

TERMS OF TRADE

Revised: 2 July 2015

1. Definitions

Heli Maintenance:	Heli Maintenance Limited
Customer:	_____
Terms:	These Terms of Trade.
Works:	The provisions of goods ("the goods") or services or both as supplied by Heli Maintenance.
CAA:	Civil Aviation Authority.

2. Acceptance of Terms

All Works are supplied on the basis of these Terms. No variation is binding on the parties unless it is in writing and signed by both parties.

3. Works Provided

- 3.1. Subject to clause 3.2 below, the Works will be provided in accordance with the Customer's directions and in accordance with the Operator's Maintenance Manual where this is supplied by the Customer.
- 3.2. Where Works are requested by the Customer to ensure compliance with CAA regulations, Heli Maintenance is authorised to undertake such work as is required to comply with the required regulations including such work which, in the opinion of Heli Maintenance is required to comply with the regulations even though such work is incidental or not directly related to the specified work.

4. Price

- 4.1. The price payable for the Works provided by Heli Maintenance shall be in accordance with the quote or estimate supplied to the Customer. If no quote or estimate is given in writing then the price paid shall be the prevailing hourly rate multiplied by the number of hours undertaken to carry out the Works, plus the cost of goods and Heli Maintenance's margin.
- 4.2. GST is payable in addition to all prices quoted, unless otherwise specifically provided.
- 4.3. Heli Maintenance reserves the right to increase the price in the case of alterations by the Customer to the specifications, quantity or delivery date or any of them of the Works or as a result of an:
 - a) Increase in costs of materials, labour and other costs of manufacture or any of them between the date of quotation and acceptance by the Customer, irrespective of whether or not Heli Maintenance knew or should have known of such increase at the time of quotation or acceptance, or
 - b) Increases in such costs or any of them between the date of acceptance and the date of supply if supply is not made within 4 months of the date of acceptance, unless such delay is caused by fault on the part of Heli Maintenance.

5. Invoicing and Payment Obligations

- 5.1. Notwithstanding any other provisions of these Terms, Heli Maintenance shall be entitled to issue interim invoices for partial progress with completion of the works, provided such invoices are issued no more than once monthly, and such interim invoices shall be payable on the same terms as clauses 5.2 and 5.3 below.
- 5.2. Payment in full is due 20 days following receipt of Heli Maintenance's invoice for the Works or instalments thereof and shall be paid without deductions or set-off, whether legal or equitable.
- 5.3. Interest at 18% per annum calculated daily and compounded monthly is payable on any overdue payment for the period from when payment is due until payment is made together with any costs and expenses incurred by Heli Maintenance in obtaining or attempting to obtain any overdue payment including legal costs on a solicitor/client basis.
- 5.4. Heli Maintenance may require a deposit before any work is carried out.
- 5.5. If at any time any payment is outstanding or Heli Maintenance believes the customer's credit to be unsatisfactory, it may stop work at its own discretion until it is satisfied as to an arrangement for payment, or cancel any contract for work.

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6. Delivery

- 6.1. Delivery times stated by Heli Maintenance are estimates only. Heli Maintenance will use its best endeavours to deliver the works promptly and within the time frames stated but accepts no liability for any delay beyond its reasonable control.
- 6.2. Delivery to the Customer occurs when the Pilot in Command signs Heli Maintenance's acceptance form or goods are handed to the Customer or agent of the Customer or to a professional delivery agent (such as NZ Post or a courier or cartage firm) addressed to the Customer.

7. Risk & Insurance

- 7.1. Risk passes to the Customer when the Pilot in Command signs Heli Maintenance's acceptance form or upon the Works or the goods on which the work was undertaken leaving Heli Maintenance's premises and or the goods are attached to the customer's equipment. Heli Maintenance will therefore carry no insurance for goods in transit and will not be liable to repair or replace goods damaged or lost in transit nor for any consequential loss.
- 7.2. Any goods belonging to the Customer in Heli Maintenance's custody remain at the Customer's risk. This is irrespective of where they are located and includes in transit and trial flight.
- 7.3. Any plans, electronic mails, designs, drawings, specifications, computer files, moulds, mock-ups and samples or other items provided by the Customer to Heli Maintenance ("Design Items") are at the risk of the Customer while in the possession of Heli Maintenance. Heli Maintenance will not be liable to repair or replace such items under any circumstances (including negligence) and will not be liable for any consequential loss.
- 7.4. Risk with respect to the customers' goods remains with the Customer at all times. Heli Maintenance does not and has no obligation to insure the Customer's goods.
- 7.5. All goods supplied by Heli Maintenance or on their behalf are at the risk of the Customer upon delivery.

