prepare for Services to be carried out by AAE.
- 2.2.6 AAE reserves the right to amend or withdraw Quotations or Estimates at any time prior to Customer acceptance.

2.3 Services

- 2.3.1 AAE is authorised to carry out aircraft and aeronautical product maintenance services on Equipment specified in the Agreement under Australian CASA Certificate of Approval C604967 and subsequent CASR PART 145 Approval CASA.145.0182.
- 2.3.2 AAE is authorised to carry out manufacturing services for aircraft and aeronautical products as applicable under CASA Part 21 Production Certificate 604967-1.
- 2.3.3 The Customer accepts that AAE will carry out all works in accordance with the Civil Aviation Act and associated regulations.
- 2.3.4 Any Products or miscellaneous items replaced in the course of carrying out the Services will be returned to the Customer on the Customer's request. All costs associated with return of such items will be at the Customer's cost.
- 2.3.5 For any purposes incidental to carrying out the Services specified under this Agreement the Customer authorises AAE to test, transport, outsource services and in general manage the Equipment while the Services are carried out.
- 2.3.6 The details of the Services, in their entirety, provided by AAE for constituting this Agreement are detailed in the Schedule of Services.

2.4 Services - Time for completion

- 2.4.1 Unless specified in the Schedule of Services, there is no fixed time for the completion of the Services.
- 2.4.2 The parties agree and understand that delayed Product supply and decision making, particularly in relation to rectification works will have a direct impact on the work timeframe. The Customer shall not be entitled to make any claim for loss and damage arising out of such delay

2.5 Services - Additional Works and Rectification of Defects

- 2.5.1 In the event that additional works and or rectification of defects are required during the carrying out of Services beyond the expected work scope such works and rectification of such defects will only be undertaken after written approval and Agreement between the Customer and AAE.

2.6 Services - FITCOM/MITCOM

- 2.6.1 Under Certificate of Approval C604967 AAE is approved for MITCOM.
- 2.6.2 Under AAE's CASA Part 145 AMO Approval CASA.145.0182, AAE is approved for FITCOM.
- 2.6.3 If a Part is unavailable or not procurable within the required timeframe, AAE reserves the right to manufacture the Parts and will notify the Customer should this occur. AAE holds a complete register of all MITCOM/FITCOM Parts.

2.7 Products

- 2.7.1 Products supplied directly to the Customer or supplied during carrying out the Services under this Agreement will be sourced and administered in accordance with AAE's Quality Management System manual and procedures.
- 2.7.2 Products supplied directly to the Customer will be supplied with a *Certificate of Conformance/Delivery Note*, and where applicable the Authorised Release Certificate. AAE holds traceable documentation for all Products supplied except for Products designated NEW SURPLUS or COMMERCIAL.
- 2.7.3 Should the Customer supply Products required for the Services specified in the Agreement, the Products must be supplied with the appropriate documents as specified in AAE's Quality Management System manual and procedures. AAE reserves the right to charge an administration fee to process Customer supplied Products through AAE's quality system.
- 2.7.4 Administration fee for receiving Customer products is \$50/line item, or \$95/ hour, whichever is the least.

2.8 Costs, Payments and Penalties

- 2.8.1 The Customer agrees to pay AAE in accordance with the invoice and where applicable the Payment Schedule.
- 2.8.2 The Customer acknowledges and agrees that AAE may charge a late payment fee if the invoices are not paid by the due date. AAE reserves the right to:
- i. Charge interest penalties on overdue amounts. Interest will accrue on and from the date following the due date for payment of the outstanding amount up to and including the date of its payment. Interest shall be at the rate fixed in Regulation 36.7 of the *Uniform Civil Procedure Rules 2005* and computed at a daily rate on the amount not paid from the time it fell due until payment without prejudice to AAE's other rights to terminate this Agreement,
 - ii. Stop providing Products or Services until payment is made,

- iii. Exercise a lien over the Equipment until payment in full of all amounts owing by the Customer under this Agreement including costs and interest,
- iv. Recover from the Customer all costs including legal costs that AAE may incur in order to recover the moneys owing.

