

General Terms and Conditions for Supplies and Maintenance Services in aviation by RUAG companies with their place of business in Switzerland (GTC SMS RA)

1. Scope and validity

1.1 These GTC SMS RA govern the conclusion, content and performance of contracts for the supply of components, equipment, parts and material ("Parts") as well as for maintenance, repair and overhaul including upgrade, life cycle support and similar or related services ("MRO") by RUAG (all together hereinafter referred to as "Maintenance").

1.2 These GTC SMS RA shall be considered accepted if the Customer orders from RUAG and reference is made to them in the offer or in the order confirmation. General Terms and Conditions of the Customer are explicitly excluded.

2. Offer and order

2.1 An offer submitted by RUAG is valid during the period mentioned in the offer. If there is no respective information, RUAG remains bound for 30 calendar days.

2.2 If the order of the Customer deviates from RUAG's offer or order confirmation, the offer, the order confirmation respectively, applies, unless the Customer raises an objection immediately after receipt.

2.3 Orders are only binding if they are placed in writing or subsequently confirmed in writing. Electronic orders and confirmations are considered equivalent.

3. Scope of Maintenance

3.1 Unless otherwise agreed in writing,

- a) services cover preventive Maintenance to safeguard operational reliability and corrective Maintenance (fixing defects so that normal operability is resumed) through repair or replacement of defective components or installation of technical upgrades. The ownership of any part which is replaced shall, unless otherwise agreed, be acquired by RUAG upon its removal;
- b) software services shall include the remedy of errors as well as the elimination of faults in programs. Subject to other agreement in writing case by case, the remuneration for the Maintenance of the software shall not include the integration of new functions and the corresponding user rights.

3.2 If requested, RUAG shall provide support to diagnose the cause of a fault resulting from the interaction of several systems or components. If the fault was not caused by hardware or software for which RUAG is responsible, the Customer shall be billed separately for this service.

3.3 At Customer's request the following services shall be rendered by RUAG for separate remuneration:

- a) The implementation of any necessary software adaptations for operational, database and carrier systems that are modified.
- b) The remedy of errors that are caused by circumstances for which Customer or third parties are responsible.

3.4 RUAG shall be entitled but under no obligation to replace a part either by an Exchange Part or an Outright Part.

4. Enlisting of subcontractors

RUAG reserves the right to mandate subcontractors for the provision of Maintenance. In such a case RUAG remains responsible towards the Customer for the provision of Maintenance.

5. Remuneration and packing

5.1 The remuneration compensates for the Maintenance agreed upon in the contract. Unless expressly otherwise agreed, it is due net, excluding taxes and duties (value added tax, customs duties etc.), from RUAG premises, without packing and without deductions.

5.2 The parties shall agree on the MRO to be performed on:

- a) a flat rate basis; and/or
- b) a time and material basis.

MRO provided on a time and material basis shall be charged at the man-hour rate in force at RUAG's working place at the time upon conclusion of the contract.

5.3 RUAG may increase the remuneration for the Maintenance to take effect at the beginning of the following calendar year, as long as:

- a) it reasonably justifies the increase upon prior notice to Customer, and
- b) Customer does not refuse the increase within 10 calendar days from receipt of the notice.

5.4 In case Maintenance has to be provided outside the agreed working place, prices do not include related expenses of RUAG.

5.5 The value for a removed part, replaced by an Exchange Part, will only be taken into account in case a later reconditioning into an operable part is possible at economically reasonable expenses. In respect thereof, invoicing is subject to correction.

6. Terms of payment

6.1 Unless otherwise agreed, the payments are due at once, payable to RUAG within 30 calendar days from the invoice date without any deduction.

6.2 RUAG may demand a reasonable advance payment upon placement of an order.

6.3 Customer's objections against an invoice of RUAG must be raised in writing within two weeks after its receipt, otherwise the invoice shall be deemed fully approved by Customer.

