

# General Terms and Conditions for Maintenance Services

## 1. SCOPE OF APPLICATION

- 1.1. The General Terms and Conditions (the "TERMS") set out hereinafter shall apply, to all MAINTENANCE SERVICES (one or any combination of the following activities: overhaul, repair, inspection, testing, replacement modification or rectification) performed upon aircrafts or parts thereof ("MAINTENANCE OBJECT") and which ACC Columbia Jet Service GmbH ("ACJ") shall carry out itself or may delegate to third parties.
- 1.2. These TERMS form an integral part of all quotations and contracts for MAINTENANCE SERVICES and supplies between ACJ and the customer ("MAINTENANCE CONTRACT") and shall exclusively apply to all business relationships with the customer ("CUSTOMER"). Agreements deviating from or contradicting to these TERMS, including but not limited to contradictory terms and conditions of the CUSTOMER, and side agreements shall only become an integral part of the contract upon ACJ express written [in the sense of section 126 German Civil Code (BGB)] consent as to their inclusion.

- 1.3. These terms shall also govern all future transactions between the parties and shall also apply if ACJ performs supplies or MAINTENANCE SERVICES despite its knowledge of differing or contrary terms of the CUSTOMER.

## 2. OFFERS, COST ESTIMATES AND CONCLUSION OF CONTRACT

- 2.1. Offers and cost estimates are not binding.
- 2.2. Contracts shall only be deemed to have been concluded once ACJ has accepted in writing (letter, fax or e-mail) the orders placed with it, has confirmed in writing letters of acceptance sent to it, or has delivered the supplies or performed the services ordered by the CUSTOMER. The same applies *mutatis mutandis* to all amendments to or alterations of contracts.

## 3. SCOPE OF ORDER

- 3.1. In cases of doubt regarding the scope of the contractual obligations, the content of the written order confirmation by ACJ and of the documents listed therein shall be decisive. Additional expenses due to errors in drawings and other documents provided by the CUSTOMER shall be borne by the CUSTOMER. The same applies to extra MAINTENANCE SERVICES not provided for in the contract or relevant confirmation of order.
- 3.2. ACJ is entitled, without prior consent of the CUSTOMER but at the CUSTOMER's expense, to perform additional services that ACJ may consider necessary to uphold the airworthiness of the MAINTENANCE OBJECT, 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 a net value of EUR 3,000.00.
- 3.3. In case the order includes the execution of scheduled or unscheduled maintenance, testing or modification work, it shall always cover all such work and testing as shall be deemed necessary by the responsible inspector of ACJ to maintain or restore an aircraft's airworthiness.
- 3.4. ACJ shall be authorized to delegate any MAINTENANCE SERVICES ordered by a CUSTOMER to a third party without previously notifying the CUSTOMER or obtaining specific consent of the same.

## 4. PRICES

- 4.1. All prices are net in euros (EUR), ex-works (EXW, INCOTERMS 2000) or ex performance site and exclusive of VAT, where and to the extent applicable.

- 4.2. If no fixed price is agreed upon, ACJ shall apply the prices it currently charges for the type of work involved. In this case the relevant rates will apply according to ACJ' current price list on the date of the conclusion of the contract. Releases and special travel disbursements shall be agreed on in each individual case or shall be charged at rates as being customary within the aircraft repair and maintenance industry. The current price list can be obtained on our website "www.acc-columbiaget.com" and is displayed for CUSTOMER'S inspection at ACJ' offices at the Cologne/Bonn and Hannover-Langenhagen airports.

- 4.3. If the CUSTOMER purchases components required for ACJ' MAINTENANCE SERVICES directly and delivers these parts to ACJ' premises for installation ("CUSTOMER'S SUPPLIES"), ACJ is entitled to charge 10% of the market value of such CUSTOMER'S SUPPLIES for handling, but no more than –EUR 15,000.00 per component. However, ACJ shall not be responsible for any defects of or caused by CUSTOMER'S SUPPLIES (see clause 14.1 hereof).
- 4.4. In the event that the performance of the contract by ACJ becomes entirely or partially impossible for reasons beyond ACJ' control, the CUSTOMER shall owe the pro-rata share of the remuneration for supplies and services so far provided.

