

## **STANDARD TERMS AND CONDITIONS OF AGREEMENT**

### **1. GENERAL**

- 1.1 These Standard Terms and Conditions of Agreement between National Airways Corporation Pty Ltd and the Customer shall apply to each and every agreement, whether it be for parts sales, fuel sales, pilot tuition and training, workshop maintenance, overhauls, servicing, repairs, aircraft and helicopter charter and / or leasing and / or the sale of aircraft and helicopters and / or the provisions of any other aviation related service, which is concluded between National Airways Corporation Pty Ltd and the Customer (hereinafter referred as the "National Airways Corporation Pty Ltd Agreement").
- 1.2 It is specifically recorded and agreed that the terms and conditions contained herein together with any National Airways Corporation Pty Ltd Agreement, constitute the entire agreement between the parties hereto as to the subject matter hereof and no other agreements, representation or warranties between the parties, other than those specifically set out herein and in a National Airways Corporation Pty Ltd Agreement, shall be binding on the parties.
- 1.3 No addition to, variation, consensual cancellation or novation of this agreement, including this clause, and no waiver of any right contained herein, or its termination, shall be of any force and effect whatsoever, unless reduced to writing and signed by the parties hereto, or their duly authorized representatives.
- 1.4 No latitude, extension of time or other indulgence, which may be given or permitted by one party to the other, shall operate as a waiver or novation of or otherwise affect any of a party's rights in terms of or arising from this Agreement.
- 1.5 Each clause in these terms and conditions is severable, the one from the other, and if any clause is found by any competent court to be defective or unenforceable for whatever reason, the remaining clauses shall be and continue to be of full force and effect.
- 1.6 The clause headings contained in this agreement are not to be used in the interpretation hereof.
- 1.7 Each reference in this agreement to:
  - 1.7.1 the singular includes the plural and vice versa;
  - 1.7.2 a gender, includes the other genders;
  - 1.7.3 a person means and includes any individual, company, close corporation, partnership, association, firm, joint venture, trust, unincorporated organization, association or any other legal entity, in each case, whether having distinct legal personality or not.
- 1.8 All illustrations, brochures, drawings, diagrams, advertisements, schedules, estimated delivery date schedules and documents of a similar nature provided by National Airways Corporation Pty Ltd to the Customer are for general information purposes only and shall not be binding on National Airways Corporation Pty Ltd in any manner whatsoever.
- 1.9 The Customer hereby undertakes in favour of National Airways Corporation Pty Ltd:
  - 1.9.1 that the Customer shall notify National Airways Corporation Pty Ltd in writing of any change to any information completed by the Customer in the Customer Database Information and Credit Application Form within 7 (seven) days after the effective date of any such change; and
  - 1.9.2 that the Customer shall notify National Airways Corporation Pty Ltd in writing of any change of address and/or telephone number and/or other contact details of the Customer and/or its business, not less than 30 (thirty) days prior to the effective date of any such change.
  - 1.10 The Customer hereby acknowledges and specifically agrees that any credit facility granted to the Customer by National Airways Corporation Pty Ltd, following upon National Airways Corporation Pty Ltd' approval of the credit application form to which this agreement is attached and incorporated into, may be immediately suspended or withdrawn by National Airways Corporation Pty Ltd in the event that the Customer breaches any provision of these terms and conditions, exceeds the credit limit granted to it by National Airways Corporation Pty Ltd or fails to comply with the payment terms referred to herein. The decision as to whether or not to grant a credit facility to the Customer and whether or not to subsequently suspend or withdraw such credit facility is in the sole discretion of National Airways Corporation Pty Ltd. The credit limit granted to the Customer shall not be deemed to be a limit of the Customer's indebtedness to National Airways Corporation Pty Ltd.

