

STANDARD TERMS AND CONDITIONS OF AGREEMENT

1. GENERAL

- 1.1. These Standard Terms and Conditions of Agreement between National Airways 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 and the Customer (hereinafter referred to as the "National Airways Agreement").
- 1.2. It is specifically recorded and agreed that the terms and conditions contained herein together with any National Airways Agreement, constitute the entire agreement between the parties hereto as to the subject matter hereof and no other agreements, representations or warranties between the parties, other than those specifically set out herein and in a National Airways 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 to the Customer are for general information purposes only and shall not be binding on National Airways in any manner whatsoever.
- 1.9. The Customer hereby undertakes in favour of National Airways:
 - 1.9.1. that the Customer shall notify National Airways 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 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, following upon National Airways' approval of the credit application form to which this agreement is attached and incorporated into, may be immediately suspended or withdrawn by National Airways in the event that the Customer breaches any provision of these terms and conditions, exceeds the credit limit granted to it by National Airways or fails to pay any amount due to National Airways. 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. The credit limit granted to the Customer shall not be deemed to be a limit of the Customer's indebtedness to National Airways.
- 1.11. The Customer hereby unconditionally authorizes National Airways and its employees:
 - 1.11.1. to conduct credit enquiries relating 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 Agreement concluded between National Airways 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 obligations with National Airways, in respect of a National Airways 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 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 recordal of the existence of the Customer's account with National Airways by any credit bureau.
- 1.12. The Customer hereby waives any claim and indemnifies and holds National Airways harmless against any claim of any nature and howsoever arising from the aforesaid instances.
- 1.13. The Customer shall not cede its rights nor assign its obligations under these terms and conditions. National Airways shall at any time in its sole discretion be entitled to cede all its rights in terms of these 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 services rendered to the Customer by both National Airways and the third party.

2. PRICE, PAYMENT AND INTEREST

- 2.1. Each and every invoice to the Customer in consequence of a National Airways Agreement, shall be paid by the Customer to National Airways, without any deduction or set off of any nature whatsoever, at the address of National Airways reflected in clause 8 below. The Customer carries any risk associated with or arising from the method elected to effect payment to National Airways and will only have discharged this obligation as soon as its payment has been cleared by National Airways' bank.
- 2.2. National Airways may appropriate payments from the Customer to such outstanding amounts as it, 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 Agreement, unless specifically otherwise agreed in terms of a National Airways Agreement, shall be strictly 30 (thirty) days calculated from the date of the original National Airways 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 on the applicable due date thereof, interest shall accrue on the overdue amount at the maximum rate permissible under the 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 Customer to National Airways.

3. DELIVERY/SUPPLY/EXCUSABLE DELAY/RISK/INDEMNITY

- 3.1. National Airways will make every endeavour to comply with the delivery and/or supply dates contained in a National Airways Agreement, however, it is hereby agreed by the Customer that time shall not be of the essence insofar as National Airways' performance of its obligations in terms of such National Airways Agreement is concerned. National Airways 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 timely comply with its obligations to the Customer in terms of such National Airways Agreement.
- 3.2. In the event that the Customer fails to take delivery of the subject matter of a National Airways Agreement, when duly tendered to the Customer by National Airways upon completion of National Airways' obligations to the Customer contained herein, National Airways, at 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 Agreement by written notice to the Customer. If the Customer fails to obtain 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, 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' right to claim such damages as National Airways may have suffered arising from such cancellation.
- 3.3. National Airways 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 Agreement, whether such delay is as a result of any cause or matter beyond National Airways' 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 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 embargoes, 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 to perform its contractual obligations. In the event that the excusable delay results in National Airways not being in a position to perform its obligations under a National Airways Agreement for a period of 30 days or more, either party will be entitled to cancel the effected National Airways Agreement by written notice to the other party without either party incurring liability as a result of such cancellation.
- 3.4. The Customer shall, with effect from the date upon which National Airways completes its obligations to the Customer in terms of a National Airways Agreement and tenders the subject matter of such National Airways Agreement to the Customer, bear all risks of loss, theft, damage and destruction of, or to, the subject matter of such National Airways Agreement from any cause whatsoever.
- 3.5. The Customer hereby indemnifies and holds National Airways, 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, costs, 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' obligations to the Customer, in respect of a National Airways 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.