## 5. TERMS OF PAYMENT, CONTRACTUAL LIEN AND RIGHT OF RETENTION

- 5.1. Unless ACJ otherwise agreed, payments to ACJ shall become due immediately upon receipt of invoice and must be made in cash free of bank or other charges and without deduction.
- 5.2. If the CUSTOMER has not paid within 10 working days from receipt of the invoice, he will be in default of payment. In this case, ACJ may charge a consumer default interest at a rate of 5 percentage points above the base rate of interest, entrepreneurs in default of payment will be charged interest at a rate of 8 percentage points above the base rate of interest.
- 5.3. ACJ shall be entitled at any time to demand, and the CUSTOMER undertakes to immediately effect partial or full payment at ACJ's option either in advance or at the time of ACJ's fulfillment of the contract.
- 5.4. Notwithstanding the maturity date provided in 5.1., **complaints concerning ACJ's invoices shall be submitted in writing and within ten days of the receipt of invoice.** Otherwise, ACJ's invoices shall be deemed to have been accepted.
- 5.5. ACJ shall not be obliged to accept credit cards, cheques, bills of exchange or money orders. In case of acceptance of the same, such payments shall not be considered to have been effected until the date of crediting to ACJ for free disposal by the latter.

- 5.6. In the event that the CUSTOMER fails to comply with its payment obligations according to the MAINTENANCE CONTRACT in conjunction with clause No. 5 of the TERMS, ACJ has a contractual lien and a contractual right of retention with respect to the MAINTENANCE OBJECT in its custody as well as with respect to other items of the CUSTOMER in ACJ's custody in order to secure any claims of ACJ against the CUSTOMER out of or in connection with the MAINTENANCE CONTRACT. ACJ shall be entitled to charge their current hanging fees during any period in which the vehicle is retained by virtue of this lien or right of retention.

## 6. ASSIGNMENT, SET-OFF AND RIGHT OF RETENTION

- 6.1. The CUSTOMER shall not have the right to assign any claims or rights it may be entitled to against ACJ to third parties without ACJ' prior written consent.
- 6.2. The CUSTOMER may only set-off such claims against ACJ as are either uncontested, determined by final and binding arbitration award or court decision or ready for judgement (proven - German: "entscheidungsreif").
- 6.3. The CUSTOMER may assert a right of retention only to the extent its claim is based on the same contractual relationship.

## 7. TIME LIMITS AND DATES

- 7.1. Time limits and dates for the performance of MAINTENANCE SERVICES shall be binding on ACJ only if they have been expressly agreed in writing. Where no time limits or dates have been agreed upon in writing, the time limits and dates estimated by ACJ shall apply.

- 7.2. Prerequisite for the timely delivery or performance of services by ACJ is the complete and timely fulfillment of all CUSTOMER'S responsibilities and obligations of co-operation including but not limited to the timely delivery of documents, the timely provision of the MAINTENANCE OBJECT including keys and aircraft papers etc., and in a condition allowing the performance of the MAINTENANCE SERVICES on it, the clarification of all commercial and technical questions (including price agreements), and the remittance of advance payments demanded by ACJ. Agreed time limits and dates shall be extended by any delay of due payments and any other of CUSTOMER'S fundamental responsibilities and obligations, even if ACJ has not asserted its right of retention or the right to refuse performance.

- 7.3. Subsequent changes of or supplements to the scope of initially agreed supplies and services shall extend the time limits and dates in accordance with the supplementary time required therefore.
- 7.4. Any occurrence of *force majeure* or of other circumstances beyond ACJ' control (e.g.: lack of spare parts, dislocation of operations, strikes, lockouts etc.) - regardless of whether they affect ACJ or its suppliers - shall release ACJ from its obligation to deliver supplies, perform MAINTENANCE SERVICES and provide the space for transitory HANGERING of aircrafts for the duration of the effects of such occurrence. Should any such occurrence render impossible ACJ' supplies, MAINTENANCE SERVICES or the provision of space for transitory HANGARING, ACJ shall be fully released from its obligation.
- 7.5. In the event the completion of the MAINTENANCE OBJECT by ACJ is delayed and thus the CUSTOMER has suffered a proven damage, the CUSTOMER shall have the right, notwithstanding the CUSTOMER's right to rescind the contract in accordance with the statutory requirements for such rescission, to claim (without rescinding the contract) compensation for such delay in the amount of 0.5% of the contract price per full week of delay with a maximum of 10 % of the contract price to the exclusion of any further claims for damages. This limitation shall not apply if the delay is due to a violation of such obligations whose fulfillment is a prerequisite for the proper performance of the contract and on whose fulfillment a customer may ordinarily rely ("CARDINAL OBLIGATIONS") or is due to serious fault (wilful misconduct or gross negligence) of ACJ.

