

## **STANDARD TERMS AND CONDITIONS OF SALE**

### **1. APPLICABILITY**

1.1. Unless expressly agreed otherwise in writing by an authorised representative of Pacific AirHub:

1.1.1. these Terms and Conditions apply to the sale of all goods and services by Pacific AirHub, and prevail over the terms of any other document, including any terms sought to be imposed by the Customer;

1.1.2. notwithstanding anything to the contrary in any Order, the making of an Order will be deemed as acceptance by the Customer of these Terms and Conditions; and

1.1.3. no action by Pacific AirHub will be deemed to be acceptance by Pacific AirHub of any terms proposed by the Customer or a waiver by Pacific AirHub of these Terms and Conditions or any provision contained in them.

### **2. ACCEPTANCE**

2.1. Pacific AirHub will not be deemed to have accepted any Order until it provides a formal written acceptance (which may be by way of email) or commences Services or supplies Goods pursuant to the Order.

### **3. PRICE**

3.1. Any quoted price remains fixed for 30 days or for such other period as is specified. Once the relevant period expires without an Order being placed and Pacific AirHub accepting the same, all prices may change without notice at any time.

3.2. Where no fixed price has been quoted, all Orders for Goods and / or Services will be charged for at the prices prevailing at the date of delivery of Goods and/or performance of Services.

3.3. Notwithstanding any other provision of the Sales Contract, if the final price is dependent on the condition of any Component (including where being provided for exchange), the price will be determined following inspection of that Component and final determination of the Services and / or Goods required to complete the Order.

3.4. Unless otherwise specified, all prices given are exclusive of GST which shall (if applicable) be payable in addition to those prices.

3.5. All prices are exclusive of freight costs, insurance charges, duties, installation, and maintenance costs unless otherwise agreed by Pacific AirHub and the Customer in writing.

3.6. Unless agreed by Pacific AirHub, all parts required for the provision of any Services will be supplied by Pacific AirHub. Where it is agreed that parts are to be supplied by the Customer, Pacific AirHub will charge a surcharge equivalent to 25% of the retail price of the supplied parts. Such parts will be in all respects at the sole risk and cost of the Customer, and the Customer releases Pacific AirHub from, and indemnifies Pacific AirHub against, any loss, cost, claim or expense arising out of or in respect of the fitting, operation or use of the parts.

3.7. The Customer shall, upon invoice by Pacific AirHub, pay storage costs (as reasonably determined by Pacific AirHub) for any period in which any Goods or Components are in Pacific AirHub's possession or in any Pacific AirHub facility:

3.7.1. after the required delivery period determined under clause 5.3;

3.7.2. and Customer has not promptly provided provide instructions or consent for the completion of Services; or

3.7.3. at any time for any other property deposited or left with Pacific AirHub and in respect of which no instruction for Services has been given.

#### **4. TERMS OF PAYMENT**

4.1. Except where Pacific AirHub allows Credit Terms, Pacific AirHub may require payment in full in cleared funds:

4.1.1. at the time of acceptance of the Order; or

4.1.2. prior to the performance of any Services or the delivery to the Customer of any Goods, or any Component or other property in respect of which Services have been performed.

4.2. Where Goods and/or Services are supplied on Credit Terms, payment is due by the 20th of the month following the date of the invoice or within such other time or times as may be specified by Pacific AirHub.

4.3. Payment of all monies must be made without set-off or deduction of any kind, whether or not the Customer believes that it has a claim against Pacific AirHub. If the Customer is required by law to deduct or withhold any sum from any amount due, the Customer will pay to Pacific AirHub such additional sum as is required to ensure that Pacific AirHub receives from the Customer the entire invoiced amount.

4.4. Pacific AirHub may, at its absolute discretion and at any time:

4.4.1. agree to extend credit to the Customer;

4.4.2. determine any terms or limits to apply to the provision of any credit; and

4.4.3. vary, amend or suspend any Credit Terms, including the credit limit.

