

**GENERAL TERMS AND CONDITIONS OF SALE FOR GOODS AND SERVICES**

**1. APPLICATION**

- 1.1 These general terms and conditions of sale ("this Agreement") will apply to all goods ("Goods") and services ("Services") supplied by NZ Skydive Limited ("the Company") to the purchaser ("the Customer") unless expressly varied in writing.
- 1.2 Goods are defined as all present and after acquired parts for the aviation industry including but not limited to parts for the Cresco, P-750XL, CT4, FBA-2C series and Fletcher FU24 supplied by the Company together with all proceeds arising from those goods.
- 1.3 Services are defined as meaning the provision of mechanical, engineering and design services for the aviation industry including but not limited to assembling and manufacturing parts, welding, and aircraft design on a consultancy basis and such other services as the Company may agree to provide to the Customer from time to time.

**2. ORDERS**

- 2.1 All orders for Goods and/or Services ("Order") must be in writing and will be subject to acceptance by the Company, which may decline an Order, or accept an Order in whole or in part at its sole discretion. The Company may cancel any Order without liability if in the Company's opinion it is or becomes impractical or uneconomical to fulfil. An Order once placed by the Customer cannot be cancelled by the Customer.
- 2.2 The minimum value for an Order is \$50.00 plus GST.
- 2.3 The Company will be entitled to cancel or terminate any part or the whole of an Order, following acceptance, if the Company becomes aware that in the Company's judgment the Customer's credibility or ability to perform this Agreement may be in jeopardy, including but not limited to:
  - (a) The Customer does not or is unable to perform or comply with any of its obligations under this Agreement; or
  - (b) The Customer is unable to make any payments under this Agreement as they fall due; or
  - (c) The Customer or anyone else has taken steps to bring about the Customer's insolvency.

**3. WARRANTIES**

- 3.1 Notwithstanding that the provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement as the Goods and/or Services are being provided for business purposes, but subject to clauses 3.2 and 3.3, the Company provides the guarantees stipulated under

Sections 5, 6, 7, 9 and 10 of the Act as if those guarantees were written into this Agreement in full, to the extent that any reference to any other section in the Act (other than Sections 5, 6, 7, 9 and 10) shall not be applicable to this Agreement.

- 3.2 The Company will not be liable under clause 3.1 for any of the following:
  - (a) use of the Goods other than in accordance with the Company's documentation and other instruction from the Company;
  - (b) use of the Goods in a manner not approved by the Company;
  - (c) modification of the Goods not authorised by the Company;
  - (d) subjection of the Goods to unusual or non-recommended physical environment;
  - (e) the Customer's failure to comply with any terms of this Agreement.

- 3.3 The Company's liability is restricted, at its option and discretion, to:
  - (a) the replacement of the Goods or the supply of equivalent Goods; or
  - (b) the payment of the cost of an amount equivalent to the Goods or of acquiring equivalent Goods; or
  - (c) the supply of Services again or payment of an amount equivalent to the cost of the Services invoiced by the Company to the Customer in respect of such Services supplied. The Company shall not be liable for any indirect or flow on losses

**4. CLAIMS**

- 4.1 Should a Customer become aware of an occurrence or a circumstance that could give rise to a claim, the Customer must notify the Company in writing within 30 days.

**5. PRICES**

- 5.1 Prices will be stated on the Company's sales order form and/or invoice or other like documentation.
- 5.2 Prices for Goods are given in New Zealand dollars (unless otherwise stipulated) EXW at the Company's business premises. Any variation to such prices, including exchange rate variation, subsequent to the date of quotation may be chargeable to the Customer. Orders may be subject to a surcharge for packaging, handling freight or service.
- 5.3 Prices quoted are subject to the applicable Goods and Services Tax and any other tax or levy imposed by any government authority upon the Goods and/or Services. All such taxes or levies will be payable by the Customer in addition to the price of the Goods and/or Services.