## 8. ACCESS TO ACJ' PREMISES AND EXECUTION OF MAINTENANCE SERVICES

- 8.1. As long as the MAINTENANCE OBJECT is on ACJ' premises, no persons and entities other than those mandated by ACJ shall be allowed to execute work on the MAINTENANCE OBJECT without ACJ' prior written consent. The CUSTOMER undertakes to notify ACJ timely and in writing of any work executed by authorised third parties. Such work is performed at the exclusive risk and responsibility of the CUSTOMER.
- 8.2. During their stay on ACJ' premises the aircraft's crew and all persons retained by the CUSTOMER or present on board the aircraft must observe all statutory provisions, the regulations referred to in clause 8.3 below and must at any time identify themselves.
- 8.3. ACJ' premises are situated on and part of either the Köln/Bonn-Airport or the Airport of Hannover-Langenhagen, and thus lie within the scope of either the "Airport User Regulations of the Flughafen Köln/Bonn GmbH" (German: "Flughafenbenutzungsordnung der Flughafen Köln/Bonn GmbH") or the "Ordinance of Flughafen Hannover-Langenhagen GmbH concerning the Use of the Airport Hannover-Langenhagen" (German: "Flughafenbenutzungsordnung der Flughafen Hannover-Langenhagen GmbH") - both hereinafter referred to as "AIRPORT ORDINANCES". Hence all persons retained by the CUSTOMER and present on ACJ' premises at or the PREMISES of the two Airports must also adhere to the AIRPORT ORDINANCES, the current version of which can be obtained on our website "www.acc-columbiaget.com" and is displayed for CUSTOMERS' inspection at ACJ's offices at the Cologne/Bonn and Hannover-Langenhagen airports.
- 8.4. All scrap (replaced parts, substances, etc.) removed in the course of MAINTENANCE SERVICES shall pass into ACJ' ownership without compensation if ACJ so desires. However any and all disposal of all toxic substances and hazardous waste will be performed by ACJ at CUSTOMER'S expense.

## 9. EXCHANGE PARTS AND LEASED PARTS

- 9.1. **Exchange parts:** If ACJ supplies exchange parts to the CUSTOMER, he shall return the off-core parts to ACJ within 10 days of the receipt of such exchange parts. The costs of exchange shall be determined in advance by the manufacturer of the parts or by ACJ. If the expense of repairing the returned off-core parts exceeds the cost of the exchange, the CUSTOMER shall be charged with the difference by supplementary invoice. If for any reason whatsoever the CUSTOMER returns an exchange part without having used it, such exchange part shall only be accepted if serviceable upon arrival at ACJ. The CUSTOMER shall in addition be charged with a restocking fee and recertification charge of 20 % of the exchange part's current list price. If a returned exchange part is found to be defective,

the CUSTOMER shall be charged with the cost of repairing it with supplementary invoice. If the exchange part is not repairable, the CUSTOMER shall be debited with the full sales price.

- 9.2. **Leased parts:** Leased parts are provided to the CUSTOMER exclusively on the basis of ACJ' Standard Lease Agreement for Single Parts to be concluded separately. However, leased parts shall be returned serviceable in any event. If such is not the case, the repair costs or, if repairs are not cost-effective, the replacement costs of loaned parts shall be charged to the CUSTOMER.

## 10. ACCEPTANCE OF MAINTENANCE SERVICE AND REMOVAL OF MAINTENANCE OBJECTS

- 10.1. The CUSTOMER or his representative undertake to accept the MAINTENANCE SERVICES and remove the MAINTENANCE OBJECT within three days of being notified of the completion of the MAINTENANCE SERVICE against payment of invoice. Delivery shall be affected at the place MAINTENANCE SERVICES were requested by ACJ. However, acceptance shall be deemed to have occurred at the latest upon the CUSTOMER'S taking into operation of the MAINTENANCE performed. ACJ shall not be obliged to verify the authorisation of the person taking delivery.
- 10.2. If the CUSTOMER is in default of acceptance of the MAINTENANCE SERVICES, ACJ shall be entitled to rescind the contract and/or to claim damages at ACJ's option either by means of indemnification of the loss actually suffered - or - without proof of loss - in the amount of 10 % of the agreed contract price. The CUSTOMER, however, retains the right to prove in particular that ACJ did not suffer any loss at all or suffered only a significantly lower loss.
- 10.3. In case of the CUSTOMER fails to comply with the time limit for removal set out in clause 10.1., ACJ shall be entitled to invoice the customary hanging or parking charges. In addition, ACJ shall have the right to park aircrafts or store other maintenance objects at CUSTOMER'S expense and risk outside the hangar, workshops and tarmac areas under its control.
- 10.4. Any Shipment of the MAINTENANCE OBJECT to the CUSTOMER, including transitory hanging or parking of aircrafts or storage of other MAINTENANCE OBJECTS en route or at destination, shall be entirely at risk and to account of the CUSTOMER.

