

# Standard Terms and Conditions for Maintenance Services Performed by Lufthansa Technik Component Services.

These Standard Terms and Conditions apply to every Maintenance Service performed by Lufthansa Technik Component Services under a Customer Agreement concluded with a Customer.

## O. Definitions and Abbreviations

The following terms, expressions and abbreviations used in these Standard Terms and Conditions shall have the following meanings:

**Airworthiness** An aircraft or Component is airworthy if it conforms with the applicable approved type, i.e. if it complies with the valid type certificate data sheet, which includes any supplemental type certificate (STC) and approved modifications incorporated into the aircraft and if any Maintenance Service was carried out in accordance with the applicable maintenance requirements and if the aircraft or Component was released to service.

**Certificate of Release to Service** The issuance of a Certificate of Release to Service by the maintenance organization approved by the competent authority confirming, unless otherwise specified, that the Maintenance Service listed therein has been carried out in conformity with the applicable requirements (e.g. EASA Part-145 requirements) by appropriate authorized personnel of the maintenance organization and in accordance with the applicable maintenance organization exposition, and that the Maintenance Object has been released to service.

**Components** Devices, modules or individual parts of an aircraft, including engine or flight equipment or emergency equipment. Components are always identified by a part number in the maintenance or operational documents issued by the respective aircraft or component design organization.

**Customer** A Person or legal entity who or which, when entering into a Customer Agreement with LTCS, acts in exercise of his or its trade, business or profession.

**Customer Agreement** A contract between LTCS and the Customer under which LTCS agrees to perform a Maintenance Service on one or more Maintenance Object(s) in return for payment by the Customer.

**Customer's Working Equipment** Any technical equipment for use by LTCS to perform the Maintenance Service which the Customer is obligated to provide to LTCS under the Customer Agreement as specified in the Customer Agreement.

**Flight Hour** Each hour that the aircraft is airborne.

**LTCS** Lufthansa Technik Component Services.

**Maintenance Object** Any aircraft or Component delivered to LTCS by the Customer for a Maintenance Service to be performed by LTCS.

**Maintenance Service** One or a combination of the following: overhaul, repair, inspection, testing, replacement, modification or rectification of an aircraft, an engine or a component, as further specified in the order confirmation.

**Place of Performance** Has the meaning set forth in Article 4.

**Subcontractor** Any person or legal entity (other than employees of LTCS), engaged by LTCS to perform LTCS's obligations under the Customer Agreement.

**Vicarious Agents** LTCS's personnel and Subcontractors used by LTCS to support LTCS in the performance of its obligations under the Customer Agreement.

## 1. Scope and Exclusive Validity of these Terms and Conditions

These Standard Terms and Conditions shall exclusively apply to all Customer Agreements, unless LTCS expressly waives their applicability in written form, and only as far as LTCS and the Customer have not agreed on any other terms and conditions provided by LTCS.

The Customer's standard terms and conditions shall not become part of the Customer Agreement, even if LTCS has not expressly rejected their applicability. Further, if LTCS replies to any communication of the Customer that refers to the Customer's standard terms and conditions or any other set of terms and conditions (each being "Other Terms and Conditions"), such reply shall not constitute an acceptance of such Other Terms and Conditions, nor shall it result in the acceptance of such Other Terms and Conditions.

## 2. Conclusion of Customer Agreement

Any offer submitted by LTCS shall be non-binding.

Orders submitted by the Customer are binding for the Customer.

The Customer Agreement is concluded once LTCS has submitted an order confirmation to Customer in writing (letter, fax or e-mail).

## 3. Scope of Maintenance Service

The scope of any Maintenance Service requested shall be stated in the order placed by the Customer and, if agreed, shall be confirmed in the order confirmation submitted by LTCS.

LTCS is the provider of the Maintenance Service at the expense of the Customer but at the Customer's expense, to perform additional services that LTCS considers necessary for the proper performance of the Maintenance Service if (i) the Customer's prior consent cannot be obtained without causing a delay in the completion of the services and (ii) the price for the additional services does not exceed ten percent of the value of the original order.

The Maintenance Service shall be performed by LTCS in accordance with the Lufthansa Technik Quality Manual and Procedures as approved by the competent authority unless otherwise agreed in writing between the Customer and LTCS.

Any entries in the technical log book of an aircraft by LTCS do not constitute any indication with respect to the Airworthiness of the aircraft as a whole. However, the signature does constitute a Certificate of Release to Service with respect to the scope of the Maintenance Service.

## 4. Place of Performance

The Place of Performance of the Maintenance Service shall be the LTCS service facility site specified in the Customer Agreement. Should the Customer Agreement specify no particular LTCS service facility, Place of Performance shall be the LTCS facility at which LTCS received the Maintenance Object.