- 1.11 The Customer hereby unconditionally authorizes National Airways Corporation Pty Ltd and its employees:
  - 1.11.1 to conduct credit enquiries to the Customer, by accessing any credit bureau database; and
  - 1.11.2 to transmit details of the Customer to any credit bureau as to how the Customer has performed in meeting its obligations in terms of a National Airways Corporation Pty Ltd Agreement concluded between National Airways Corporation Pty Ltd and the Customer and to share such information with other credit grantors; and
  - 1.11.3 in the event that the Customer fails to meet its obligation with National Airways Corporation Pty Ltd, in respect of a National Airways Corporation Pty Ltd Agreement, to notify and record the Customer's non-performance with any credit bureau; and
  - 1.11.4 to record the consent of the Customer that any and/or all information disclosed by National Airways Corporation Pty Ltd to any credit bureau, in respect of the Customer, may be assessed by other credit grantors and used by them in making risk management decisions; and
  - 1.11.5 to attend to the record all the existence of the Customer's account with National Airways Corporation Pty Ltd by any credit bureau.
  - 1.11.6 The Customer hereby waives any claim and indemnifies and holds National Airways Corporation Pty Ltd harmless against and claim of any nature and howsoever arising from the aforesaid instances.
- 1.12 The Customer shall not cede its rights nor assign its obligations under these terms and conditions. National Airways Corporation Pty Ltd shall at any time in its sole discretion be entitled to cede all its rights in terms and conditions to any third party without prior notice to the Customer and in such event the third party shall be entitled to enforce these terms and conditions in respect of the goods supplied and serviced rendered to the Customer by both National Airways Corporation Pty Ltd and the third party.

## **2. PRICE, PAYMENT AND INTEREST**

- 2.1 Each and every invoice to the Customer in consequence of a National Airways Corporation Pty Ltd Agreement, shall be paid by the Customer to National Airways Corporation Pty Ltd, without any deduction or set off of any nature whatsoever, at the address of National Airways Corporation Pty Ltd reflected in clause 8 below. The Customer carries any risk associated with or arising from the method elected to effect payment to National Airways Corporation Pty Ltd and will only have discharged this obligation as soon as its payment has been cleared by National Airways Corporation Pty Ltd' bank.
- 2.2 National Airways Corporation Pty Ltd may appropriate payments from the Customers to such outstanding amounts as is, in its sole discretion, deems fit.
- 2.3 The payment terms in respect of each and every invoice to the Customer in consequence of a National Airways Corporation Pty Ltd Agreement, unless specifically otherwise agreed in terms of a National Airways Corporation Pty Ltd Agreement, shall be strictly 30 (thirty) days calculated as from the date of the original National Airways Corporation Pty Ltd invoice.
- 2.4 If the Customer is a legal entity, partnership or trust with an asset value or annual turnover in excess of R1 million and the Customer fails to pay any amount to National Airways Corporation Pty Ltd on the applicable due date thereof, interest shall accrue on the overdue amount at the maximum rate permissible under the South African National Credit Act and shall be calculated from the day immediately following the applicable payment due date, to the date of full payment of such overdue amount by the Customers to National Airways Corporation Pty Ltd.

## **3. REFUND POLICY**

NAC does not exchange parts incorrectly ordered on customer's instructions. If an exchange is required, re-stocking fees will apply and charged to customer's account. All cores are billable at full replacement rate if found unserviceable, with customer acknowledging acceptance and liability of these terms. Warranties provided by manufacturer on parts, will be treated as such and not handled or refunded by NAC, as the supplier. Should NAC supply the incorrect part or if the part supplied is damaged or faulty, NAC shall exchange the part for the equivalent condition of original purchased part (New, Overhauled, Repaired, Repairable, As Removed, etc.) provided that the damaged or incorrect unit is returned in its original packaging with all warranty cards, manuals and accessories within 10 (ten) days of the collection

of the part by the customer. The Company will replace any damaged or faulty part or an incorrect part supplied with a replacement part within a reasonable amount of time. Items with seals on them such as avionic parts, rotatable parts etc. will not be accepted back if the seal is broken. This will be regarded as a used item. Refunds will only be processed using the payment method and into the account that was used when the order was created. A refund can take up to 14 (fourteen) business days to reflect in your account.

#### **4. CURRENCY POLICY**

All NAC parts are sold in South African Rand (ZAR). Any payment received as foreign currency will be converted at the applicable buying rate of the day as fixed by First National Bank. Customers are responsible for bank and transactional charges to convert payment to ZAR.