4.5. If any payment received or recovered by Pacific AirHub in respect of any Goods or Services is avoided by, or is required to be refunded, repaid or accounted for under, any applicable law (including any law relating to preferences or insolvency), then:

4.5.1. that payment or application will be deemed not to have discharged or affected the liability or obligation in respect of which the payment or application was received or made; and

4.5.2. Pacific AirHub and the Customer will, to the maximum extent permitted by law, be deemed to be returned to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment had not been received or recovered.

#### **5. DELIVERY**

5.1. Except where Pacific AirHub has agreed to deliver any Goods or Component to the Customer's premises, delivery shall take place at Pacific AirHub's Facility. Subject to any rights the Customer may have under the Consumer Guarantees Act 1993, Pacific AirHub is not liable for, and the Customer releases Pacific AirHub from and indemnifies Pacific AirHub against, any loss or damage to the Goods or Component during transportation even though such loss or damage may be caused or contributed to by Pacific AirHub's negligence or other default.

5.2. Dates given for shipment or delivery are indicative only. Pacific AirHub shall not be liable in any way to the Customer or any other party for cost, loss, damage, or expense sustained due to any delay.

5.3. Pacific AirHub will notify the Customer when any Goods and/or Components are available for Delivery. The Customer shall take delivery of the Goods and/or Component within 2 business days of such notification or such later period as may be agreed, provided that Pacific AirHub has no obligation to release any Goods and/or Components until such time as payment has been received.

5.4. No claim in respect of any discrepancy in Goods delivered will be accepted, and Pacific AirHub will have no liability for the same, unless made in writing to Pacific AirHub within 2 business days of delivery.

5.5. Delivery by Pacific AirHub to a carrier, or any other third party acting for the Customer, shall be deemed to be delivery to the Customer.

5.6. Pacific AirHub shall be relieved of all obligations under a Sales Contract in the event of any delay or non-performance arising from any event beyond Pacific AirHub's reasonable control, including (without limitation): wars; strikes; lockouts; delay or defaults of manufacturers or suppliers; or acts of God or nature. Pacific AirHub shall have no liability to, and the Customer releases Pacific AirHub from, all loss, cost, damage or expense arising from or in consequence of any such cancellation, suspension or amendment.

## **6. DEFAULT**

6.1. If the Customer commits an event of default, or Pacific AirHub considers that the Customer may commit such an event of default Pacific AirHub may:

6.1.1. Demand immediate payment of all or part of any sums owing irrespective of the due date; and/or

6.1.2. require security for Customer's obligations to Pacific AirHub's full satisfaction before any further supplies are made to the Customer; and/or

6.1.3. without notice withhold supplies of Goods and Services ordered or requested by the Customer; and/or

6.1.4. cancel any Sales Contract and seek damages from the Customer.

6.2. Without prejudice to Pacific AirHub's other remedies, the Customer shall pay interest on all sums not paid on the Due Date, calculated and compounded daily on the amount due from the Due Date until the actual date of payment at a rate equal to 1.5% per month.

6.3. The following shall constitute events of default by the Customer:

6.3.1. failing to pay any sum by the Due Date;

6.3.2. intimating that it will not pay any sum by the Due Date;

6.3.3. the seizure of any Goods by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods;

6.3.4. any Goods in the possession of the Customer are damaged while any sum due from the Customer to Pacific AirHub remains unpaid;

6.3.5. the Customer is bankrupted or put into liquidation or a receiver or administrator is appointed to the Customer or any of the Customer's assets, or the Customer gives notice of a proposed compromise with all or any of its creditors;

6.3.6. a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days);

6.3.7. any material adverse change in the financial position of the Customer;

6.3.8. if the Customer no longer carries on business or threatens to cease carrying on business;

6.3.9. If the ownership or effective control of the Customer is transferred or the nature of the Customer's business is materially altered; or

6.3.10. the Customer, in Pacific AirHub's opinion, acts unreasonably in delaying delivery or refusing to accept delivery of any Goods, Component, or Services.

