

**MTU Maintenance Lease Services B.V. (hereinafter referred to as "MLS")**  
**General Terms and Conditions (Parts Sale)**

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**1. Application**

1.1 These General Terms and Conditions ("T&C") shall apply between MLS and its customer ("Customer") to the sale by MLS to Customer of new, used or exchanged commercial aircraft engine parts, modules, components, units and/or accessories (hereinafter called the "Part" or "Parts"). Each binding contractual arrangement between MLS and Customer for the sale and delivery of Parts (an "Agreement") will be governed by these T&C. These T&C shall supersede and take precedence over any prior oral or written agreements, drafts, understandings or representations of the same subject matter between MLS and Customer.

1.2 Any general terms and conditions of business provided or referred to by Customer shall be excluded and shall not become part of the Agreement between MLS and Customer, even if MLS does not explicitly raise objections, or performs the Agreement without having raised objections. Customer agrees that these T&C shall govern their relationship with MLS for the sale of Parts.

1.3 Any amendment and supplement to an Agreement shall be made in writing by the Parties.

**2. Contract Formation**

2.1 The binding terms of the Agreement between MLS and Customer shall be based on and include only the terms and conditions of MLS written offer and these General Terms and Conditions (hereinafter "MLS Offer"). If the acceptance by Customer deviates from MLS Offer (hereinafter "Customer's Counter-Offer"), a binding contract shall be concluded on Customer's Counter-Offer only if MLS expressly accepts Customer's Counter-Offer in writing and in all events these T&C shall govern that sale. Customer's terms and conditions (if any) attached to, enclosed with or referred to in any shipping documents, acknowledgement or acceptance of MLS Offer, specification or other document shall not govern or be incorporated into the Agreement and Customer waives any right which it otherwise might have to rely on such terms and conditions.

2.2 MLS shall retain (solely) all proprietary rights to all intellectual property (including, but not limited to, patents, copyright, trademarks, design rights, database rights, know-how and trade secrets, moral rights and goodwill) ("IPR") which exists or may be created in connection with the Agreement between MLS and Customer including (but not limited to) all cost estimates, offers, drawings and any other documents made available to Customer by MLS, which Customer shall not reveal to any third parties and shall be returned to MLS immediately (including all copies) on demand by MLS and/or if a contract is not concluded or is terminated.

2.3 Cancellations by Customer later than forty eight (48) hours post acknowledgment of Customer's order by MLS will be subject to a 10% cancellation fee, which Customer agrees is reasonable and proportionate. The minimum value of any order is USD 500 (five hundred United States Dollars). If the order volume for all Parts in total is below USD 500 (five hundred United States Dollars), MLS will invoice a handling fee in order to bring the order volume to 500 USD in total.

**3. Delivery, Inspection and Export controls**

3.1 Unless otherwise agreed between the parties, MLS will deliver Parts FCA (free carrier) at MLS affiliate's warehouse in Germany (Incoterms 2010).

3.2 Upon arrival of the Parts at their shipping destination, Customer shall inspect, or cause to be inspected, the Parts and all related documents and shall notify MLS within two (2) calendar

days, if the Parts do not conform with the Agreement. Otherwise Customer will be deemed to have accepted the Parts without reservation. If MLS accepts the return of the non-conforming Part, Customer shall return Parts at his expense if MLS has not presented Customer with a return material authorization ("RMA") including shipping advise. If the non-conformance is accepted by MLS, MLS will reimburse Customer for his shipping expenses provided they are reasonable. Non-conformance for the purpose of this Clause shall mean the failure of the individual Part to conform with the Agreement. Every return accepted by MLS where the Part conforms with the Agreement will be subject to a 15% restocking fee based on the order value for the Parts, which shall be payable by Customer.

3.3 MLS' acceptance of Customer's order and MLS' obligations under the Agreement for the supply of Parts are subject to applicable export control regulations. Customer shall apply for and maintain all required export permits or approvals and acknowledges that MLS has no control over and is not responsible for their issuance or renewal. Customer will for such purpose keep on record, and will, upon request, prove to MLS, respective know-your-customer-statements and end-user-statements. Any failure to obtain such permits and/or approvals shall not affect or release Customer from its respective contractual obligations, but shall entitle MLS, in its sole and unfettered discretion, to terminate the Agreement and charge a 10% cancellation fee.