8. Retention of Title and Lien

- 8.1. Legal and beneficial title to goods supplied by Heli Maintenance passes only upon payment in full and remains with Heli Maintenance until payment in full including interest and costs, if applicable.
- 8.2. Should the Customer manufacture, intermingle or deal with the Works in such a manner that they become a constituent part of any other object the Customer will be deemed to do so as agent for Heli Maintenance and property in all such resultant objects will pass to Heli Maintenance. The Customer will hold all such resultant objects on trust for Heli Maintenance.
- 8.3. Heli-Maintenance shall have a continuing lien on any goods on which it performs works pending full payment of all amounts due in respect of such works, meaning that Heli-Maintenance shall be entitled to retain possession of such goods in priority to the ownership or other rights of the Customer until such payment in full.

9. Personal Property Securities Act 1999 ("PPSA")

- 9.1. Upon agreeing to these Terms in writing the Customer acknowledges and agrees that:
 - a) These Terms constitute a security agreement for the purposes of the PPSA; and
 - b) A security interest is taken by Heli Maintenance in all present and after acquired personal property of the Customer ("the secured property").
 - c) With respect to any goods supplied by Heli Maintenance, this security interest constitutes a purchase money security interest as defined in the PPSA.
 - d) This security interest is independent of and in addition to the rights and remedies referred to in clause 8 above.
 - e) In addition to the rights and remedies available to Heli Maintenance at law or under the PPSA, the provisions of Parts 1, 2, 3, 4, 6 (excluding clause 16), 7 and 8 of the Auckland District Law Society Memorandum of General Terms and Conditions (2007/4240) are deemed to be included in this security agreement unless they are clearly inapplicable or conflict with these Terms.
- 9.2. The Customer acknowledges that it is the intention of the parties that Part 9 of the PPSA will not apply to these Terms. However, if at law this is not the case, the Customer:

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- 9.2.1 Agrees that if, at any relevant time, Heli Maintenance's security interest in the Works created or provided for in these terms of trade does not have priority over all other secured parties in respect of the Works, the parties, for the purposes of section 109(1) of the PPSA are deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, for the purposes of these Terms and the application of the PPSA, that section 109(1) (amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into;
- 9.2.2 Agrees that nothing in section 133 and 134 of the PPSA shall apply to this agreement;
- 9.2.3 Waive its right to receive notice pursuant to section 114(1)(a) of the PPSA;
- 9.2.4 Waive its right to object to Heli Maintenance's proposal to retain any collateral pursuant to section 121 of the PPSA; and
- 9.2.5 Agrees that, in addition to Heli Maintenance's right under clause 8 of these Terms, Heli Maintenance may appoint a receiver in relation to the Works and, in addition to and without effecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise) a receiver has the power to do all things as if the receiver had absolute ownership of the secured property.
- 9.3 The Customer undertakes to:
- Sign any further documents and/or provide any further information; such information to be complete, accurate and up to date in all respects, which Heli Maintenance may reasonably require to register a financing statement or financing change statement on the Personal Properties Securities Register ("PPSR");
 - Indemnify, and upon demand reimburse Heli Maintenance for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing and Property charged thereby;
 - Not register a financing change statement or a change demand without the prior written consent of Heli Maintenance;
 - Give Heli Maintenance no less than 14 days prior written notice of any proposed change in the Customers name and/or any other change in the Customers details (including to and not limited to changes in the Customers address, facsimile number or business practice); and
 - Immediately advise Heli Maintenance of any material change in its business practices of selling the goods, which would result in a change in the nature of proceeds derived from such sales.
 - The Buyer waives its rights as a debtor under sections 116, 120(2), 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.4 Unless otherwise agreed to in writing by Heli Maintenance, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

10. Intellectual Property

The intellectual property and other similar ownership rights in the Design Items as defined in clause 7.3 provided by the Customer to Heli Maintenance remain the property of the Customer at all times.