6.4 The payment dates have to be complied with, even if the Maintenance is delayed for reasons, for which RUAG is not responsible, or if insignificant parts are missing or slight corrections are necessary.

7. Transfer and retention of title

7.1 The property and title in the Parts remain with RUAG until all payments and claims owed to RUAG for the Maintenance and all other monies owed to RUAG by Customer from the contractual relationship have been fully paid.

7.2 Customer shall, for the term of the retention of title, thoroughly keep the Parts under RUAG's retention of title, maintain them, insure and protect them against fire, water, damage and all other risk, as well as take all reasonable measures to secure RUAG's title. Sale, treatment, processing, mixing, pledging, chattel mortgaging or any other act of disposal of the Parts are permitted solely with prior written approval by RUAG. In case any Parts under RUAG's retention of title are drawn upon by a third party (e.g. by seizure), Customer shall advise such third party about the retention of title, and immediately notify RUAG of such event.

8. Right of retention and lien

RUAG has a right of retention and a contractual lien over the aircraft and all Parts of which RUAG has taken possession under any contract with the Customer, until all payments and claims owed to RUAG for the Maintenance and all other monies owed to RUAG by Customer from the business relationship have been fully paid. In case such lien should require additional legal action for its validity (e.g. a notary deed), Customer shall fully cooperate to have such actions executed.

9. Delivery times and default of delivery

9.1 Ground time, time of performance and delivery dates shall only be binding if agreed on in writing and if:

- a) Maintenance to be provided is clearly defined, and
- b) the aircraft or Part to be maintained is placed at RUAG's disposal at the agreed time, and if
- c) Customer has paid all amounts due under the relevant order.

- 9.2 Delivery times are considered kept if, until their expiry, the Maintenance agreed upon has been provided by RUAG. Partial Maintenance delivery shall be permitted provided Customer suffers no disproportional disadvantage thereof.
- 9.3 RUAG shall be entitled to extend the agreed ground time and/or time of performance or delivery in case:
- Customer requests performance of additional services; or
 - defects on airframe, systems, engines or components have been discovered and have to be rectified; or
 - any additional services are required to maintain and/or restore aircraft's airworthiness; or
 - components, parts and documents requested by RUAG on time from Customer or any third party are delayed, incomplete or not delivered; or
 - aircraft is being delivered late or not in accordance with the terms and conditions set out in the relevant work order or any other contract; or
 - Customer's default of any other contractual obligation.

9.4 If RUAG cannot comply with a delivery time for reasons, for which it is not responsible (e.g. due to unfulfilled obligation to co-operate of the Customer or the fault of third parties), it is extended appropriately.

9.5 If the parties have agreed upon an exact deadline for Maintenance, and in case RUAG does not meet the deadlines so fixed, RUAG comes into default without further ado; in any other cases after a written reminder by the Customer granting a reasonable respite. If RUAG comes into default through its own fault, the Customer is entitled to claim a contractual penalty. For each full week of delay, the contractual penalty amounts to a maximum of 0,5%, but not more than a total of 5%, calculated on the contractually agreed remuneration for the delayed (partial) Maintenance. For the first week from the beginning of default there is no claim for a contractual penalty. The contractual penalty is credited against a possible compensation for damages to be paid. Personal negligence of the Customer or Force Majeure remain reserved.

10. Force Majeure

10.1 RUAG shall not be held responsible for failure to perform or delay in performing any of its contractual obligations if such failure or delay is due to unforeseeable events beyond their reasonable control, whether arising from natural causes or human agency ("Force Majeure"), including but not limited to acts of God, war, insurrection, epidemics, sabotage, labour disputes, strikes, lock-outs, shortages of labour, interruption or delays in transportation, fire, explosion, equipment or machinery breakdown, failure or delays of RUAG's source of supply, shortage in material or energy, acts, orders or priorities of any aviation authority or government (e.g. non-issuance of an export license or non-approval of service deliveries as well as the withdrawal of such an export authorization), and embargo.