## 5. Customer's Obligations

The Customer shall supply LTCS with the Customer's Working Equipment and with all documents on the operation, maintenance and repair history of the Maintenance Object necessary for completing the Maintenance Service (including without limitation all relevant instruction manuals and special documentation not at LTCS's disposal).

If the Customer fails to supply LTCS with the documents as per Article 5.1 above or if such documents are incomprehensible or incomplete, LTCS may request that the Customer supply any such document and any relevant undocumented information, within a reasonable period of time. For the purposes of this Article 5 "documents" include both printed documents and data in all other formats, including without limitation electronic formats.

If the Customer does not comply with the request according to Article 5.2 in due time, LTCS is entitled to terminate the Customer Agreement with immediate effect. In such case, LTCS shall be entitled to claim payment for any costs incurred to the extent it was performed prior to the date of termination and will be allowed to return AS-IS condition the object under Maintenance Service.

Articles 5.1, 5.2 and 5.3 do not in any way limit LTCS's legal and contractual rights or claims.

Customer shall treat as strictly confidential any information disclosed by LTCS relating to the Customer Agreement, including the document itself as well as individual provisions contained therein ("Confidential Information"). Confidential Information shall include, but not be limited to, the contents of the negotiations leading up to the Customer Agreement, any business, technical and strategic data disclosed by LTCS or its Subcontractors at any time for any reason, comprising any and all such information in oral or visual form and including but not limited to prices for materials and Maintenance Services, the scope of Maintenance Services offered, legal provisions, turnaround times and man-hours needed.

## 6. Delivery

The delivery of each Maintenance Object and the Customer's Working Equipment to the Place of Performance of the Maintenance Service shall be at the Customer's risk and expense, unless otherwise agreed in the Customer Agreement.

## 7. Redelivery Dates

Unless they have been explicitly and in writing declared as binding, redelivery dates indicated by LTCS are provisional, non-binding, and shall serve as general information only.

## 8. Redelivery

Redelivery of the Maintenance Object shall be effected ex works (FCA, Incoterms 2010) the Place of Performance excluding packing material.

No later than one week after (i) LTCS has notified the Customer that the Maintenance Service has been completed or (ii) the date of termination of the Customer Agreement, whichever may occur first, the Customer shall exercise best efforts to immediately collect the Maintenance Object at the Place of Performance.

If the Customer fails to comply with Article 8.2, the Customer shall compensate LTCS for any costs and expenses it incurs in connection with the storage of the Maintenance Object according to LTCS's then current price list.

The Customer may request that LTCS supports Customer in arranging for shipment of the Maintenance Object to another place as the one specified in Article 8.1. Any shipment arrangements made by LTCS shall be in the name and on behalf of Customer. The Customer shall bear all shipping cost including the cost for packing material.

## 9. Warranty

A defect shall only be subject to warranty if it is related to workmanship and material of a maintenance service performed within twelve months or within one thousand Flight Hours after redelivery, whichever may occur first.

A warranty claim must be raised by Customer within thirty days after the defect has or could have become reasonably apparent and LTCS must be provided at the Place of Performance with the defective part for inspection and repair within additional thirty days after the warranty claim has been raised. If a defect arises on a non-removable part of an aircraft, the Parties shall in good faith agree how to remedy such defect in a way convenient for Customer and reasonably acceptable for LTCS.

LTCS's warranty shall be excluded (i) if the defect has been caused because the Maintenance Object has been altered, overhauled or repaired during the warranty period by any party other than LTCS, or (ii) if the defect has been caused by the Customer's Working Equipment or any material supplied by Customer, (iii) if the Customer has not taken all reasonable precautions to prevent an aggravation of the defect or damage, or (iv) if the Customer does not comply with operating instructions provided by LTCS or the respective aircraft or Component design authorization, or (v) if the Customer refuses to apply a recommended reliability improvement (service bulletin, release letter, etc.) As long as the Customer is in default with its payment obligations, LTCS may exercise its right of retention and may therefore refuse to meet warranty claims until full payment has been made.

Provided that suppliers grant LTCS warranty rights for material or services beyond the scope of LTCS's warranty as set forth in Article 9.1 and 9.2 above, customer may request LTCS to assign any such warranty rights. Further, upon request, LTCS shall support Customer in pursuing such warranty rights.

Material provided by the Customer must at all times have been stored, handled and operated in accordance with the manufacturer's recommendations.

If upon Customer's special request LTCS or its Subcontractors perform a provisional repair, the materials used and the Maintenance Services performed during such repair are not subject to any warranty.

LTCS shall correct any defect covered by this warranty at its own cost and expense at the Place of Performance or at any other place Customer and LTCS may agree upon from time to time. If the Customer requests LTCS to correct the defect of a Component at another location as the Place of Performance, the Customer shall arrange at its own risk and expense for the removal and transport of the defective Components to and from the location where the repair shall be made and for the reinstallation of the respective Component.