- 10.2. The intellectual property and other similar ownership rights in the Works and Design Items provided by Heli Maintenance to the Customer remain the property of Heli Maintenance at all times.
- 10.3. Any alterations, which Heli Maintenance makes to Design Items provided by the Customer, remain the property of Heli Maintenance at all times.

11. Use of Works

- 11.1. The Customer acknowledges that it is acquiring the Works for its own business purposes and the Consumer Guarantees Act 1993 does not apply.
- 11.2. The Customer agrees to contract out of the Consumer Guarantees Act 1993 pursuant to S43 of that Act in respect of any resale of goods to a consumer (within the meaning given to that word in the Consumer Guarantees Act 1993) who acquires the goods for the purposes of a business.

12. Heli Maintenance Warranties

- 12.1. Providing all payment, which is due, by the Customer at the time is made, Heli Maintenance will with reasonable despatch correct any defect in the Works supplied resulting from faulty workmanship or materials which under proper and normal conditions of use appear and are notified to Heli Maintenance within 7 days of delivery.

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- 12.2. In respect of such correction the liability of Heli Maintenance is limited to either replacing the Works or repairing them at its discretion and within normal business hours. The liability of Heli Maintenance does not extend to cover any damage to other property nor the cost of removing the faulty item from any goods into which it has been in any way incorporated.
- 12.3. Heli Maintenance will not be liable for any consequential or indirect loss or expense in respect of the Works and in any event the liability of Heli Maintenance is in all respects limited to the price agreed for the Works provided and is subject to the Customer having first fully paid all sums due to Heli Maintenance.
- 12.4. The Customer is liable for the organisation and costs of returning the faulty item to Heli Maintenance for correction.
- 12.5. These warranties are in lieu of and to the exclusion of any other guarantee, condition or warranty either expressed or implied by any statute or otherwise in relation to the Works supplied either directly by or through Heli Maintenance which may legally be excluded.
- 12.6. Heli Maintenance will endeavour to secure for the Customer the benefit of any guarantee given to Heli Maintenance in respect of the Works provided to Heli Maintenance and subsequently included in the product or services supplied to the Customer.

13. Claims for Damaged or Defective Goods or Services

- 13.1. Heli Maintenance will not accept any claim by the Customer for any reasons and any warranty will not apply where:
- 13.1.1. the defect or failure is due to or resulting from damage or misuse, negligent maintenance or care or failure to follow care instructions provided by Heli Maintenance or the goods have not been used for the purpose for which they were designed or the goods used by persons not technically competent with the design of the goods or the goods are not used and operated in accordance with the original manufacturers operating instructions.
- 13.1.2. the defect, or failure is due to defective materials, instructions or plans supplied by the Customer.
- 13.1.3. the defect or failure is due to non-operation of the goods due to the Customer or Customer's employees or agents not complying with aviation laws, Health and Safety in Employment Act 1992 or any other laws of New Zealand.
- 13.2. Where Heli Maintenance elects to replace damaged or defective goods it may replace with identical goods and if Heli Maintenance cannot make replacement within fourteen (14) days of notification of the goods becoming defective it may loan goods to the Customer that are fit for the purpose intended until such replacement is completed OR it may replace with substituted goods that will be equally fit for purpose and such substituted goods will become subject to the provisions of these Terms in the same manner as the Works for which they have been substituted.
- 13.3. If the Customer does not comply with the above requirements, the Customer will be deemed to have accepted the goods and Heli Maintenance will not incur any liability whatsoever in relation to the goods.

14. Customer Warranties

The Customer warrants that both at the time of placement of any order for the Works from Heli Maintenance and at the time of acceptance of delivery of any such order the Customer is solvent and able to pay the full sum due for the order.

15. Privacy Act

- 15.1. The Customer hereby authorises:
- (a) Heli Maintenance to provide any Agency (within the meaning given that term in the Privacy Act 1993) with any information collected by Heli Maintenance from the Customer;
- (b) Heli Maintenance to collect any information from any Agency about the Customer; and
- (c) any Agency to provide Heli Maintenance with any information about the Customer which Heli Maintenance requires.
- 15.2 If at any time the Customer changes any of its trading or delivery or postal addresses or if it changes the place where the goods are situated it will notify Heli Maintenance of its new address or the new address where the goods are stored within seven days of the alteration.