4. 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 in terms of a National Airways Agreement, shall remain vested in National Airways until such time as the Customer has paid to National Airways, the full amount so due, including overdue interest thereon, in terms of such National Airways Agreement.

5. WARRANTY

- 5.1. Unless specifically recorded in writing to the contrary in any National Airways Agreement and/or any invoice and/or any estimate and/or any quotation and/or any work authorization, National Airways hereby warrants that its services as rendered in accordance with a National Airways Agreement shall be free from defective workmanship and that the aircraft, helicopter, parts, materials, items and/or components supplied by National Airways in accordance with the National Airways Agreement (specifically excluded therefrom, any aircraft, helicopter, parts, materials, items and/or components acquired by National Airways 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' notice within a period of 7 (seven) days from the date of such discovery. National Airways hereby assigns to the Customer any and/or all assignable warranties received by National Airways 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 Agreement.
- 5.2. The National Airways warranty as referred to above, is restricted to those particular instances in which, in the reasonable opinion of National Airways, defective workmanship or defective aircraft, helicopter, parts, materials, items and/or components are concerned. The specifications of the manufacturer and/or the approved supplier thereof exists. In the event of a dispute between National Airways and the Customer, insofar as the applicability of National Airways' warranty is concerned, a suitably qualified expert, mutually appointed by the parties within 5 (five) days if the dispute arising from 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 exist.
- 5.3. The National Airways warranty shall specifically not extend to any claim, failure or damage, following delivery of the subject matter of the National Airways Agreement, attributable to:
 - 5.3.1. inherent defect, rust, corrosion or entry of foreign objects, lightning strikes; or
 - 5.3.2. 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
 - 5.3.3. 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, either in terms of a National Airways Agreement or at all.
- 5.4. The obligation and responsibility of National Airways, 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; provided that the Customer has notified National Airways in writing of any such claim in terms of National Airways' 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 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.
- 5.5. Should such replacement or repair result in an increase in the additional value, utility or useful life of any parts or component, the Customer shall be responsible for the pro-rata proportional costs incurred, based on the additional value, utility or amount of useful life so recovered.

6. REMEDIES

- 6.1. Should the Customer fail to make payment to National Airways in terms of its payment obligations contained in a National Airways 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 a 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 shall without prejudice to any other rights and/or remedies which it may have in terms of a National Airways Agreement, these terms and conditions or at law, be entitled to:
 - 6.1.1. to suspend its further obligations to the Customer in terms of any National Airways Agreement or these terms and conditions and, if applicable, withdraw any credit facility granted to the Customer; and/or
 - 6.1.2. to claim payment from the Customer of the full balance of the amounts then owing to National Airways in terms of a National Airways Agreement notwithstanding that the amounts would otherwise not have been due for payment; and/or
 - 6.1.3. to retake possession of any aircraft, helicopter, parts, items and/or components supplied to the Customer by National Airways in terms of such National Airways 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 and only on receipt of payment of the full outstanding amount will National Airways release the goods to the Customer. In these circumstances National Airways 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, including such storage costs; and/or
 - 6.1.4. to retain all payments previously made to it by the Customer on account of such National Airways 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 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
 - 6.1.5. Cancel the National Airways Agreement.
- 6.2. The Customer agrees to pay, on demand, all legal costs incurred by National Airways, calculated on the attorney and own client scale, including costs of counsel on brief, collection commission and tracing agents fees.

7. GOVERNING LAWS/JURISDICTION

- 7.1. 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.
- 7.2. 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 exceeds the jurisdiction of the Magistrate's Court as to value. National Airways shall nevertheless in its sole and absolute discretion 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.

8. DOMICILIA

- 8.1. The Customer hereby chooses its domicilium citandi et executandi for all purposes arising from a National Airways Agreement, including the service of all process, at the physical address of the Customer as recorded in a National Airways Credit Application, or National Airways 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).
- 8.2. National Airways hereby chooses its domicilium citandi et executandi for all purposes arising from the National Airways Agreement, and this Agreement, including the service of all process at Hangar 104C Lanseria Airport, Gate 15, Lanseria Airport.
- 8.3. Any notice to be given by either party to the other shall be deemed to have been received 5 (five) days after the posting thereof by prepaid 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.

9. 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.