#### **5. DELIVERY / SUPPLY / EXCUSABLE DELAY / RISK / INDEMNITY**

- 5.1 National Airways Corporation Pty Ltd will make every endeavour to comply with the delivery and / or supply dates contained in a National Airways Corporation Pty Ltd Agreement, however, it is hereby agreed by the Customer that time shall not be of the essence insofar as National Airways Corporation Pty Ltd' performance of its obligations in terms of such National Airways Corporation Pty Ltd Agreement is concerned. National Airways Corporation Pty Ltd shall accordingly not be liable for any Customer losses and / or damages of whatsoever nature (whether direct, indirect or consequential) including but not limited to loss of income, loss of profit, increased cost of working and / or diminution of aircraft or helicopter value, caused by or arising from, or attributable to, any delay in or failure to timeously comply with its obligations to the Customer in terms of such National Airways Corporation Pty Ltd Agreement.
- 5.2 In the event that the Customer fails to take delivery of the subject matter of a National Airways Corporation Pty Ltd Agreement, when duly tendered to the Customer by National Airways Corporation Pty Ltd upon completion of National Airways Corporation Pty Ltd' obligations to the Customer contained therein, National Airways Corporation Pty Ltd, at its sole election, may store the subject matter until the Customer takes delivery and charge the Customer its reasonable costs of storage or cancel such National Airways Corporation Pty Ltd Agreement by written notice to the Customer and after obtaining an order of court, sell the subject matter by way of public auction or private treaty and apply the net proceeds received from such sale in reduction of the Customer's indebtedness to National Airways Corporation Pty Ltd, including selling costs and reasonable storage costs, and remit any balance of the net proceeds to the Customer. The above remedies shall be without prejudice to National Airways Corporation Pty Ltd' right to claim such damages as National Airways Corporation Pty Ltd may have suffered arising from such cancellation.
- 5.3 National Airways Corporation Pty Ltd shall not be liable to the Customer for any losses and / or damages of whatsoever nature (whether direct, indirect or consequential) caused by or arising from, or attributable to, any delay in performance and / or completion of any obligations under a National Airways Corporation Pty Ltd Agreement, whether such delay is as a result of any cause or matter beyond National Airways Corporation Pty Ltd' control (each "excusable delay"). For the purposes of this Agreement, a *force majeure* shall be deemed to be an excusable delay. *Force Majeure* shall mean any unforeseeable, unavoidable and insurmountable event occurring independently from the will or control of National Airways Corporation Pty Ltd or of their employees, agents, sub-contractors or representatives and includes, but is not limited to Acts of God such as natural disasters (hurricanes, tornados, landslides, earthquakes, volcanoes, eruptions, tsunamis, floods, lightning, explosions and their direct consequences); International or civil war, whether declared or not, riots, act of any government of any country from a public or governmental authority, including seizure, confiscation and / or forfeiture, whether "*de jure*", or "*de facto*", including blockades or embargos, whether declared or not, sea or air transport and navigation perils, use or release or threat thereof of any nuclear weapon or device or chemical or biological agent, act of terrorism or the threat thereof; strikes, lockouts or other labour disturbances to the extent that these events prevent National Airways Corporation Pty Ltd to perform its contractual obligations. In the event that the excusable delay results in National Airways Corporation Pty Ltd not being in a position to perform its obligations under a National Airways Corporation Pty Ltd Agreement for a period of 30 days or more, either party will be entitled to cancel the effected National Airways Corporation Pty Ltd Agreement by

written notice to the other party will be entitled to cancel the effected National Airways Corporation Pty Ltd Agreement by written notice to the other party without either party incurring liability as a result of such cancellation.

- 5.4 The Customer shall, with effect from the date upon which National Airways Corporation Pty Ltd completes its obligations to the Customer in terms of a National Airways Corporation Pty Ltd Agreement and tenders the subject matter of such National Airways Corporation Pty Ltd Agreement to the Customer, bear all risks of loss, theft, damage and destruction of, or to, the subject matter of such National Airways Corporation Pty Ltd Agreement from any cause whatsoever.
- 5.5 The Customer hereby indemnifies and holds National Airways Corporation Pty Ltd, its affiliates, subcontractors and their respective directors, officers and employees harmless from and against any and all claims, proceedings, actions, losses, damages, liabilities, suits, judgments, cost, expenses, including penalties or fines of whatsoever nature and howsoever arising, including , but without limitation, for or on account of, or arising from, or in any way connected with injury to, or death of, any persons or loss or damage to any property of any person (each "a claim") which may at any time be suffered or incurred, whether directly or indirectly, as a result of, or in any way connected with, attributable to, the provisions of National Airways Corporation Pty Ltd' obligations to the Customer, in respect of a National Airways Corporation Pty Ltd Agreement. The foregoing indemnity shall not however, extend to direct damage or loss that arises out of, or is attributable to, gross negligence or willful conduct of National Airways Corporation Pty Ltd. In such circumstances the liability of National Airways Corporation Pty Ltd for the services rendered or the goods supplied to which the claim relates.

## **6. OWNERSHIP**

Notwithstanding anything to the contrary herein contained or implied, ownership of any aircraft, helicopter, parts, materials, items and / or components sold by National Airways Corporation Pty Ltd in terms of a National Airways Corporation Pty Ltd Agreement, shall remain vested in National Airways Corporation Pty Ltd until such time as the Customer has paid to National Airways Corporation Pty Ltd, the full amount so due, including overdue interest thereon, in terms of such National Airways Corporation Pty Ltd Agreement.