## 11. PLACE OF PERFORMANCE

Unless another place of performance has been agreed upon, the place of ACJ' contractual performance shall be ACJ' premises.

## 12. RESERVATION OF TITLE

- 12.1. ACJ reserves title to goods delivered and/or installed by it ("CONDITIONAL GOODS" - German: "Vorbehaltsware") until the CUSTOMER'S entire performance of all claims - regardless of their legal basis and of whether they have arisen or existed at the time of the conclusion of the contract, or will arise in the future - to which ACJ is entitled from the CUSTOMER either (a) under the respective contract and (b) arising in connection with the business relationship with the CUSTOMER.
- 12.2. The CUSTOMER shall be entitled to re-sell, mix or combine and subsequently sell CONDITIONAL GOODS within the scope of the extended reservation of title, provided that this is done within the ordinary course of business. The CUSTOMER may neither pledge nor transfer ownership by way of security of CONDITIONAL GOODS to third parties. The CUSTOMER must notify ACJ promptly in writing about any attachment or seizure of property, or any other disposal by third parties.
- 12.3. The CUSTOMER shall maintain the CONDITIONAL GOODS in proper condition.

## 13. DEFECTS

- 13.1. The CUSTOMER must notify ACJ of any defect in writing immediately upon its discovery. Subject to clause 14.3 hereof, ACJ shall not be liable for any aggravation of defects occurring due to late notice of a defect.
- 13.2. The CUSTOMER must first provide ACJ the opportunity to rectify the defect within reasonable time (removal of defect, German: "Nacherfüllung"). In order to rectify the defect ACJ may at its option either repair the defect or produce a new work.
- 13.3. The MAINTENANCE OBJECT must be made available to ACJ for the purpose of rectification of the defect at the place of performance specified in clause 11 hereof. If this is economically unreasonable, the CUSTOMER upon mutual agreement shall be entitled to get the work necessary for rectifying the defect done either by ACJ' staff abroad or if necessary at another aircraft repair and service centre ("Third-Party Repair Centre"). In the latter case ACJ shall reimburse the CUSTOMER all expenses proven necessary and reasonable for such work.
- 13.4. The CUSTOMER'S claims for reimbursement of expenses incurred for the facilitation of rectification, including but not limited to the cost of making the MAINTENANCE OBJECT available at the place of performance specified in clause 11 hereof, shall be excluded.
- 13.5. In cases of notified defects, ACJ shall only be obliged to rectify the defect after the CUSTOMER has paid a proportionate part of the contract price taking into account the notified defect.
- 13.6. If rectification finally fails, or if such rectification cannot be reasonably expected to be acceptable to ACJ or the CUSTOMER, or if rectification is associated with disproportionate costs, and is for this reason, refused by ACJ, the CUSTOMER may, subject to statutory requirements, rescind the contract or reasonably reduce the remuneration without prejudice to claims for damages which the CUSTOMER may otherwise have.
- 13.7. ACJ' obligation for payment of damages shall be governed by clause 14.3 hereof.
- 13.8. The title for replaced parts shall pass to ACJ if it so desires.
- 13.9. Subject to clause 14.3 hereof, any claims and rights of the CUSTOMER in connection with defects shall be null and void if the supplies or services performed are altered, treated, processed, or handled or repaired improperly by the CUSTOMER or third parties not authorised by ACJ.

- 13.10. Warranty claims and further rights of the CUSTOMER are also excluded in case of used parts or makeshift repairs installed or performed at the request of the CUSTOMER. The same applies to CUSTOMER'S SUPPLIES.
- 13.11. Unless agreed otherwise between ACJ and the CUSTOMER, all claims of the CUSTOMER against ACJ regarding defects shall become time-barred after one year commencing upon passing of risk. However, this period of limitation shall not apply if and to the extent the defect was maliciously concealed and/or any of the liability cases specified in clause 14.3 hereof apply.