2.8.3 GST will be added to the Costs and payable by the Customer unless the Products or Services are supplied to a Customer who is not based in Australia and the GST does not apply to that Customer.

2.9 Title, Risk and Insurance

- 2.9.1 All Products supplied by AAE will remain the property of AAE until full payment is made by the Customer for the Products or Services supplied under this Agreement.
- 2.9.2 The Equipment title for which the Services are being provided on will remain with the Customer at all times. The risk in the Equipment while Services are being provided by AAE will remain with the Customer.
- 2.9.3 AAE shall hold appropriate Hangar Keepers Liability insurance to cover the agreed value of the Equipment. AAE shall also hold insurance for goods in transit that are owned by AAE.
- 2.9.4 In the case where the Equipment is a complete aircraft, the Customer is responsible for Aviation Hull and Liability insurance, which must be current and comprehensive at all times for the duration of the Services provided. Should the aircraft require ground runs and flight testing the aircraft must be insured by the Customer for flight risks.
- 2.9.5 Insurance for all Products supplied to the Customer is the responsibility of the Customer.

2.10 Freight and transport

- 2.10.1 Any Customer owned Equipment that requires transportation from AAE's facility to another organisation for outsourced Services must be insured by the Customer. Once the items leave AAE's facility, AAE will not be liable for any loss, damage or delay. Unless otherwise specified, all freight costs associated with the transport of items for such Services will be chargeable to the Customer in addition to the Costs.
- 2.10.2 Should AAE be requested to deliver the Customer's Equipment, AAE will not be liable for any loss, damage, delay or non-delivery once the Equipment leaves AAE's facility. Unless otherwise specified, all costs associated with delivery of Customer's Equipment will be chargeable to the Customer in addition to the Costs.
- 2.10.3 Upon shipment of Products to the Customer from AAE's facility, AAE will not be liable for any loss, damage or delay.
- 2.10.4 Unless otherwise specified, all freight costs associated with the transport of Products will be chargeable to the Customer in addition to the Costs of the Product.
- 2.10.5 Should the Customer request a freight courier other than that nominated by AAE, additional cost may be incurred if the Customer's courier does not Service AAE's facility.
- 2.10.6 The Customer may elect to collect the Products subject to 2.11

2.11 Dispatch

- 2.11.1 "Dispatch" means to:
 - i. Provide the Products to the designated freight forwarder for shipping, or in the case of a Customer pick up; and

- ii. provide the Products directly to the Customer.

2.11.2 AAE will endeavour to dispatch the Products in a timely and reasonable manner, but is under no obligation to do so until the Customer has made full payment of all Costs or the Customer account is in good standing.

2.12 Advanced and Partial Shipments

- 2.12.1 AAE is authorised to advance the delivery date and complete the performance of any order.
- 2.12.2 AAE is authorised to deliver products in partial orders and invoice the Customer for that portion of the order.

2.13 Applicability and Suitability

- 2.13.1 Specifications and images presented on AAE's websites are for reference purposes only and may not represent actual contents or specifications of Products. It is the Customer responsibility to determine applicability and suitability of Products.

2.14 Storage

- 2.14.1 Should the Customer not collect the Customer's Equipment or Products within the agreed time frame after notification has been received that the Services are completed, AAE reserves the right to charge hangarage or remove the Equipment or Products from the hangar.

2.15 Acceptance

- 2.15.1 The Customer acceptance of Equipment and or Products is deemed to occur 7 days after delivery to the Customer or collection by the Customer.
- 2.15.2 Should the Customer determine that Products provided or Services performed are not in accordance with this Agreement the Customer may, within 7 days of receiving the Equipment or Products, provide written notice and substantial evidence in support of the determination. The ensuing resolution process will entail:
 - i. an assessment by AAE of the validity of the claim and,
 - ii. determination by AAE of a suitable and fair resolution, be that a replacement Product or,
 - iii. rectification by AAE of the defect or,
 - iv. covering of the cost for the Customer to rectify the defect or,
 - v. refund or partial refund to cover the cost of the reduced value of the Product or Services.
- 2.15.3 The Customer must at all times comply with AAE's instructions during the resolution process.

