

## TDA's General Terms & Conditions

### 1 GENERAL

- 1.1 These conditions of sale ("**Conditions**") shall apply to any agreement whereby a party ("**Customer**") purchases commercial aircraft products ("**Products**") or purchased from Touchdown Aviation B.V., a private company with limited liability, holding offices in (1175 RB) Lijnden at Tokyostraat 29-33 ("**TDA**").
- 1.2 An agreement will only be concluded between TDA and the Customer after written acknowledgement has been received and accepted by TDA ("**Agreement**"). The Customer shall purchase from TDA, equal TDA shall sell to Customer, the Products as further detailed in the Agreement. The Agreement together with the Conditions shall form the complete agreement between TDA and the Customer. The Customer's terms & conditions do not apply to the Agreement. Any subsequent references to those terms and conditions shall have no effect. The Agreement may only be amended in writing, based on a written document that is duly signed by both parties.
- 1.3 After conclusion of the Agreement, Customer cannot terminate, annul or void the Agreement on the basis that the Product is in breach of, or not in conformity with the Agreement. Any error with regard to (any part of) this Agreement will be for the account and risk of the party in error.
- 1.4 Customer may, at any time prior to despatch of the Products, or ultimately within 7 days after the Agreement was concluded, amend the quantity of the Products ordered or cancel the Agreement in its entirety by written notice to the TDA. If the Customer amends or cancels an Agreement, then Customer shall incur a penalty that is directly payable of 15% of the value of the Products that are ordered under the Agreement. Clause 6:92(2) Dutch Civil Code does not apply.

### 2 PRODUCTS

- 2.1 It is specifically agreed and acknowledged that the Products constitute new/used/refurbished and/or re-conditioned aircraft parts and components, which originate from regulated sources. TDA specifically does not assume any obligation, and disclaims all responsibility, with regard to the compliance of such Products with any applicable expiration dates, specifications, regulations, directives and / or laws with regards to airworthiness, allowed use or otherwise. Customer agrees to solely accept the responsibility to assess the Products with regards to suitability for use and to ensure Customer complies with any and all applicable specifications, regulations, laws, and requirements of any and all regulatory and advisory bodies prior to its purchase of the Products.
- 2.2 In the light of the above, Customer specifically acknowledges that the Products may have defects in whatever shape or form - including with respect to integrity, reliability

and sound condition - and Customer agrees to purchase the Products nonetheless in their current state. Clauses 7:17 and 7:21 Dutch Civil Code do not apply.

- 2.3 The Products are sold by TDA on an 'as-is, where-is' basis, without any representations or warranties as to performance, merchantability, fitness for purpose, date recognition requirements or intellectual property rights infringements or any other warranties whether expressed or implied and TDA disclaims all further liability in respect of the Products whether based on contract, tort or otherwise, as well as for visual and hidden defects.

### **3 PRICE AND PAYMENT**

- 3.1 The price to be paid by Customer to TDA for the Products are to be TDA's sales prices in force from time to time. When Products are ordered by Customer outside of normal working hours (08.00 - 18.00 CET), a surcharge of US\$ 400.00 will apply additionally to the charges for the respective Products. The complete price for the Product inclusive with any and all charges, interest or other fees will be referred to as the "**Purchase Price**".
- 3.2 Customer shall pay Purchase Price in full in accordance with the Agreement, without deduction, discount, and/or without the right to set-off. Customer shall be responsible for the collection, remittance and payment of any and all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, sale, lease or other distribution of the Products.
- 3.3 The Purchase Price shall be paid in U.S.Dollars (US\$) unless otherwise agreed. Customer shall pay the Purchase Price in free available funds at the bank account designated by TDA ultimately within thirty (30) calendar days after invoice unless otherwise agreed. The payment term is fatal: if payment is not fully received within this term then Customer shall be automatically in default. If Customer does not timely and correctly pay the Purchase Price, then interest at the rate of 2% shall be charged monthly on any amounts overdue. The interest period shall run from the due date for payment until receipt by TDA of the full amount whether before or after judgment and without prejudice to any other right or remedy of TDA. In case Customer does not perform its payment obligations hereunder, Customer shall be liable to pay all out-of-court fees (with a minimum of 15% of the Purchase Price) and all applicable costs for legal assistance.

### **4 DELIVERY**

- 4.1 TDA shall perform its reasonable efforts to deliver the Products within the agreed delivery terms agreed at time of sale, after TDA confirming order in writing, and according to the delivery schedule specified in the Agreement. It is specifically agreed that the delivery schedule is an approximation only and subject to delays. As such, TDA will only be in default when the Customer has notified TDA in writing of the breach under the Agreement specifying the Product, order number, estimated delivery date, and other relevant information, whereby TDA is awarded an additional reasonable period of at least 30 (thirty) days to cure its breach and TDA remains in breach upon expiry of that term.
- 4.2 Unless otherwise agreed, the Products shall be delivered EXW (Incoterms 2010) TDA's warehouse. The Products are for the risk of Customer upon collection.