6.4. The Customer indemnifies Pacific AirHub against all costs, including costs on a solicitor-client basis and debt collectors' costs, incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of these Terms and Conditions.

## **7. OWNERSHIP AND RISK**

7.1. In this clause 7 unless context otherwise requires:

7.1.1. PPSA means the Personal Property Securities Act 1999; and

7.1.2. The terms accession, collateral, Purchase Money Security Interest, financing change statement, financing statement, security interest, and verification statement have the meanings given to them in the PPSA.

7.2. Risk in the Goods shall pass to the Customer on delivery at Pacific AirHub's Facility. Risk in any Component remains with the Customer throughout the period in which the Component is in Pacific AirHub's care, custody or control or in transit to, from or between any Pacific AirHub Facility. The Customer releases Pacific AirHub from any liability in respect of any damage to any Goods or Component arising while the risk in such Goods or Component lies with the Customer.

7.3. The Customer shall:

7.3.1. at all times maintain appropriate insurance, including transit and hull and liability insurances, to the extent relevant, over any Component whilst the same is in transit or in Pacific AirHub's care, custody or control;

7.3.2. where payment has not been made for Goods at the time they are delivered at Pacific AirHub's Facility and accordingly title has not passed to the Customer, insure the Goods in the name of Pacific AirHub and the Customer for their respective interests.

7.4. Notwithstanding any period of credit granted by Pacific AirHub, legal and beneficial title and ownership of any and all Goods supplied by Pacific AirHub passes to the Customer only when the Customer has made payment in full in cleared funds for all Goods and Services provided by Pacific AirHub and for any other amounts owing by the Customer to Pacific AirHub from time to time.

7.5. For the avoidance of doubt clause 7.4 also applies to Goods which are or have attached, fixed, installed, mixed or been incorporated in any way into any Component or other goods of the Customer or in any goods over which the Customer has rights.

7.6. Until title / ownership in any Goods passes to the Customer, the Customer holds the Goods as fiduciary, bailee and agent for Pacific AirHub and will (to the extent possible) store the Goods in such manner that they are clearly identifiable as the property of Pacific AirHub and will keep separate records in respect of the Goods.

7.7. In consideration of Pacific AirHub providing Goods and/or Services to the Customer and for the purposes of section 36(1) of the PPSA, the Customer grants to Pacific AirHub the following security interests:

7.7.1. A Purchase Money Security Interest over Goods and the proceeds of the sale of Goods, existing until the debt owed by the Customer in respect of those Goods is paid in full.

7.7.2. A security interest over all Goods and their proceeds until Pacific AirHub discharges the security interest.

7.7.3. A security interest in all the Customer's right, title and interest in all of the Customer's other present and after acquired property, being all of the Customer's personal property and all of the Customer's other property (including land) which will be on the terms of the standard form of General Security Agreement most recently published by the Auckland District Law Society at the date of these Terms and Conditions (including any memorandum of terms and conditions referred to in that agreement). For the avoidance of doubt, the security interest over land also constitutes an agreement to mortgage;

7.8. Each security interest is a continuing interest irrespective of whether there may be monies or obligations owing by the Customer to Pacific AirHub at a particular time.

7.9. Pacific AirHub may register a financing statement in respect of its security interests. The Customer waives its right to receive a copy of any verification statement confirming registration of a financing statement or financing change statement.

7.10. The Customer agrees to do anything Pacific AirHub reasonably requires to ensure Pacific AirHub has perfected security interests, including signing any further documents and/or providing any further information (such information to be complete, accurate and up to date in all respects), as Pacific AirHub may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.