10.2 RUAG shall notify in writing Customer within two weeks following the occurrence of any event of Force Majeure citing this clause in said notice and shall supply all relevant information about its effects on the performance of its contractual obligations.

10.3 Unless mutually agreed to in writing, if RUAG is unable to perform because of Force Majeure, RUAG is temporarily excused from performance while the incident of Force Majeure is occurring and obligated to perform once the incident ends. RUAG shall not be subject to damage claims.

10.4 In case the duration of Force Majeure exceeds six months, the parties will have the right to terminate this contractual relationship immediately. Contractual obligations performed shall be remunerated. If the purchase price has been paid by the Customer in full, RUAG will refund the purchase price less the accrued cost and expenses of the contractual obligations.

11. Place of performance

11.1 Unless otherwise agreed, the premises of RUAG are the place of performance.

11.2 With the delivery at the place of performance risk is transferred to the Customer.

12. Inspection and acceptance

12.1 In case acceptance of Maintenance is required by law, Customer shall inspect deliverables on his own cost and start this inspection promptly upon receipt of a notification of acceptance readiness, the „Certificate of Release to Service“ (CRS), an EASA Form One, a Certificate of Conformity (CoC) or equivalent, as applicable and whichever received earlier. Customer may not refuse to declare acceptance for defects by which the operability of the deliverables in question is not affected or in-significantly affected. If during the acceptance inspection major defects are detected, acceptance is postponed. RUAG remedies detected defects and notifies the Customer of a new acceptance date.

12.2 In case Customer fails to start the inspection within 14 calendar days upon receipt of a notification of acceptance readiness or of the CRS, an EASA Form One, a CoC or equivalent, as applicable and whichever received earlier, acceptance shall be deemed to have been declared without reservation. Acceptance shall be deemed to have been declared without reservation in any case when Customer puts into operation, without reservation, the deliverable, in particular when such object, to Customer's knowledge, is removed from RUAG's premises for other purpose than local testflight.

12.3 The provisions above shall not affect the risk for Customer to get in default already prior to expiry of the aforementioned period. The responsibility for technical condition and precaution, and, if applicable, for sustaining airworthiness of the object in question, as well as the risk of damage to the object shall, without further declarations, pass on to Customer, at the latest, as soon as the period pursuant to Art. 12.2 is expired or in case Customer leaves the object on RUAG's premises after having accepted it; in such cases RUAG shall solely be liable for damages or destruction of the object when caused willfully or grossly negligently by RUAG. RUAG may charge the Customer a fee for any efforts or expenses due to reasonable care and storage of the aircraft or Parts. However, RUAG shall not be under any obligation to care and store the aircraft in case of Customer default.

13. Warranty

13.1 RUAG warrants that Maintenance provided:

- is performed and conform to industry standards relevant to authorized providers of such services,
- is free of defects in material and workmanship, and
- conforms to all contractual requirements.

13.2 For MRO and Parts of RUAG, claims due to defects shall be subject to a limitation period of 90 calendar days, 150 flight hours, or 100 cycles of the aircraft, whichever occurs first, following the completion or, if required, the CRS, EASA Form One, CoC or equivalent as applicable. However, for parts and services supplied by third parties the remaining supplier warranty shall be passed on to the Customer.

13.3 Defects shall be reported to RUAG in writing promptly after Customer becomes aware of them, at the latest within 10 calendar days after discovery.

13.4 In case Customer is entitled to elimination of a defect, RUAG can choose between remediation and replacement. Other claims of the Customer are expressly excluded. RUAG will only rectify the defects provided the defect is not the result of any alteration undertaken by any party, other than RUAG. Customer shall not be entitled to any additional indemnification whatsoever. In case the aircraft or Parts are not at RUAG's working place at the time a defect is reported, RUAG shall be entitled to appoint any working place where the defect will be rectified. RUAG shall be entitled to have the defect rectified by a third party.