3.4 MLS and Customer agree to comply with all export control laws and regulations of any country having jurisdiction over MLS or Customer which may apply to their respective activities and obligations set forth in the Agreement. Nothing in these T&C shall be construed as requiring MLS to perform an obligation that is noncompliant with applicable export laws and regulations.

3.5 Upon formation of the Agreement and fulfillment of all conditions precedent, MLS will start with the delivery of the Part. No delivery is guaranteed until all conditions have been complied with.

**4. Prices**

4.1 The prices for the Parts delivered by MLS under the Agreement will be charged plus VAT, if applicable. VAT means any value added tax or any equivalent sales or services tax that replaces it. Customer will provide its valid VAT number when accepted by MLS Offer. Where the sale of the Parts constitutes a taxable supply for VAT purposes, Customer shall, on receipt of a valid VAT invoice from MLS, pay to MLS such additional amounts in respect of VAT as a surcharge on the Parts at the same time as payment is due for the provision of the Parts (or upon reasonable notice thereafter should VAT be assessed as due post payment).

4.2 The prices for Parts are valid for 10 (ten) days from the offer date if not otherwise agreed upon in writing. All Parts are subject to availability and prior sale. In the event of variations in material prices, wages or other cost factors, MLS reserves the right to adjust the prices accordingly.

**5. Payment**

5.1 Unless otherwise expressly agreed in the Agreement, MLS requires payment in advance of delivery of the Parts and shall be entitled to terminate the Agreement (without any liability to Customer) if such advance payment is not received in advance of the date for payment agreed between the parties.

5.2 Invoices shall be due and payable as indicated on the invoice. In the absence of payment dates and/or currency on the in-

voice, all payments shall be made in US Dollars within thirty (30) days after the invoice date. Payments shall be made by bank transfer to the bank account indicated by MLS, with no deductions allowed and with all charges (including, but not limited to, bank transfer charges) paid.

- 5.3 If Customer is in default of any payment obligations, MLS, without prejudice to any of its other rights or remedies under the applicable law, reserves the right to charge interests on the outstanding amount at eight (8) percent per annum, from the due date of payment until payment is received, as well as to receive reimbursement for all reasonable expenses incurred by MLS in connection with the recovery of any due payment.
- 5.4 Customer shall not have the right to offset any claims Customer may have against MLS or to withhold payment except in the event that Customer's counterclaim is undisputed or that a final enforceable judgment has been entered against MLS.
- 5.5 In the event Customer disputes any invoice, Customer shall pay MLS the undisputed portion of the invoice and notify MLS of the reasons for disputing the invoice. Disputes on invoices will only be considered by MLS if raised by Customer to MLS in writing within thirty (30) days from the invoice date.

## 6. Taxes

MLS shall be responsible for any sales, use, excise or similar taxes, duties and fees levied on either party by the authorities in the Netherlands in connection with the sale of the Parts under the Agreement. Any taxes levied by any authority outside the Netherlands on MLS or Customer in connection with the sale of the Parts, including, but not limited to any export/import duties or any type of withholding tax levied in the country of delivery, shall be borne by Customer and Customer hereby indemnifies MLS in respect of the same and agrees to make payment of such taxes or fees upon demand.

## 7. Excusable Delay

MLS is not responsible for any failure or delay in performance resulting from events beyond MLS' reasonable control that hinder or delay MLS' performance under the Agreement. This may include, but is not limited to, events such as acts of government, court orders, civil unrest, sabotage, severe weather conditions, labour troubles, shortage of materials or transport. MLS will give timely notice to Customer of any such event and will endeavour to avoid or remove the cause and resume performance with minimum delay. In the event of any single delay (or multiple delays with the practical effect of one single delay) lasting 30 days, either party shall be entitled to terminate the Agreement immediately (without liability).