## **7. WARRANTY**

- 7.1 Unless specifically recorded in writing to the contrary in any National Airways Corporation Pty Ltd Agreement and / or any invoice and / or any estimate and / or any quotation and / or any work authorization, National Airways Corporation Pty Ltd hereby warrants that its services as rendered in accordance with a National Airways Corporation Pty Ltd Agreement shall be free from defective workmanship and that the aircraft, helicopter, parts, materials, items and / or components supplied by National Airways Corporation Pty Ltd in accordance with the National Airways Corporation Pty Ltd Agreement (specifically excluded there from, any aircraft, helicopter, parts, materials, items and / or components acquired by National Airways Corporation Pty Ltd from any manufacturer and / or approved supplier thereof), shall be free of defect, provided that such defect must have occurred within a period of 60 (sixty) days from the date of delivery of the aircraft, helicopter, parts, materials, items and / or components and must be brought to National Airways Corporation Pty Ltd's notice within a period of 7 (seven) days from the date of such discovery. National Airways Corporation Pty Ltd hereby assigns to the Customer any and / or all assignable warranties received by National Airways Corporation Pty Ltd from the manufacturers and / or the approved suppliers of the aircraft, helicopter, parts, materials, items and / or components supplied to the Customer in terms of the National Airways Corporation Pty Ltd Agreement.
- 7.2 The National Airways Corporation Pty Ltd warranty as referred to above, is restricted to those instances in which, in the reasonable opinion of National Airways Corporation Pty Ltd, defective workmanship or defective aircraft, helicopter, parts, materials, items and / or components measured against the specifications of the manufacturer and / or the approved supplier thereof exists. In the event of a dispute between National Airways Corporation Pty Ltd and the Customer, insofar as the applicability of National Airways Corporation Pty Ltd' warranties are concerned, a suitable qualified expert, mutually appointed by the parties within 5 (five) days if the dispute arising the representative of the manufacturer and / or

approved supplier of the defective aircraft, helicopter, parts, materials, items and / or components concerned, shall determine whether defective workmanship or defective materials exists.

- 7.3 The National Airways Corporation Pty Ltd warranty shall specifically not extend to any claim, failure or damage, following delivery of the subject matter of the National Airways Corporation Pty Ltd Agreement, attributable to:
- 7.3.1 inherent defect, rust, corrosion or entry of foreign objects, lightning strikes; or
  - 7.3.2 the failure of the Customer to operate and / or to maintain and / or to take care of the claimed defective aircraft, helicopter, parts, materials, items and / or components concerned in accordance with the manufacturer's specifications and / or requirements and / or the requirements of the applicable Aviation Authority; or
  - 7.3.3 any aircraft, helicopter, parts, materials, items and / or components alleged to be defective and upon, or in respect of which, no repair, alteration, overhaul or any work whatsoever was performed by National Airways Corporation Pty Ltd, either in terms of a National Airways Corporation Pty Ltd Agreement or at all.
- 7.4 The obligation and responsibility of National Airways Corporation Pty Ltd, in terms of the warranty given in terms of this clause 5, is, subject to the following provisos, expressly limited to assuming the cost of the labour and / or parts, materials, items and / or components required to replace or repair the primary damage caused to the applicable aircraft or helicopter by the defective workmanship or defective parts, materials, items and / or components of National Airways Corporation Pty Ltd; provided that the Customer has notified National Airways Corporation Pty Ltd in writing of any such claim in terms of National Airways Corporation Pty Ltd' warranty in terms of clause 5.1 above; provided further that the subject of the Customer's warranty claim shall have been returned to National Airways Corporation Pty Ltd by the Customer, at the Customer's expense, within 10 (ten) days of the Customer's discovery of the claimed defective workmanship and / or defective aircraft, helicopter, parts, materials, items and / or components.
- 7.5 Should such replacement or repair result in an increase in the additional value, utility or useful life of any parts or components, the Customer shall be responsible for the pro-rata proportional cost incurred, based on the additional value, utility or amount of useful life so recovered.