13.5 The warranty shall exclude defects due to normal wear and tear or the aircraft or Parts not being operated, handled or stored by the Customer in accordance with manufacturer's recommendations or in accordance with the flight manual or applicable authority requirements or other causes RUAG is not responsible for.

13.6 RUAG assumes no liability of whatever nature to the Customer relating to defects in Parts procured from third parties which have been installed by RUAG. However, RUAG will use its best endeavours to obtain from its suppliers of Parts any warranties and shall assign, if possible, such warranties to the Customer.

13.7 Handling of "Third Party – Manufacturer Warranties"

If RUAG handles warranty claims for Customer toward third parties (e.g. manufacturers), Customer's obligation to first remunerate RUAG's efforts shall remain unaffected thereby. Payments, if any, made by such third party will then be reimbursed to Customer.

13.8 Warranty Notice

13.8.1 Above warranties are exclusive and Customer waives all other claims for warranties (express or implied) of RUAG to the Customer arising by law or otherwise with respect to or relating to Maintenance performed by RUAG under the order.

13.8.2 Any warranty work carried out by the Customer or any third party as agreed in writing with RUAG shall not be reimbursed at a rate higher than RUAG's rates, and in such event RUAG is not responsible for any aircraft positioning costs, or freight charges which may incur.

14. Liability

RUAG is only liable for violations of contract caused through gross negligence or intentionally. Liability for auxiliary personnel is excluded.

15. Licenses and export regulations

15.1 If the Customer provides goods for the performance by RUAG, he keeps informed at all times about national and international export regulations (e.g. ITAR) and notifies RUAG immediately in writing, if the goods provided are subject to these provisions in whole or in part. He complies with all applicable export regulations and discloses to RUAG all relevant information for this purpose.

15.2 Unless expressly otherwise agreed in writing, the Customer takes all measures required to obtain the official license needed for the provision of Maintenance. RUAG provides the Customer with appropriate support.

16. Emerging intellectual property rights

16.1 Intellectual property rights (Copyrights, patent rights etc.) created during the performance of the contract, particularly on works, concepts, hardware and individual software including source code, program description in written or machine-readable form specially developed by RUAG belong to RUAG.

16.2 The Customer has a non-transferable and non-exclusive right to use the emerging intellectual property rights within the purpose of the contract. In case of software this right includes the use on the hardware as agreed and their successor systems. For a changed operating system or higher performance class the modification and extension of the right of use requires the approval of RUAG.

16.3 Both parties are entitled to use and dispose of ideas, procedures and methods which are not protected by law, but without being under the obligation to disclose them.

17. Pre-Existing intellectual property rights

17.1 Pre-Existing intellectual property rights (Copyrights, patent rights etc.) remain with RUAG or third parties.

17.2 The Customer obtains a non-exclusive and non-transferable right to use the pre-existing intellectual property rights for the agreed purpose.

18. Infringement of intellectual property rights

18.1 RUAG shall contest at its own cost and risk any third party claims arising from infringement of intellectual property rights. The Customer informs RUAG immediately in writing about claims of third parties due to infringement of intangible property rights. He lets RUAG conduct a possible trial and take care of the measures and instructions for a settlement in court or out of court. In case of a trial the Customer shall consult RUAG immediately. If necessary, he takes first damage-reducing measures.

18.2 Under these conditions RUAG assumes the costs accruing to and damages paid by the Customer. In case of a settlement out of court RUAG makes the agreed payment to third parties only if it has approved it beforehand.

19. Confidentiality

19.1 Both parties shall treat in strict confidence all information which is neither generally known nor generally accessible, and shall use it only for the purpose of fulfilling the concluded contract. Moreover, the parties shall ensure the confidential treatment by their personnel and consulted specialists. In case of doubt, all information is to be treated confidentially.