7.11. The Customer gives irrevocable authority to Pacific AirHub to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer, or before default if Pacific AirHub believes a default is likely, and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are installed or incorporated. Pacific AirHub will not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Pacific AirHub may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all liabilities and expenses (including legal expenses, repossession, storage and selling costs) incurred by Pacific AirHub in enforcing or attempting to enforce its rights under these Terms and Conditions) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as Pacific AirHub determines on account of wear and tear, depreciation, obsolescence, loss of profit, and costs.

7.12. Where Goods are retained by Pacific AirHub pursuant to clause 7.11, the Customer waives the right to receive notice under s.120 of the PPSA and to object under s.121 of the PPSA.

7.13. The rights of the Customer under sections 114(1)(a), 125, 126, 127, 129, 131 and 132 of the PPSA do not apply, and the Customer expressly waives those rights. Sections 133 and 134 of the PPSA do not apply.

7.14. Pacific AirHub may in its discretion allocate any payment received from the Customer towards any interest, costs, invoice or portion of an invoice that Pacific AirHub determines (in any order that Pacific AirHub determines) and may do so at the time of receipt or at any time afterwards and on default by the Customer, Pacific AirHub may reallocate any payments previously received and allocated. In the absence of any payment allocation by Pacific AirHub, payment shall be deemed to be allocated in such manner as preserves the maximum value of Pacific AirHub's Purchase Money Security Interest in the Goods.

7.15. Notwithstanding anything in this clause 7, Pacific AirHub shall have a particular and general lien over all property of the Customer that is in or which comes into its possession, for all sums due to it at any time, whether or not such sums are overdue for payment. The rights given by this clause are in addition to and not in substitution for any rights that Pacific AirHub may have under the PPSA and the exercise of rights either under lien or under the PPSA shall not constitute a waiver of other rights or give rise to an estoppel against Pacific AirHub.

## **8. CREDITS**

8.1. Credits sought for returned Goods are at Pacific AirHub's exclusive discretion. Goods must be:

8.1.1. returned within seven days of receipt;

8.1.2. returned free into Pacific AirHub's store, all transportation charges, insurance, taxes duties and additional charges being borne by the Customer;

8.1.3. in the condition as supplied and in Pacific AirHub's original containers, all unsoiled and undamaged; and

8.1.4. accompanied by the number and date of supplying invoice.

## **9. SUPPLY FOR BUSINESS PURPOSE**

9.1. The parties agree that all Goods and Services are supplied and acquired in trade, to contract out of the Consumer Guarantees Act 1993, and that it is fair and reasonable for them to be bound by this provision.

9.2. Notwithstanding clause 9.1, if the Customer is in fact not in trade, nothing in these Terms and Conditions shall be construed as an attempt by Pacific AirHub to contract out of the Consumer Guarantees Act 1993.

## **10. WARRANTIES AND CONDITIONS**

10.1. This clause 10 shall apply where the Customer is not a Consumer.

10.2. Except as provided in any express warranty given by Pacific AirHub, no warranty or condition shall be implied against Pacific AirHub by any statute, at common law or otherwise and no representation, express condition, warranty or variation of these Terms and Conditions shall be binding on Pacific AirHub unless it is in writing and signed by a director of Pacific AirHub.

10.3. Goods returned under warranty must be returned free into Pacific AirHub's store, all transportation charges, insurance, taxes, duties and charges being borne by the Customer.

## **11. GUARANTEES AND CONDITIONS**

11.1. This clause 11 shall apply where the Customer is a Consumer.

11.2. If Goods supplied or Services provided are defective as provided for under the Consumer Guarantees Act 1993, Pacific AirHub will meet its obligations under that Act. To the maximum extent possible, Pacific AirHub shall have the discretion to choose the remedy that it will provide to the Customer.

11.3. With the exception of the guarantees in the Consumer Guarantees Act 1993, no warranty or condition shall be implied against Pacific AirHub by any other statute, at common law, or otherwise, and no representation, express condition, warranty or variation of the Terms and Conditions shall be binding on Pacific AirHub unless it is in writing and signed by a director of Pacific AirHub.