## 8. Warranty

- 8.1 Unless expressly otherwise agreed upon in writing, MLS sells all Parts and the related documentation "as-is – where-is". Customer shall notify MLS immediately about any discrepancies. MLS warrants that the Parts supplied are free from any rights of third parties, such as mortgage, pledge, lien, security interest, option, covenant, condition, restriction, encumbrance, charge or other third-party claim.
- 8.2 In the case of a defect being discovered in a new Part by Customer and notified to MLS within 30 days of its delivery, MLS may at no cost to Customer and in MLS' sole discretion, 1) replace such Parts or 2) return the purchase price within ten (10) days after the return and receipt by MLS of the defective Part at MLS' warehouse. In case of used, repaired or overhauled Parts, MLS may, again in its sole and unfettered discretion, at no cost to Customer, accept the return of such Parts to MLS, provided that Customer informed MLS immediately and as per the time limits set out in Clause 3.2 above of a defect. MLS will not accept warranty claims without prior written authorization in form of a return material approval (RMA) which will only be issued on receipt and acceptance of information regarding the defect. Parts returned without this written authorization will be subject to a 15% restocking fee.

- 8.3 Customer acknowledges and accepts that in case of Customer requesting MLS to provide non-OEM authorized Parts such as PMA parts or parts repaired with a DER repair, the provision of such Parts is not warranted by the OEM, and Customer will release the OEM from any and all liability associated with the use of such Parts. This Clause 8.3 does not affect, reduce or suspend the liability and warranty obligations of MLS provided in this Clause 8, save that Customer indemnifies MLS for any losses, damages, costs or similar which may arise from non-OEM product usage.

- 8.4 If Customer makes a warranty claim and as a result of investigation by MLS it is established by MLS that MLS is not liable for the defects claimed, the costs of investigation as well as any other costs and expenses incurred by MLS, its personnel, agents and/or subcontractors in connection with such claim shall be borne by Customer and due and payable upon receipt of the respective MLS invoice and the terms of clause 5 as to payment shall apply.

- 8.5 THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF (I) ANY AND ALL OTHER WARRANTIES OF SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (II) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN CONTRACT, TORT OR STRICT LIABILITY, WHETHER OR NOT ARISING FROM MLS' NEGLIGENCE, ACTUAL OR ACCUSED. THE REMEDIES OF CUSTOMER SHALL BE LIMITED TO THOSE PROVIDED IN THIS WARRANTY AND ANY AND ALL OTHER REMEDIES SHALL TO THE FULLEST EXTENT PERMITTED UNDER THE APPLICABLE LAW BE EXCLUDED. NO AGREEMENT VARYING OR EXTENDING THE FOREGOING WARRANTY, REMEDIES OR THIS LIMITATION WILL BE BINDING UPON MLS UNLESS AGREED IN A WRITTEN DOCUMENT SIGNED BY MLS.

## 9. Liability, Indemnification and Insurance

- 9.1 Subject to the liability limitation set forth in Clause 9.2, MLS shall be liable to Customer, its directors, officers and employees (the "Customer Indemnified Parties") for Damages (as hereinafter defined) and MLS shall indemnify and hold harmless Customer Indemnified Parties from any Damages arising out of the performance by MLS, its officers, directors, employees, agents, affiliates, shareholders and authorized subcontractors (the "MLS Indemnified Parties") under the Agreement to the extent caused by the Negligence (as hereinafter defined) of the MLS Indemnified Parties.

- 9.2 In cases of Negligence of the MLS Indemnified Parties, MLS' liability obligation set forth in Clause 9.1 above is limited to the value of the Part which caused the damage. In no event shall MLS be liable to or indemnify Customer Indemnified Parties for any indirect, special, incidental or consequential loss and/or expense (including but not limited to loss of profit or revenue; loss of use; cost of capital; cost of substitute equipment, facilities or services; and downtime costs) suffered by Customer or any third party.

- 9.3 THE FOREGOING LIMITED LIABILITY AND INDEMNITY OBLIGATIONS OF MLS ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY BY CUSTOMER UNDER ANY CAUSE OF ACTION, WHETHER IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT ARISING FROM MLS' NEGLIGENCE, ACTUAL OR IMPUTED. THE LIABILITY OF MLS TO CUSTOMER SHALL BE LIMITED TO THAT PROVIDED IN CLAUSE 9 OF THIS AGREEMENT TO THE EXCLUSION OF ANY AND ALL OTHER REMEDIES TO THE FULLEST EXTENT PERMISSIBLE UNDER THE APPLICABLE LAW CHOSEN BY THE PARTIES TO THE AGREEMENT. MLS IS NOT LIABLE UNDER OR IN CONNECTION WITH ANY AGREEMENT FOR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, CLAIMS FOR SPECIAL, DIRECT OR INDIRECT, INCIDENTAL DAMAGES OR LOSS OF PROFITS OR REVENUE, LOSS OF USE OF AN ENGINE OR ENGINE PARTS OR OTHER EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, OR DOWNTIME COSTS SHALL

TO THE FULLEST EXTENT PERMITTED UNDER THE APPLICABLE LAW BE EXCLUDED.