19.2 Confidential information of a party does not include information which:

- was already known to the other party, before it was made accessible by the disclosing party;
- is or becomes generally known without the other party's responsibility;
- was disclosed to the other party by a third party without any transfer restriction;
- was developed by the other party itself without using or referring to the confidential information of the protected party;
- has to be disclosed based on a legally binding decision of a law court, administrative or other authority. In this case the party under the obligation to disclose has to inform the other party immediately about the decision and support protective measures the other party may want to take.

19.3 This obligation of confidentiality already exists prior to the conclusion of the contract and remains valid for a period of 3 years after termination of the contractual relationship.

19.4 Without the approval of the other party the disclosure of information to third parties is not permitted. The companies of the RUAG Group, particularly the RUAG Holding AG as well as its subsidiaries and enlisted specialists (lawyers, auditors, experts) are not third parties in terms of this agreement. The parties hereby give explicit approval that confidential information may be disclosed to the aircraft's owner, operator, responsible Continuing Airworthiness Management Organization and/or Aviation Authority, as applicable. If the approval is given, the obligations of confidentiality are to be transferred to the receiving third party.

19.5 Advertising and publications about specific services in connection with the contractual relationship require the written approval of the other party. Without the written approval of RUAG the Customer may not advertise the fact that a cooperation between the parties exists or existed, and may not give RUAG as a reference.

19.6 If a party violates the above-mentioned obligations of confidentiality, it owes, unless otherwise agreed, a payment to the other party, unless it can prove that it was not at fault. For each case the payment amounts to 10% of the total compensation or 10% of an annual remuneration in case of a recurring remuneration, but no more than CHF 50'000.00 per case. This payment does not relieve the party from the obligation of confidentiality; but it is credited against the damages to be paid. Possible penal consequences remain reserved.

20. Data protection

20.1 The parties commit themselves to adequate data protection, corresponding with Swiss legislation. In particular they undertake to take economically, technically and organisationally reasonable measures to protect the data affected by contract performance effectively against unauthorised knowledge by third parties.

20.2 Personal data may only be processed for the purpose and to the extent required for the fulfillment of the contract and for safeguarding a high service and security standard. To this extent and for this purpose personal data may also be passed on to another Customer of the RUAG Group and to domestic and foreign business partners, as far as legally admissible.

20.3 The parties transfer these commitments to their subcontractors, suppliers and other third parties enlisted for the fulfillment of the contract.

21. Compliance

21.1 The parties shall comply with applicable legal standards, particularly with the competition- and antitrust laws, industrial safety and child protection provisions and with the core conventions of the International Labor Organisation, as well with the provision against counterfeits or for the protection of the environment and of health.

21.2 The parties commit themselves not to accept financial or other favours, if in return the giving party expects an unjustified advantage or is rewarded. They also commit themselves to observe the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions concluded within the OECD on 17 December 1997 also in private business transactions.

21.3 The parties shall commit their personnel, subcontractors, subsuppliers and other third parties enlisted for the fulfillment of the contract contractually to compliance with this article.

21.4 If one of the parties violates the above-mentioned compliance commitments, it shall owe a contractual penalty, unless it can prove that it was not at fault. For each case of violation this penalty amounts to 10% of the total remuneration or 10% of an annual remuneration in case of a recurring remuneration, but no more than CHF 50'000.00. This payment does not relieve the respective party from its contractual obligations.

22. Assignment and pledging

22.1 The contractual relationship or rights and duties therefrom can only be assigned or pledged after previous written approval of the other party. Apart from that RUAG may assign rights and duties from the contractual relationship to another company from the RUAG Group at any time.

22.2 The claims arising to the Customer from the contractual relationship may be neither assigned or pledged without the previous written approval of RUAG.

23. Set-off

The Customer shall not be entitled to set-off.

24. Applicable law and jurisdiction

24.1 The contractual relationship between the parties shall be governed by Swiss Law, excluding its rules on conflicts of legal systems (in particular Federal Law on International Private Law of 18.12.1987). The United Nations Convention on Contracts for the International Sale of Goods shall be expressly excluded.

24.2 Place of jurisdiction shall be the domicile of RUAG.