### **5 OWNERSHIP**

- 5.1 TDA retains the ownership of the Products, until Customer has paid the applicable Purchase Price and any and all related costs and interests in full.

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- 5.2 Upon delivery of the Products, Customer shall store the Products separately from its other inventory, and shall clearly label the Products as the property of TDA. Customer is not entitled to attach liens or encumbrances to the Products of which the ownership is retained, or to provide such Products to another party. In case TDA has reasonable grounds to fear that Customer shall not perform payment of the Purchase Price, TDA is entitled to retake any and all Products that have not been paid yet. Customer shall provide unrestricted access to the delivered Products in the Customer's premises, and the Customer will grant all co-operation to TDA in that regard.
- 5.3 Customer may only use the Products, once the Product Price has been paid in full. If Customer for whatever reason would use the Products in deviation of the foregoing, TDA will not lose its retained ownership if the Products are processed or adapted by Customer. In such case Customer shall automatically retain the Products for the benefit of TDA.

## **6 INSPECTION**

- 6.1 Parties agree that Customer shall at its own costs directly upon receipt of the Products inspect the Products itself (including a quality check, measuring, weighing, counting) to determine whether or not the Products are in conformity with its intended purpose as well as its required and prescribed specifications, and workings. Parties agree that the full responsibility of such inspection lies with Customer, and TDA can never be held to perform (or be deemed to have to have performed) any such inspection on behalf of Customer. The Customer must notify TDA promptly of any defects that can be revealed upon a careful visual inspection. Further, Customer must report in writing any hidden defects immediately after their discovery and at least within three (3) business days after delivery date.
- 6.2 If Customer fails to (timely) notify TDA, Customer thereby accepts any and all risks involved and hereby waives any and all rights with regards to any claim that the Product is not in conformity with the agreement or is otherwise defect or in breach with the agreement.

## **7.1.0 WARRANTY**

- 7.1.1 Customer is only eligible for the warranties, indemnities or other commitments to the extent that these are provided to TDA by (the supplier of) TDA's supplier, and to the extent that these can be made available to Customer, in which case TDA will perform its reasonable efforts to assist Customer in the enforcement thereof.
- 7.1.2 Seller's sole warranty obligation is that the title to the material sold herein is owned by TDA, free of any liens or claims.  
Buyer agrees that TDA and its suppliers will in no event be liable for any obligation of buyer to any third party, or for any other direct, incidental or consequential damages in connection with the product or services sold.
- 7.1.3 TDA expressly disclaims on behalf of itself and any of its suppliers as owners of the material herein, any express or implied guarantee or warranty, including the warranties of merchantability and fitness for a particular purpose, and any warranty regarding year 2002 compliance and date recognition requirements.
- 7.1.4 Nothing herein shall prevent TDA from assigning to any customer any manufacturers, distributors, or repair station warranty which may be so assigned.
- 7.1.5 TDA offers a standard 3 month warranty on all parts.

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## **7.2.0 WARRANTY SUPPLIER (PURCHASING)**

- 7.2.1 Supplier warrants to TDA that during the warranty period, as stated in Clause 4.2, all Goods provided hereunder shall be: (i) of merchantable quality; (ii) fit for the purposes intended; (iii) unless otherwise agreed to by TDA, new and in full conformity with the technical conditions and regulations that are set forth in Original Manufacturer regulations; (iv) free from defects in design, material and workmanship; (v) in strict compliance with the specifications and Purchase Order; (vi) free from any liens or encumbrances on title whatsoever; (vii) in conformance with any samples provided to TDA; and (viii) compliant with all applicable laws, regulations, standards, and codes.
- 7.2.2 Supplier shall assign to TDA all manufacturer's warranties for Goods not manufactured by or for Supplier, and shall take all necessary steps as required by such third party manufacturers to effect assignment of such warranties to TDA. In no event warranty for (i) new Goods shall be less than 12 months; (ii) repaired Goods shall be less than 6 months / 500 FH (whichever occurs last) and for (iii) overhauled Goods – 12 months / 1000 FH (whichever occurs last).
- 7.2.3 All expenses related to the warranted Goods transportation, test, inspection, and repair during the warranty term provided by Supplier and assigned by Supplier to TDA or end user of the Goods, shall be on Supplier. If Supplier fails to repair or replace the Goods within the time periods specified by TDA, TDA may repair or replace the Goods at Supplier's expense.
- 7.2.4 The warranty shall not be applicable in case of improper use, unqualified repairs, or repairs in contradiction with repair instructions and operation and maintenance manuals, or in case warranted Goods have been subject to the misuse, mishandling or ingestion of foreign material.
- 7.2.5 Any defect material which requires on site scraping or administration due to Supplier's fault will be charged to Supplier according to TDA standard pricelist.