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16. Breaches & Termination

- 16.1. Heli Maintenance reserves the right to cancel any agreement it may have with the Customer at any time in the event of:
- 16.1.1. default by the Customer which is not remedied within 7 days of written notification by Heli Maintenance requiring remedy, or
 - 16.1.2. distress, execution or a warrant to seize is issued against any of the goods in the possession of or belonging to the Customer, or
 - 16.1.3. any judgement against the Customer remains unsatisfied for more than 7 days, or
 - 16.1.4. if the Customer is a company there is any transfer in shares which effectively alters the control of the company without the prior written consent of Heli Maintenance, or
 - 16.1.5. the Customer becoming insolvent or being subject to the appointment of a receiver, liquidator or statutory manager or committing an act of bankruptcy or making or attempting to make a scheme or arrangement with its creditors.
- 16.2. Upon termination of any agreement which Heli Maintenance may have at any time with the Customer all moneys which are then outstanding from the Customer to Heli Maintenance will immediately become due and payable.
- 16.3. Failure by Heli Maintenance to insist in any one or more instances upon strict performance of any of these Terms or its other rights of any kind or the waiver by Heli Maintenance of any default by the Customer will not be deemed or construed as a waiver by Heli Maintenance of any other such matter.

17. Heli Maintenance's Set Off

- 17.1. At all times, Heli Maintenance shall have and be entitled to a right of set off for money owed to the Customer by Heli Maintenance against any money owing to Heli Maintenance by the Customer on any account however arising.

18. Mediation

- 18.1. If any dispute or difference arises between the parties which is not resolved within 7 days either party may by written notice served on the other require the dispute to be referred to the mediation of a single mediator if one can be agreed upon or to two mediators (one to be appointed by each party). If the parties cannot agree on a mediator or fail to appoint their own mediator within 7 days of service of the notice requiring mediation then either party may request the chairperson of any national mediation association to appoint a mediator. The mediation will take place in accordance with guidelines agreed by the parties or if they fail to agree on those within 7 days after appointment of the mediator then in accordance with guidelines set by the mediator(s). The parties will share the costs and expenses of mediation equally (but if they each appoint their own mediator they will each pay their own mediator's fees separately).
- 18.2. If any dispute or difference arising between the parties is not settled by mediation it will be submitted to the arbitration of a single arbitrator if one can be agreed upon or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration) such arbitration to be carried out in accordance 18.3 with the provisions of the Arbitration Act 1996 or any then statutory provisions relating to arbitration.
- 18.3. This clause 18 will not prevent Heli Maintenance taking any legal action against the Customer to recover any moneys payable by the Customer or from exercising any of its rights under its security interest.

19. Scope of Agreement

The legal relationship between Heli Maintenance and the Customer will be governed by the laws of New Zealand.

20. Guarantee

- 20.1 In consideration of Heli Maintenance supplying the Works to the Customer the Guarantor:
- (a) guarantees payment of all sums due and the performance by the Customer of these Terms, and
 - (b) indemnifies Heli Maintenance against any loss Heli Maintenance might suffer should these Terms be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

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20.2 The Guarantor covenants with Heli Maintenance that:

- (i) No release delay or other indulgence given by Heli Maintenance to the Customer or to the Customer's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety will release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
- (ii) As between the Guarantor and Heli Maintenance the Guarantor may for all purposes be treated as the Customer and Heli Maintenance will be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor.
- (iii) The guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the benefit of Heli Maintenance under these Terms.
- (iii) Should there be more than one Guarantor their liability under this guarantee will be joint and several.

20.3 The failure of any guarantor to execute these terms, or that this guarantee shall not be enforceable against any guarantor for any reason whatsoever, shall not release the Customer or any other guarantor from any liability under these Terms.

21. Third Party

The Customer authorises Heli Maintenance to have part or all of the Works supplied by a third party (third party supplier). In such cases all exclusions or limitation of liability for the benefit of Heli Maintenance set out in these Terms apply.

22 Commission

Heli Maintenance discloses that in some or all instances it may receive from its suppliers or suppliers to the Customer, gifts, commissions, discounts on goods and services or other rewards (commissions). Heli Maintenance retains these commissions.

23 General

Heli Maintenance reserves the right to review these Terms at any time and from time to time. If following such a review, there is to be any change in such terms and conditions, that change will take effect from the date on which Heli Maintenance notifies the Customer in writing of such change.

If any provisions of these Terms shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

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