11.4. Where Goods are subject to any express warranty given by Pacific AirHub to remedy any defect by repairing or replacing the goods with goods of identical type, the Consumer shall not be able to exercise its remedies set out in the Consumer Guarantees Act 1993 without first giving Pacific AirHub a reasonable opportunity to remedy the defect by repair or replacement in accordance with its express warranty.

11.5. Goods returned under express warranty for the purposes of remedying any defect must, where practical be returned free into Pacific AirHub's store, all transportation charges, insurance, taxes, duties and charges being borne by the Customer.

## **12. CLAIMS**

12.1. This clause 12 shall apply where the Customer has a claim which is not subject to the Consumer Guarantees Act 1993.

12.2. Where Goods are returned by the Customer due to alleged defect, Pacific AirHub may, in its sole discretion (if it accepts the claim), repair the goods or make a reasonable allowance on the purchase from Pacific AirHub of replacement goods, provided that the following conditions are met: all claims must be received by Pacific AirHub within seven (7) days of delivery of the Goods;

12.2.1. all claims must be accompanied by the number and date of supplying invoices;

12.2.2. all claims must specifically identify the defect and if applicable be accompanied by the defective Goods; and

12.2.3. Pacific AirHub shall have a reasonable opportunity to investigate the claim.

12.3. Goods returned must be returned free into Pacific AirHub's store, all transportation charges, insurance, taxes, duties and additional charges being borne by the Customer.

12.4. Where any claim is made by the Customer in respect of any alleged defect in any Service, Pacific AirHub may, in its sole discretion (if it accepts the claim), remedy any defect in the Service or make a reasonable allowance on the purchase from Pacific AirHub of replacement Services, provided that the following conditions are met:

12.4.1. all claims must be received by Pacific AirHub within seven (7) days of performance of the Service by Pacific AirHub;

12.4.2. all claims must be accompanied by the number and date of supplying invoices;

12.4.3. all claims must specifically identify the defect; and

12.4.4. Pacific AirHub shall have a reasonable opportunity to investigate the claim.

12.5. Where the claim arises in relation to Services performed on or in respect of any property, the Customer must return that property free into Pacific AirHub's premises, all transportation charges, insurance, taxes, duties and additional charges being borne by the Customer.

12.6. If claims are not received in accordance with the requirements specified in subclause 12.2.1 and/or subclause 12.4.1, the Customer shall be conclusively deemed to have accepted the Goods and/or Services and Pacific AirHub shall not have any liability whatsoever in relation to the Goods or Services.

### **13. LIMITATION OF LIABILITY**

13.1. Pacific AirHub's aggregate liability in respect of arising out of the supply of any Goods or Services, whether in contract, in tort (including negligence), for breach of statutory duty, or otherwise (other than for death or personal injury caused by Pacific AirHub's negligence) shall be limited to the purchase price of the Goods and/or the Services in respect of which such liability arises. Pacific AirHub shall have no liability or responsibility for any direct, indirect or consequential injury, loss, cost, expense or damage whatsoever and howsoever arising PROVIDED THAT this subclause shall not prevent a Customer who is a Consumer from exercising any remedies that the Customer may have under the Consumer Guarantees Act 1993.

13.2. Pacific AirHub shall not be responsible for any damage whatsoever caused either to the Goods supplied or as a result of the malfunction of such Goods if:

13.2.1. the Goods (or any Component within which the Goods are installed) are fitted by an unqualified tradesman; or

13.2.2. the Goods are fitted in an untradesmanlike manner; or

13.2.3. the Goods are in any way adapted or put to a use for which they are not specifically intended; or

13.2.4. the Goods are added to or repaired using components not recommended or approved by the manufacturer of such Goods; or

13.2.5. the Goods are improperly transported, operated or stored.