## **8 RETURN OF PRODUCTS**

- 8.1 Products may not be returned to TDA without TDA's prior written authorization.
- 8.2 In the case that Products are returned, if not under a valid warranty claim, Customer shall incur a restocking charge to the amount of 25% of the Product's invoice value.
- 8.3 No returns are accepted after 30 days unless for warranty consideration. In addition, Products returned must be accompanied by the original documentation as provided at time of the Agreement. If this is not the case, Customer will be liable for the costs involved in recertifying the Products.

## **9.1.0 LIABILITY AND INDEMNIFICATION (CUSTOMER)**

- 9.1.1 TDA shall not be liable to Customer, whether in contract, tort or otherwise, for any indirect damage (including: loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving, loss or corruption of data or information, special, indirect or consequential damage) that is incurred by Customer as a result of or in connection with this Agreement.
- 9.1.2 TDA's total liability arising under or in connection with the Agreement, whether arising in contract, tort or otherwise, for direct damage shall in all circumstances in aggregate be limited to the invoice value of the Product that gave rise to the liability, or USD \$ 10,000.00 , whichever is lower.
- 9.1.3 Nothing in this agreement shall limit or exclude the liability of either party for intent or wilful recklessness of a party or its managerial personnel.
- 9.1.4 Notwithstanding anything to the contrary in these Conditions, TDA shall only be liable vis-à-vis Customer with regard to any liability that Customer incurs in respect of damage to property, death or personal injury that arises from any fault or defect in the materials or workmanship of the Products, to the extent such claim is awarded under mandatory law on product liability law and the liability for which cannot be excluded under the applicable law, except where such liability arises as a result of the action or omission of the Customer.
- 9.1.5 Customer agrees to indemnify and hold TDA, its partners, directors, employees, agents, affiliates and suppliers harmless from and against all claims, demands suits or proceedings made or brought against TDA, and shall reimburse TDA for any and all liability, judgements, loss, damage or expenses that are payable by TDA to the party bringing such action, including all counsel fees as a result of any claim that is based on product liability in relation to the Products, unless such claims, demands, suits or proceedings are caused by the gross negligence or wilful misconduct of TDA.
- 9.1.6 The disclaimer of warranty and the limitation of liability as provided in these Conditions are made on behalf of TDA and on behalf of any of TDA's suppliers. As such, Customer and TDA hereby agree that such suppliers of TDA have the right (but not the obligation) to invoke these clauses vis-à-vis Customer as if they were party to this Agreement.

## **9.2.0 LIABILITY SUPPLIER (PURCHASING)**

- 9.2.1 Supplier shall indemnify, defend and hold harmless TDA, its affiliates, and their respective officers, directors, employees, consultants, and agents (the "TDA Indemnified Parties") from and against any claims, fines, losses, actions, damages, expenses, legal fees and all other liabilities brought against or incurred by the TDA Indemnified Parties or any of them arising out of: (a) death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged defect in the Goods, or from the failure of the Goods to comply with the warranties hereunder; (b) any claim that the Goods infringe or violate the intellectual property rights or other rights of any person; (c) any intentional, wrongful or negligent act or omission of Supplier or any of its affiliates or subcontractors; (d) Supplier's breach of any of its obligations under this Agreement; or (e) any liens or encumbrances relating to any Goods.
- 9.2.1 Except for Supplier's obligations under Clause 9.2.1, and except for damages that are the result of the gross negligence or wilful misconduct of a Party, in no event will either Party be liable to the other Party or any other person for any indirect, incidental, consequential, or punitive damages, including any lost profits, data, goodwill, or business opportunity for any matter relating to this Agreement.

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## 10 COMPLIANCE WITH EXPORT CONTROL AND TRADE SANCTIONS RULES

Customer hereby acknowledges and agrees that the Products and related technical data ('Data') may be subject to applicable export control and trade sanction laws, regulations,

10.1 rules and licences, including without limit Council Regulation (EC) No. 428/2009, the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, any legislation replacing the foregoing and any orders issued under the foregoing ("Export Control and Trade Sanctions Rules").

10.2 Customer shall comply with the Export Control and Trade Sanctions Rules and agrees that it alone is responsible for ensuring its compliance with Export Control and Trade Sanctions Rules. In particular:

(b) Customer warrants that none of its personnel, directors, officers, shareholders or business partners are designated or sanctioned parties under Export Control and Trade Sanctions Rules.