## 14. LIABILITY AND INSURANCE

- 14.1. For the duration of the MAINTENANCE CONTRACT the CUSTOMER shall be responsible for all effects and valuables, and all cargo remaining onboard the aircraft, and the CUSTOMER'S SUPPLIES.
- 14.2. Subject to clause 14.3 hereof, ACJ shall not be liable for damages resulting from incorrect drawings or other documents provided by the CUSTOMER or the lack of functionality and/or airworthiness of the MAINTENANCE OBJECT. The CUSTOMER must expressly notify ACJ in writing about circumstances affecting the functionality and/or airworthiness of the MAINTENANCE OBJECT which could create a risk of damage to the MAINTENANCE OBJECT or its equipment or ACJ' property despite proper execution of MAINTENANCE SERVICE by ACJ.
- 14.3. Claims other than those provided herein or in the contract entered into with the CUSTOMER shall be excluded unless such claims arise from
  - > the provisions set out in the German Product Liability Act (German: "Produkthaftungsgesetz");
  - > the intentional or grossly negligent breach of contractual or statutory obligations by ACJ' executive bodies or senior management;
  - > personal injuries or death of the CUSTOMER or its employees caused by a breach of duty for which ACJ is responsible;
  - > the warranty for the presence of particular characteristics, or
  - > ACJ' violation of its CARDINAL OBLIGATIONS.

Without prejudice to the events of liability specified above, ACJ shall not be liable, except in the case of its violation of CARDINAL OBLIGATIONS, for damages of the CUSTOMER arising from a grossly negligent breach of duty, in particular the duty to exercise proper care and supervision of ordinary vicarious agents.

- 14.4. If ACJ has violated CARDINAL OBLIGATIONS, damage claims by the CUSTOMER against ACJ shall be limited to foreseeable damages which are characteristic for the contract, unless there is intentional misconduct or gross negligence proven, or the claim against ACJ is based on personal injury or death of the CUSTOMER or its employees or a breach of ACJ' warranty for the presence of particular characteristics.

- 14.5. To protect itself against the consequences of above exclusion and limitation of liability, the CUSTOMER shall cover the relevant risks by taking out all necessary insurance cover. The CUSTOMER covenants in particular to take out and maintain in full force during the term of the MAINTENANCE CONTRACT the following insurance cover for the aircraft and - where appropriate - for other MAINTENANCE OBJECTS:

- (i) Hull All Risk and All Risk Property Insurances, both covering war risks and containing a waiver of subrogation and/or assignment in favour of ACJ, its executive bodies, senior management, vicarious agents and subcontractors;
  - (ii) Comprehensive Airline Legal Liability Insurance including aircraft third party, passenger and war risk liability with a combined single limit in accordance with Art. 7 EU-Regulation (EC) no. 785/2004 with ACJ, its executive bodies, senior management, vicarious agents and subcontractors being named as co-insured parties.
- 14.6. If the CUSTOMER has contracted with ACJ on behalf of a third party, the CUSTOMER shall safeguard that such third party takes out and maintains the insurance cover specified in Clauses 14.5. sub. (i) and (ii) hereof.

## 15. SPECIAL TERMS AND CONDITIONS FOR AIRCRAFT HANGARING

The provision of parking space for aircrafts in ACJ' hangars ("HANGARING") is subject exclusively to ACJ' Special Terms and Conditions for Aircraft Hangaring the current version of which can be obtained on our website "www.acc-columbiaget.com" and is displayed for CUSTOMERS' inspection at ACJ's offices at the Cologne/Bonn and Hannover-Langenhagen airports.

## 16. PLACE OF JURISDICTION AND APPLICABLE LAW

- 16.1. The Courts at ACJ' principal place of business shall have exclusive jurisdiction for any disputes which may directly or indirectly arise out of the contractual relationship between the CUSTOMER and ACJ. ACJ shall, however, at its option, be entitled to institute legal proceedings against the CUSTOMER also before courts competent for the residence, place of business, situation of assets of the CUSTOMER or the MAINTENANCE OBJECT. Any mandatory statutory jurisdiction shall remain unaffected.

- 16.2. The laws of the Federal Republic of Germany shall apply exclusively as they are applicable among domestic persons.

## 17. PARTIAL INVALIDITY

Should any of the provisions contained in a contract of which these TERMS form an integral part, be or become invalid, the remaining provisions shall remain unaffected thereby.

## 18. AMENDMENTS

Any amendments to these TERMS including this clause as well as to agreements with the CUSTOMER need to be agreed upon in written form.