- 5.4 Unless otherwise specifically agreed in writing all freight and dispatch charges will be borne by the Customer.
- 5.5 Any bank fees associated with payment of an invoice, including any country of origin and New Zealand bank transfer fees, will be borne by the Customer.
- 5.6 In addition to the price for Services, the Company may charge pre-approved expenses reasonably incurred in providing such Services.
- 6. DELIVERY**
- 6.1 If the parties agree that the Company is to provide delivery services of the Goods to the Customer, the Company will use reasonable endeavours to make delivery at any times specified or estimated but will not be responsible for any loss or damage whatsoever sustained by the Customer or any person by reason of any delay in delivery or failure to fulfil an Order whether caused by circumstances beyond the control of the Company or not. No delay, failure or other default in respect of delivery, performance, part delivery or part performance will entitle the Customer to treat the agreement for that Order as repudiated. If the Goods are not delivered to the Customer as agreed, the Customer will promptly notify the Company no later than seven days from the expected date of delivery.
- 6.2 In the case of delays caused by circumstances beyond the control of the Company or by suppliers to the Company, the Company will have the right either to suspend deliveries without notice or to cancel the Order without liability.
- 7. CONFORMITY**
- 7.1 The Customer may only return the Goods to the Company if the Goods delivered do not comply with the obligations and warranties provided under clause 3.1 and if the Customer returns the Goods to the Company immediately and no later than seven days from delivery, including details of the non-conformity of the Goods with the Company's documentation. The Company's liability for returned Goods is restricted to that set out in clause 3.3.
- 7.2 If the Goods are not returned to the Company in accordance with clause 7.1, the Company shall have no liability in respect of the Goods.
- 8. PAYMENT**
- 8.1 The Company may require the Customer to pay a deposit or full payment in advance for any Order.
- 8.2 Unless otherwise expressly stated by the Company in writing, the Customer must pay the Company by the 20<sup>th</sup> of the month following the month in which the Goods and/or Services are invoiced ("Due Date").
- 8.3 Failure to make payment in full on the Due Date will be a default and, without prejudice to the Company's other rights in respect of such default, the Customer will pay interest on all overdue amounts at a rate of 5% over the NZ OCR per month from the Due Date until the date of payment in full.
- 8.4 In the event that a deposit is paid by the Customer but the balance is not paid by the Due Date, interest will accrue and the Company will be entitled to cancel or terminate an Order if the outstanding amounts remain unpaid for a period of 10 working days from the Due Date. The Company may dispose of the Goods after that period and the Customer shall forfeit any deposit paid to the Company and shall have no claim against the Company.
- 8.5 If the Company should deem the credit of the Customer to be unsatisfactory it may at any time require security for payment and may withhold supply until provision of sufficient security, or the Company may at its option suspend supplies or cancel this Agreement. In addition, payment for all Goods and/or Services supplied to the date of such suspension and any other monies payable will immediately become due and payable without further notice.
- 8.6 The Company will be entitled to recover from the Customer all legal and other costs arising from or in relation to the collection of any overdue monies or return of Goods or in relation to any other default made by the Customer.
- 8.7 The Customer will not be entitled to withhold payment or make deductions on account of payments due in respect of Goods or Services claimed to be defective or not in accordance with the Company's documents.
- 8.8 Where a credit application from the Customer has been accepted, the Company may cancel a line of credit at its discretion.
- 9. RISK**
- 9.1 Risk in the Goods will pass to the Customer in accordance with Incoterms. Risk includes any liability for loss or damage in respect of the Goods and third party loss or damage.
- 9.2 Notwithstanding that risk and possession may pass to the Customer, ownership and title in the Goods will remain with the Company until the Customer has discharged all outstanding indebtedness to the Company.
- 10. TITLE**
- 10.1 Until payment in full of all outstanding debts owed to the Company has been made by the Customer, the Customer acknowledges that:
- (a) The Goods are held by the Customer as bailee for and on behalf of the Company and the Customer will store the Goods in such a way as is clear that they are the Company's property;

- (b) The Customer irrevocably gives the Company, its agents and servants license and leave, without providing notice, to enter the premises occupied by the Customer to search for and remove any of the Goods in which the Company has ownership without in any way being liable to the Customer or any other person or company and if the Goods or any of them are wholly or partially attached to or incorporated in any other goods the Company may, where practical, disconnect or sever in any way whatsoever as may be necessary to remove the Goods all at the cost and expense of the Customer;
- (c) If the Goods have been resold by the Customer prior to repayment in full of the outstanding indebtedness of the Customer then the proceeds of such resale will be the property of the Company (but only to the extent necessary to discharge such outstanding indebtedness) and the Customer will hold such proceeds in trust for the Company. Any bank or secured creditor of the Customer will be made aware of the terms of this Agreement and the basis upon which the Company conducts business with the Customer;
- (d) This clause is intended to protect the Company in all circumstances including the event of insolvency or default in payment by the Customer;
- (e) By accepting delivery of the Goods, the Customer agrees:
  - (i) that this Agreement constitutes a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 (“PPSA”);
  - (ii) that a purchase money security interest exists in all Goods (and their proceeds) previously supplied by the Company to the Customer (if any) and the Customer grants a security interest in all Goods (and their proceeds) supplied in the future by the Company to the Customer;
  - (iii) that on the enforcement of those security interests created by this Agreement to which the PPSA applies, section 114(1)(a), 133 and 134 of the PPSA will not apply;
  - (iv) to waive any rights the Customer may have under sections 116, 120(2) and 121 of the PPSA on such enforcement;
  - (v) to keep records of the Goods until payment in full;
  - (vi) (without prejudice to the Company’s other rights and remedies) to return the Goods if requested to do so by the Company following non-payment of any amount due to the Company or non-fulfilment of any other obligation of the Customer under this Agreement;
  - (vii) that the Company has the right at all reasonable times to inspect the Goods and any parts of them;
  - (viii) to keep the Goods free and clear of all liens, taxes, charges, pledges, encumbrances or adverse claims of any nature;
  - (ix) that it will not register or allow any person to register a financing change statement or a change demand in respect of the Goods;
  - (x) that it will execute all other documents and do all other things that the Company may reasonably require for the purpose of registering a financing statement or financing change statement on the Personal Property Securities Register;
  - (xi) that its proper legal name appears in this Agreement and it will not change its name, address or contact details without providing the Company with 28 days prior written notice;
  - (xii) to waive any right to receive any verification statement, financing statement or financing change statement; and
  - (xiii) that it has not agreed to postpone the time for attachment of the security interest granted in this Agreement.