Customer will not use, sell, resell, export, re-export, transfer, divert, distribute, dispose of, disclose or otherwise deal with the Products and/or Data, directly or indirectly, to any companies, organisations, entities or individuals as designated under Export Control and Trade Sanctions Rules, including, but not limited to EU sanctions regulations, UN Security Council resolutions, US sanctions or other Export Control and Trade Sanctions Rules as are, amongst others, identified on the US OFAC SDN list (<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>) or EU consolidated designated party list ([http://eeas.europa.eu/cfsp/sanctions/consol-list\\_en.htm](http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm)) or other lists as established under Export Control and Trade Sanctions Rules, as such lists may be updated from time to time, nor to any country or destination designated or sanctioned under Export Control and Trade Sanctions Rules, and Customer will maintain adequate internal compliance measures in this respect.

(c) Customer will not, and will procure that none of its Affiliates or Subcontractors will, use, sell, resell, export, re-export, transfer, divert, distribute, dispose of, disclose or otherwise deal with the Products and/or Data, directly or indirectly, to any country, destination or person without first obtaining any required export licence or other governmental approval and completing such formalities as may be required by Export Control and Trade Sanctions Rules.

(d) Where, under the Export Control and Trade Sanctions Rules, TDA is required by any governmental authority to impose obligations on Customer, Customer shall comply with such obligations.

10.3 TDA shall use reasonable efforts to obtain all necessary authorisations and licences as may be required by it under Export Control and Trade Sanctions Rules for the export of the Products and/or Data to Customer. Notwithstanding the foregoing, Customer expressly acknowledges that TDA's obligation to furnish Products and/or Data hereunder is subject to the ability of TDA to supply such items consistent with Export Control and Trade Sanctions Rules. TDA reserves the right to refuse to enter into or to perform any order, and to cancel any order placed under this Agreement if TDA in its sole discretion determines that the entry into such order or the performance of the transaction to which such order relates would violate any Export Control and Trade Sanctions Rules to which it is subject. TDA shall be excused from performance, and not be liable for damages or costs of any kind, including but not limited to penalties, for late delivery, for failure to deliver or delay in delivering the Products and/or Data resulting from an authority's denial, withdrawal or delay in granting such authorisations or licences.

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- 10.4 Customer shall use reasonable efforts to obtain and provide to TDA in a timely manner end-user, end-use and other documentation, certifications and information as may be requested by TDA in support of TDA's applications to the appropriate authorities in connection with the export and/or sale of the Products and/or Data to Customer. If TDA has reason to believe that Customer has misrepresented or failed properly to disclose any material fact, including without limitation the intended end-use/end-user or destination of the Products, TDA may terminate the Agreement immediately in writing and discontinue all performance hereunder with no further obligation to the Customer.
- 10.5 Customer shall not do anything which would cause TDA to be in breach of the Export Control and Trade Sanctions Rules and shall protect, indemnify and hold harmless TDA from any fines, damages, costs, losses, liabilities, fees and penalties incurred by TDA as a result of the errors, mistakes, failures or omissions of Customer to comply with this Clause.
- 10.6 In its contracts with any third party pertaining to the Products, Data and/or any products derived therefrom, Customer agrees to impose on such third party the same obligations and requirements imposed on it by TDA in this Clause.
- 10.7 Failure by Customer to comply with any part of this Clause shall constitute a material breach of the Agreement. Customer's obligations under this Clause shall survive termination of this Agreement for any reason whatsoever.

## **11 FORCE MAJEURE**

- 11.1 A party shall not be in breach of this Agreement in respect of, or liable for, any failure or delay in performance of its obligations under this agreement arising from, or attributable to acts, events, omissions that cannot within reason be attributed to the breaching party ("**Force Majeure Event**"), including, without limitation, any of the following events: fire, flood, earthquake, windstorm or other natural disaster; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; nuclear, chemical or biological contamination; explosion or accidental damage; loss at sea; adverse weather conditions; collapse of building structures, failure of plant machinery, machinery, computers or vehicles; any labour dispute, including strikes, industrial action or lockouts; non-performance by suppliers or subcontractors; and interruption or failure of utility service, including but not limited to electric power, gas or water.
- 11.2 In the event that a delay is caused by a Force Majeure Event, the delivery dates of the Products shall be extended accordingly for a period at least equal to the duration of the Force Majeure Event. In no event shall TDA be liable for any special, incidental or consequential damages as a result of a Force Majeure Event.

## **12 GOVERNING LAW AND JURISDICTION**

- 12.1 This agreement is governed by the laws of the Netherlands, notwithstanding its conflicts of law provisions. The Vienna Convention on the International Sale of Goods 1980 (CISG), is not applicable.
- 12.2 Any dispute or claim that arises out of or in connection with this agreement, tort or otherwise will be exclusively settled by the competent court of Amsterdam (the Netherlands).

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