The warranty set forth in this Article 9 shall be the exclusive and sole remedy for Customer in case of any defect.

Articles 9.1 and 9.2 shall not apply to a possible claim for damages. Articles 9.1 and 9.2 shall also not apply if LTCS has concealed the defect intentionally or has given a written durability guarantee or warranted certain properties of the repair.

Articles 9.1, 9.2, 9.3 and 9.5 shall not affect any other limitations of LTCS's liability, or restrictions of the Customer's rights and claims against LTCS in these Standard Terms and Conditions and/or under applicable law.

## 10. Limitation of Liability for Damages

LTCS's liability for damages in case of slight negligence of LTCS, its statutory representatives and Vicarious Agents shall be excluded, provided such liability does not result from the violation of any material contractual obligations of particular significance for the purpose of the Customer Agreement which the Customer may rely on, damages arising from injury to life, limb or health or from violation of a guarantee. LTCS's liability under the Product Liability Act shall remain unaffected.

To the extent LTCS is liable in accordance with Article 10.1, LTCS's liability shall be further limited as follows: LTCS shall not be liable for non-foreseeable damages which are not typical for Maintenance Services of the kind constituting the Maintenance Service under the relevant Customer Agreement and which are neither based upon violation of a guarantee, nor upon intentional acts (or upon intentional acts of LTCS's statutory representatives or its Vicarious Agents), nor are caused by injury to life, limb or health, nor are damages to be compensated in accordance with the Product Liability Act.

## 11. Insurance

The Customer agrees to obtain and maintain in full force during the term of the Customer Agreement the following insurances:

- Hull All Risks Insurance as well as an All Risk Property Insurance including war risks containing a waiver of subrogation in favor of LTCS, its personnel and its Subcontractors.
- Comprehensive Airline Legal Liability Insurance including aircraft third party, passenger and war risk liability with a combined single limit in accordance with article 7 Regulation (EC) No. 785/2004 naming LTCS, its personnel and its Subcontractors as additional insured parties.

If the Customer has ordered the Maintenance Service from LTCS on behalf of a third party, the Customer shall ensure that the third party obtains and maintains the insurances specified according to Article 11.1.

## 12. Prices and Payments

LTCS shall issue a preliminary invoice on the basis of the cost estimate as per Customer Agreement and Customer shall pay such amount latest upon delivery of the Maintenance Object to LTCS. Any difference between the preliminary invoice and the invoice issued after redelivery of the Maintenance Object to Customer shall be reimbursed by LTCS or paid by Customer – as the case may be. Any payment of such difference shall be made by Customer to LTCS no later than seven (7) days from receipt of the invoice issued after delivery.

All prices are quoted as net prices. Any tax (including, but not limited to, value added tax), duty, fee or other public charges whatsoever imposed on the invoiced prices shall be borne by the Customer or shall be refunded by the Customer to LTCS. In the event any such tax or duty is recoverable, LTCS shall use reasonable efforts to recover such tax or duty paid.

Customer agrees that any dispute with regard to a payment obligation and any claim for reimbursement shall be made within one month after receipt of the invoice as per Article 12.1. After this period has lapsed, Customer shall not be entitled to assert any such claims.

Customer shall make payment in the contractually agreed currency. Any payment made in any currency other than contractually agreed shall be exchanged at the exchange rate on the date the payment is valued to LTCS's account. Customer remains liable for any shortfall to the amount owed resulting from such exchange.

The Customer shall not be entitled to set off any claims against LTCS's claims, unless such claims are determined by the final decision of a court or are undisputed. The Customer may only exercise a right of retention if its counterclaim has been determined by the final decision of a court or is undisputed.

## 13. Property and IP Rights

Title to all material supplied by LTCS under the Customer Agreement shall remain with LTCS until complete payment of all amounts due under the Customer Agreement has been effected.

Title to all intellectual property rights (including, but not limited to, copyrights, trademarks, patents, inventions, utility patents registered design rights or design rights – "IP Rights") disclosed in documents or data (including but not limited to plans, drawings, patterns or designs) supplied by LTCS to Customer under the Customer Agreement, shall remain with LTCS or any third party which is entitled to such IP Rights.

## 14. Lien and Right of Retention

LTCS has by virtue of the Maintenance Service performed a contractual lien with respect to the Maintenance Object in its custody as well as with respect to other items of Customer in LTCS's custody to secure any claims of LTCS against Customer out of or in connection with the Customer Agreement as well as to secure any claims of affiliates of LTCS against Customer. Such right may also be asserted for services previously performed or materials previously supplied and lien with respect to claims resulting from a contractual relationship of Customer and Deutsche Lufthansa AG and/or any of its affiliates. The contractual lien shall entitle LTCS and/or any of its affiliates to publicly offer the Maintenance Object for sale no earlier than one month after advising the Customer of its intention to do so. To effect such sale LTCS shall not be required to obtain an enforceable title or to comply with the regulations governing forced sale.