## **8. REMEDIES**

- 8.1 Should the Customer fail to make payment to National Airways Corporation Pty Ltd in terms of its payment obligations contained in the National Airways Corporation Pty Ltd Agreement, or strictly in accordance with the provisions of clause 2, above, or in the event of the Customer being placed into liquidation or under judicial management (whether provisional or final) or being sequestered or entering into compromise with any of its creditors or attempting to do so or in the event of the Customer ceasing to carry on business, then National Airways Corporation Pty Ltd shall without prejudice to any other rights and / or remedies which it may have in terms of a National Airways Corporation Pty Ltd Agreement, these terms and conditions or at law, be entitled :-
- 8.1.1 to suspend its further obligations to the Customer in terms of any National Airways Corporation Pty Ltd Agreement or these terms and conditions, and if applicable, withdraw any credit facility granted to the Customer; and / or
  - 8.1.2 to claim payment from the Customer of the full balance of the amounts then owing to National Airways Corporation Pty Ltd in terms of a National Airways Corporation Pty Ltd Agreement notwithstanding that the amounts would otherwise not have been due for payment; and / or
  - 8.1.3 to retake possession of any aircraft, helicopter, parts, items and / or components supplied to the Customer by National Airways Corporation Pty Ltd in terms of such National Airways Corporation Pty Ltd Agreement, not yet paid for by the Customer on the hereby agreed basis that the price of the aircraft, helicopter, parts, items and / or components shall immediately become due, owing and payable by the Customer to National Airways Corporation Pty Ltd and only on receipt of payment of the full outstanding amount will National Airways Corporation Pty Ltd release the goods to the Customer. In these circumstances National Airways Corporation Pty Ltd shall also be entitled to charge reasonable storage costs in respect of the goods until

such time as the Customer has paid all amounts owing to National Airways Corporation Pty Ltd, including such storage costs; and / or

8.1.4 to retain all payments previously made to it by the Customer on account of such National Airways Corporation Pty Ltd Agreement, either as a penalty or as a genuine pre-estimate of its liquidated damages, or to claim such damages from the Customer as National Airways Corporation Pty Ltd may have sustained by reason of the event of default and to set off the payment amounts so retained against damages when determined; and / or

8.1.5 Cancel the National Airways Corporation Pty Ltd Agreement.

8.2 the Customer agrees to pay, on demand, all legal costs incurred by National Airways Corporation Pty Ltd, calculated on the attorney and own client scale, including costs of counsel on brief, collection commission and tracing agents' fees.

## **9. GOVERNING LAWS / JURISDICTION**

9.1 This agreement shall in all respects, be governed and construed in strict accordance with the laws of the Republic of South Africa and all disputes, actions and other matters which may arise in connection with the relationships established by this agreement, or otherwise as a result of this agreement, shall be determined in accordance with such laws.

9.2 The Customer, in accordance with the Magistrate's Court Act, No. 32 of 1944, as amended, hereby consents to the jurisdiction of the Magistrate's Court having applicable jurisdiction, notwithstanding that any claim by National Airways Corporation Pty Ltd exceeds the jurisdiction of the Magistrate's Court as to value. National Airways Corporation Pty Ltd shall nevertheless in its sole and absolute discretion to be entitled to institute proceedings against the Customer in the High Court of South Africa (Transvaal Provincial Division) or (Witwatersrand Local Division) and the Customer hereby consents to the jurisdiction of such courts.

## **10. DOMICILIA**

10.1 The Customer hereby chooses its *domicilium citandi et executandi* for all purposes arising from National Airways Corporation Pty Ltd Agreement, including the service of all process, at the physical address of the Customer as recorded in a National Airways Corporation Pty Ltd Credit Application, or National Airways Corporation Pty Ltd Agreement. In the event of the Customer not being resident, or normally conducting business within the Republic of South Africa, the Customer hereby irrevocably and unconditionally consents and submits to the jurisdiction of the High Court of South Africa (Transvaal Provincial Division or Witwatersrand Local Division).

10.2 National Airways Corporation Pty Ltd hereby chooses its *domicilium citandi et executandi* for all purposes arising from the National Airways Corporation Pty Ltd Agreement, and this Agreement, including the service of all process at Hangar 104C, Gate 15, Lanseria Airport.

10.3 Any notice to be given by either party to other shall be deemed to have been received 5 (five) days after the posting thereof registered post to the addressee's *domicilium* or deemed to be received on the date upon which it was in fact delivered by hand to the addressee's *domicilium*.

## **11. WARRANTY OF AUTHORITY**

Each party to this Agreement warrants to the other that its representative has full power, authority and legal right to conclude this Agreement for and on behalf of a Customer and that this Agreement has been duly authorized by all necessary actions and constitutes their valid and binding obligations respectively in accordance with the terms and conditions hereof.