2.16 Returns

- 2.16.1 The Customer may return a Product if:
 - i. the Product is a returnable item,
 - ii. AAE provides the Customer with a Return Material Authorisation.
- 2.16.2 The Customer shall be responsible for all transport costs and insurance and packaging of the Products to prevent transit damage.
- 2.16.3 AAE reserves the right to charge a restocking fee in an amount up to 50% of the cost of the Product for each Product returned.

2.17 Warranty

- 2.17.1 For Services, the Customer warrants that it is the owner of the Equipment for which the Services have been requested or that the Customer has the authority and is approved by the owner of the Equipment to request the Services in this Agreement.
- 2.17.2 Unless the Customer notifies AAE otherwise, the Customer warrants that it is the end user of the Product and or Services and takes full responsibility for the acceptance and use of the Product and or Service.
- 2.17.3 AAE warrants that all Products used are of acceptable quality. Determination that Products are acceptable is made by processing all Products used in accordance with the AAE Quality Management System manual and procedures.
- 2.17.4 AAE warrants that all Services will be carried out with due care, skill and where applicable in accordance with the appropriate approved technical data.
- 2.17.5 All structural repair works carry a 6 month or 500 hour guarantee, whichever occurs first.
- 2.17.6 The workmanship guarantee given in clause 2.17.5 will not be honoured under the following circumstances:
- i. The Customer has misused the Equipment causing it to become defective.
 - ii. The Customer does not properly inspect the Equipment prior to use.
 - iii. The Customer alters or uses the Equipment for a purpose other than it was originally intended. (e.g. in contravention of the Approved Flight Manual).
- 2.17.7 Products supplied by AAE may have a manufacturer's warranty period. Should a Product be found defective as per clause 2.15.2 the warranty will be determined on a Product by Product basis.
- 2.17.8 Should a Product or Component fail, the Customer must notify AAE in writing within 5 days of the Customer becoming aware of the defect. Warranty claims against product failure will not be honoured under the following circumstances:
- i. The Customer has misused the Product causing it to become defective.
 - ii. The Customer does not properly inspect the Product prior to use.
 - iii. The Customer alters or uses the Product for a purpose other than it was originally intended. (e.g. in contravention with Approved Data).

2.18 Indemnity and liability

- 2.18.1 AAE will be responsible for all materials, plant and Equipment owned by or entrusted to AAE or its employees, agents or servants for any purpose related to this Agreement. All Customer owned Equipment will be inventoried on arrival and a master copy will be reconciled by both parties within 24 hours of delivery.
- 2.18.2 The Customer agrees to indemnify, defend and hold harmless AAE against any action, claim, proceeding, demand, damages, cost, expense liability or loss which AAE may suffer or incur in relation to this Agreement.
- 2.18.3 AAE's total liability regardless of any other clause in this Agreement will be limited to, at AAE's option:

- i. Cost of supplying a replacement Product,
 - ii. Cost of repairing a Product,
 - iii. Cost of re-supplying the Services or part thereof,
 - iv. Cost of refunding the value of the Products or Services supplied.
- 2.18.4 In any case the total cost of the liability will not exceed the amount paid in accordance with invoices issued in relation to the Services provided.
- 2.18.5 AAE 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, or other fault or harm in the Parts and/or Services supplied by or on behalf of or in any arrangement with AAE and whether or not due to the negligence of AAE, its servants or agents.

2.19 Customer Liaison

- 2.19.1 AAE will endeavour to provide regular updates/progress reports on the Services provided, as well as on an 'as needed' basis.
- 2.19.2 The Customer shall provide a representative for contact who can be available at all times during the provision of the Services to discuss findings and any requirements for work scope alteration.