Further, LTCS has by virtue of the Maintenance Service performed a right of retention with respect to the Maintenance Object in its custody as well as with respect to any other items of Customer in LTCS's custody to secure any claims of LTCS against Customer out of or in connection with the Customer Agreement as well as to secure any claims of affiliates of LTCS against Customer. Such right as well as a set-off right may also be asserted for services previously performed or materials previously supplied. The right of retention as well as a right to set off any due claims of LTCS against Customer with claims of Customer against LTCS may also be exercised with respect to claims resulting from a contractual relationship of Customer and Deutsche Lufthansa AG and/or any of its affiliates.

LTCS shall also have the right to cease any ongoing Maintenance Service without notice until all payments due under the Customer Agreement or any other contractual relationship between Customer and LTCS or Customer and Deutsche Lufthansa AG and/or any of its affiliates have been made.

## 15. Customs Clearance

The Customer is obligated to comply with all existing import and export prohibitions & requirements of the United States. If assigned and agreed in writing, LTCS will perform the necessary Customs clearance in the name and on behalf of the Customer or on behalf of LTCS. In these cases, the Customer is obligated to provide LTCS with all necessary information and documentation (especially any required licenses regarding prohibitions and restrictions). LTCS shall not be liable for any delay due to the late delivery of information and documentation by Customer or due to delays in the customs clearance process. All duties and taxes that may occur due to the importation or exportation (defined above) have to be borne by the Customer or will be charged by LTCS to Customer. The Customer agrees to support with all information request from Customs timely, in accordance to Customs requirements.

## 16. Export Clause

Customer shall comply with all applicable domestic and foreign (re) export compliance requirements, including the applicable US export laws and regulations (e.g. ITAR, EAR and OFAC sanctions regulations) and those of other relevant foreign jurisdictions. Upon LTCS's request, Customer shall promptly provide LTCS with: appropriate certifications; Schedule B or HTSUSA (Classification Commodity Code); Export Control Classification Number (ECCN) or The International Traffic in Arms Regulations (ITAR) (whichever is applicable), and any information and documentation that it knows will affect the determination of license authorization as may be required by the applicable export laws and regulations, or as necessary to ensure continuing compliance with such laws and regulations.

## 17. Change of Law / Compliance with foreign export and import regulations

The Parties have agreed that certain laws and regulations regarding certification and regulatory requirements are to be observed in the performance of Services under this Agreement. Neither Party can foresee to what extent those laws and regulations will change after the execution of this Agreement. While LTCS will try to mitigate any impact on the performance and the agreed terms of the Services because of a change of laws, regulations or their interpretation by the relevant Authority, any such impact and any resulting additional cost incurred by LTCS shall be the responsibility of and be borne by Customer. This shall apply respectively if LTCS is not able to comply with any export or import regulations of other countries than Germany without measurable negative impact on the agreed terms of the Services. LTCS shall not be held responsible for any such impact, even if due to such impact certain Services cannot be performed at all. In case the Services or parts thereof are subject to re-export license requirements due to export laws and regulations of the United States, the performance of such Services shall be contingent upon the grant of such licenses by the responsible authority. In the event such re-export license is not granted or does not otherwise permit the performance of the Services as intended by this Agreement, customer and LTCS shall negotiate to modify the Agreement accordingly.

## 18. Applicable Law and Venue

The Customer Agreement and these Standard Terms and Conditions and any legal relationship with the Customer that may arise therefrom shall be exclusively subject to and construed exclusively in accordance with the laws of the State of New York (with the giving effect to conflicts of law). The parties agree that any legal action or proceeding between them arising out of these Standard Terms and Conditions, or any of the transactions contemplated hereby, may be brought in the courts of the State of New York in and for the County of Nassau or the United States District Court for the Eastern District of New York and the parties hereby agree to submit to jurisdiction in such court and waives any objection to the commencement of actions in such courts. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement. The Parties hereby waive trial by jury in connection with any action brought under the Customer Agreement and these Standard Terms and Conditions.

## 19. Waiver of Sovereign Immunity

LTCS and Customer hereby agrees that Customer Agreement and any legal relationship that may arise therefrom are commercial transactions and Customer undertakes not to claim any immunity from suit, execution, pre-judgment or post-judgment attachment or other legal process in any jurisdiction.

## 20. Deviating from these Standard Terms and Conditions

Any deviation to these Standard Terms and Conditions including this clause need to be agreed upon between LTCS and the Customer in writing.