### **14. GENERAL PROVISIONS**

14.1. If any of these Standard Terms and Conditions or of any Sales Contract are held by a Court to be invalid, void or ineffective by virtue of illegality or otherwise, such condition, or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other conditions of part of them.

14.2. Customer may not assign, transfer or otherwise deal with any Sales Contract without Pacific AirHub's prior written consent.

14.3. Customer acknowledges that Goods supplied by Pacific AirHub may be subject to export control laws, rules and regulations of the United States of America, the European Union, and other applicable jurisdictions ("Export Control Laws"). Customer agrees:



14.3.1. to provide to Pacific AirHub all necessary and relevant information as may be appropriate to allow Pacific AirHub to assess the applicability of Export Control Laws to any sale of Goods or Services,

14.3.2. Pacific AirHub will not be liable to Customer for any failure to provide Goods or Services as a result of government or supplier actions that impact Pacific AirHub's ability to perform, including:

(a) the failure to provide or the cancellation of export or re-export licenses;

(b) any subsequent interpretation of applicable import, transfer, export or re-export law or regulation after the date of any Order or commitment that has a material adverse effect on Pacific AirHub's performance; or

(c) delays due to Customer's failure to follow applicable import, export, transfer, or re-export laws and regulations

14.3.3. that Pacific AirHub may cancel any Sales Contract that Pacific AirHub reasonably believes may be in breach of any Export Control Laws.

14.3.4. to comply strictly with all applicable Export Control Laws in relation to any sale, resale, transfer, supply or disposition of any Goods supplied by Pacific AirHub, and assumes sole responsibility for obtaining licenses to export or re-export as may be required.

14.4. Pacific AirHub may vary these Terms and Conditions from time to time, and the Customer agrees that any such variation will be effective from the date of publication of such terms on Pacific AirHub's website or any earlier delivery to the Customer. It is the Customer's responsibility to review the terms prior to placing any Order or entering into any Sales Contract.

## 15. INTERPRETATION

15.1. Unless the context requires otherwise, in these Standard Terms and Conditions of Sale:

**Pacific AirHub** means Pacific AirHub Ltd and its successors and assigns;

**Pacific AirHub's Facility** means the Pacific AirHub facility at which the Services are to be performed, as determined in the Sales Contract or by Pacific AirHub;

**Component** means any item (including an Aircraft or any part thereof) in respect of which the Customer has requested Pacific AirHub to provide Services (including an exchange), which may include the installation of Goods;

**Customer** means any purchaser of Goods or Services from Pacific AirHub, whether under cash or credit terms;

**Consumer** means a consumer as defined in Section 2 of the Consumer Guarantees Act 1993 but does not include a Customer, who, by clause 9 of these Terms and Conditions, has contracted out of that Act;

**Credit Terms** means any credit terms provided by Pacific AirHub from time to time for payment for any Goods and / or Services;

**Due Date** means the due date for payment;

**Goods** means all goods supplied by Pacific AirHub, including as part of the provision of any Services;

**GST** means Goods and Services Tax in accordance with the Goods and Services Tax Act 1985, or any other applicable consumption tax applicable to the sale of the Goods and/or Services;

**Order** means any request or purchase order issued by the Customer for the supply of Goods and / or Services by Pacific AirHub. An order is an irrevocable offer by the Customer to purchase the stated Goods and Services in accordance with these Terms and Conditions and such other conditions as Pacific AirHub may accept;

**Sales Contract** means any contract between Pacific AirHub and the Customer comprising these Terms and Conditions together with any relevant quote or estimate provided by Pacific AirHub, any documents or materials Pacific AirHub intends to be part of such contract, and the Order placed by the Customer (but excluding any Customer terms not expressly accepted by Pacific AirHub);

**Services** means all services of any nature provided by Pacific AirHub to the Customer.

**Terms and Conditions** means these Standard Terms and Conditions of Sale together with Pacific AirHub's Credit Terms, if applicable.

These Standard Terms and Conditions are effective from September 2020.