3 GENERAL

3.1 Notices

- 3.1.1 Any notice or other communication relating to this Agreement shall be given in writing and in the English language.
- 3.1.2 In addition to any other lawful means, a notice may be given by:
- i. Being served personally;
 - ii. Being left at the current address for service;
 - iii. Being sent to the current address for service by pre-paid registered post with confirmation of receipt requested or, if the address is outside Australia, by pre-paid airmail; or
 - iv. A facsimile to the current facsimile number for service.
- 3.1.3 If given by mail, service occurs on the third day after posting.
- 3.1.4 If given by facsimile, a positive transmission report from the sender's machine is prima facie evidence that service occurred at the time indicated on the report.
- 3.1.5 If given by email, a positive delivery report from the sender's email is prima facie evidence that service occurred at the time indicated on the report.
- 3.1.6 If two or more people comprise a party, notice to one shall be sufficient to constitute notice to all.

3.2 Counterparts

- 3.2.1 This Agreement may be executed in two or more consecutive counterparts (including by facsimile), each of which shall be an original, with the same effect as if the signatures were upon the same instrument, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered (by facsimile or otherwise) to the other Party.

3.3 Governing Law and Jurisdiction

- 3.3.1 This Agreement shall be governed by the laws of New South Wales.
- 3.3.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- 3.3.3 The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from this Agreement.

3.4 Prohibition, enforceability and severance

- 3.4.1 Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective, only to the extent of that prohibition.
- 3.4.2 Any provision of, or the application of any provision of, this Agreement which is void, illegal, or unenforceable in any jurisdiction, does not affect the validity, legality or enforceability of that provision in any other jurisdiction, or of the remaining provisions in that or any other jurisdiction.
- 3.4.3 If a clause is void, illegal or unenforceable, it may be severed, without affecting the enforceability of the other provisions in this Agreement.

3.5 Assignment

- 3.5.1 No Party to this Agreement may assign any of its rights and obligations under this Agreement without the prior written consent of the other party.

3.6 Entire Agreement

- 3.6.1 This Agreement (including the Schedules) constitutes the entire agreement among the Parties with respect to the matters covered by this Agreement and thereby, supersedes all previous written, oral or implied understandings among them with respect to such matters.

3.7 Amendment and Modification

- 3.7.1 This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties.

3.8 Waiver

- 3.8.1 Waiver of any right, power, authority, discretion or remedy arising on a breach of or default under this Agreement must be in writing and signed by the party granting the waiver. A failure or delay in exercise, or partial exercise of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement does not result in a waiver of that right, power, authority, discretion or remedy.

3.9 Variation and Termination

- 3.9.1 This Agreement may only be varied, terminated by agreement, or wholly or partly released, by agreement in writing signed by each of the parties.

3.10 Cumulative Rights

- 3.10.1 The rights, powers, authorities, discretions and remedies of a party under this Agreement do not exclude any other right, power, authority, discretion or remedy.

3.11 Further Assurances

- 3.11.1 Each party must do all things necessary to give full effect to this Agreement and the transactions it contemplates.

3.12 Joint and Several Liability

- 3.12.1 Two or more parties to this Agreement who represent the same interest, assume the liability to comply with their obligations under this Agreement jointly, and in addition each of them assumes those obligations severally.

3.13 Compliance with Notices on Business Day

- 3.13.1 If under the provisions of this Agreement or under any notice or demand anything is required to be done on a day which is not a Business Day, the day or the last day for compliance is deemed to be the immediately following Business Day.

3.14 Waiver of Breach

- 3.14.1 No failure by AAE or the Customer to insist on strict performance on any of these Terms and Conditions is a waiver of any right of such party thereafter to enforce any such provisions.

3.15 Force Majeure

- 3.15.1 AAE will not be liable for any breach of this Agreement due to any matter or thing beyond AAE's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lockouts, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident).
- 3.15.2 In the event of Force Majeure AAE and the Customer will use their best efforts to complete the Agreement to the extent possible.

3.16 Confidentiality

- 3.16.1 The terms of this Agreement and the details of the Services provided shall not be disclosed to any third party without written approval from AAE.

3.17 Guarantee

- 3.17.1 The Guarantors agree that they will (to the full extent of the Customer's liability to AAE under this Agreement) pay and make contribution in respect of any sum payable by the Customer to AAE in the event the Customer fails to make such payment and each of the Guarantors irrevocably and unconditionally guarantees to AAE the payment of the amounts due and payable under this Agreement.