- 9.4 Customer shall indemnify and hold harmless MLS Indemnified Parties from any Damages caused by the negligence or wilful misconduct of Customer Indemnified Parties. In addition, Customer shall indemnify and hold harmless the MLS Indemnified Parties from any and all claims in excess of the liability cap as per Clause 9.2 above per occurrence or in the aggregate per year by Customer Indemnified Parties or any third parties for Damages caused by the Negligence of MLS Indemnified Parties under the Agreement.
- 9.5 Upon request, Customer shall furnish insurance certificates indicating satisfactory insurance coverage concerning loss or damage of the aircraft as well as passenger and third party legal liability. The liability insurances shall name the MLS Indemnified Parties as additional assured. The hull insurance shall contain a waiver of recourse in favour of the MLS Indemnified Parties except in cases of the MLS Indemnified Parties' liability as outlined in this Clause 9.
- 9.6 For the purposes of this Clause 9, "Damages" means any and all liabilities, damages, expenses, suits or judgments including reasonable attorney fees for the death of or bodily injury to any person and for the loss of, damage to or destruction of any property in any manner, provided, however, that the limitations on recoverable damages contained in Clauses 9.2 and 9.3 shall remain in effect for the purposes stated therein; and "Negligence" means any form of actionable negligence in any jurisdiction (or equivalent thereof) including without limitation tortious or contractual, and whether slight, simple, ordinary, inadvertent and gross negligence but excluding willful misconduct.

#### **10. Liens, Retention of Title and Risk**

- 10.1 Even after delivery, title to Parts (incorporated into engines or not) shall remain with MLS and shall not pass to Customer until Customer has paid the respective invoice including VAT (if applicable) in full.
- 10.2 Until title to the Parts is transferred to Customer, Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Parts which are the property of MLS.
- 10.3 The risk of damage to or loss of the Parts shall pass to Customer upon delivery.

#### **11. Termination**

MLS may, in its sole discretion, suspend or terminate any sale of Parts already commenced and refuse to commence any further delivery or may terminate an Agreement at any time with immediate effect by written notice to Customer if (i) Customer commences winding-up, becomes insolvent, commits any act of bankruptcy or if a receiver, trustee or custodian is appointed over Customer or a substantial part of Customer's property, or

(ii) Customer is in default of its obligations under a purchase order and/or otherwise under the Agreement and such default remains outstanding for a period of fourteen (14) calendar days after issuance of a default notification by MLS. Upon termination MLS will have no further obligation to Customer under the Agreement and Customer will reimburse MLS' termination costs, including a reasonable allowance for profit and shall pay for all work undertaken by MLS.

#### **12. Assignment**

Customer may not assign its rights and/or obligations under the Agreement without the prior written consent of MLS. MLS may assign its rights at its sole discretion.

#### **13. Applicable Law/ Jurisdiction**

- 13.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. The U.N. Convention on Contracts for the International Sale of Goods of 11th April 1980 and its conflicts of law principles are expressly excluded.
- 13.2 Jurisdiction and venue for any and all legal action relating to current and future claims arising out of or in connection with the sale of Parts shall be the courts of England.

#### **14. Final Provisions**

- 14.1 In the event that any of the provisions contained herein and/or any contracts concluded on the basis of these provisions prove to be invalid or unenforceable, the validity of the remaining terms and conditions of any Agreement shall remain unaffected.
- 14.2 No failure delay or partial exercise by either party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 14.3 Subject to any special terms contained in MLS Offer and any terms deviating from those set forth herein, which are expressly accepted by MLS in writing, these T&C constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings, whether oral or in writing. The parties each agree that they have not relied upon, and shall have no remedy in respect of, any statement, representation, assurance or warranty that is not set out in these T&C.
- 14.4 Except as expressly provided elsewhere in these T&C, no person other than a party to these T&C (or their successor or permitted assignees) shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these T&C.