Terms defined in the PPSA have the same meaning in this Agreement.

**11. CUSTOMER’S SPECIFIC ACKNOWLEDGEMENTS, WARRANTIES AND UNDERTAKINGS**

11.1 The Customer acknowledges that the Goods and/or Services (including any ancillary items, accessories or replacements) are being acquired for the purposes of the Customer’s business.

11.2 The Customer enters into this Agreement solely in reliance upon its inspections of the Goods and upon the Customer’s own skill and judgment as to the quality of the Goods and/or Services and the fitness of the Goods and/or Services for the Customer’s purpose.

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- 11.3 The Customer, and not the Company or any employee or agent of the Company, has the skill for and is capable of assessing and has singularly assessed and determined and judged that the Goods and/or Services are fit for any particular purpose for which the Goods and/or Services are required.
- 11.4 No representation, warranty, promise or statement has been made in regard to the Goods and/or Services except for any express warranty in writing given by the Company.
- 11.5 The Customer acknowledges that all intellectual property rights in relation to the Goods and/or Services belong exclusively to the Company and/or its licensors or manufacturers of the Goods, and any intellectual property rights developed in the provision of the Services are and will be the exclusive property of the Company.
- 11.6 The Customer shall not copy or reproduce the Goods in any way or permit any other person or party to copy or reproduce the Goods.
- 12. LIABILITY**
- 12.1 Except as expressly provided in this Agreement all representations or warranties (statutory, express or implied), apart from any which may not be lawfully excluded, are expressly excluded. This clause does not limit Company obligations as a Type Certificate Holder.
- 12.2 This Agreement constitutes the entire agreement between the parties in respect of the Goods and/or Services.
- 12.3 To the extent that the Customer may, notwithstanding clauses 11.1 and 11.2, have any claim for damages against the Company at law, such claim will:
- (a) not include, under the law of tort, contract or otherwise, damages for indirect special or consequential loss of any kind (including loss of profits); and
  - (b) be restricted to the purchase price paid by the Customer for the Goods and/or Services giving rise to the claim.
- 12.4 The Customer acknowledges and agrees that it will be fully responsible for, and indemnify the Company against, any liability, cost or loss arising out of, from or as a result of improper, unlawful or illegal use of the Goods and/or Services or modification to the Goods, or in connection with combination or attempted combination of the Goods with other products and the Customer will not in any way interfere with the intellectual property of the Company in or about the Goods.
- 12.5 The Company will not be in default by reason of any failure to perform its obligations under this Agreement caused by any act or event beyond the Company's control.
- 13. WAIVER**
- 13.1 No waiver of any breach of this Agreement will be deemed to be a waiver of any other or any subsequent breach. The failure of any party to enforce any provision of this Agreement at any time will not be interpreted as a waiver of the provision.
- 14. THE PRIVACY ACT**
- 14.1 The Customer authorises the Company to contact any credit agency, referee or any other source (each a "Source") to obtain, check, disclose and exchange information (both now and in the future) in connection with this Agreement.
- 14.2 The Customer acknowledges that by signing this Agreement the Customer has authorised each Source to provide the Company with any information about the Customer which it may require in connection with this Agreement.
- 14.3 If the Customer is a natural person, the Privacy Act 1993 entitles the Customer to have access to personal information held by the Company about the Customer and to request correction of that information if necessary.
- 15. SEVERABILITY**
- 15.1 If any provision of this Agreement is deemed to be invalid, illegal or unenforceable, the remaining provisions will remain in full force and effect.
- 16. JURISDICTION**
- 16.1 This Agreement shall be construed and governed in New Zealand according to the law of New Zealand and the parties submit to the exclusive jurisdiction of New Zealand Courts in any proceedings relating to it.
- 17. ACKNOWLEDGMENT**
- 17.1 As a Customer has or will transact business with the Company, Implies that the Customer hereby acknowledges receipt and acceptance of these General Terms & Conditions of the sale.