

# Air End Repair



**Air End Repair Ltd.**  
**Terms and Conditions for Product Deliveries and Services**  
**(Applicable from April 2019)**

## 1. GENERAL

These Terms and Conditions apply to the Contract entered into with the Customer. These Terms and Conditions, as amended or supplemented from time to time, shall also apply to any subsequent Services regardless of any Offer or explicit provision with respect to their applicability to such subsequent Services. References by the Customer to terms and conditions of the Customer shall be deemed not made. Such references shall not have any effect on the applicability of these Terms and Conditions.

## 2. DEFINITIONS

Contractor	Air End Repair Limited, Unit 5, Waterside Business Park, 1649 Pershore Road, Birmingham, B30 3DR, UK
Customer	The company designated in the Offer for whom the Contractor is supplying Products or performing a Service.
Offer	Quotation on which the Product Deliveries and/or Services of the Contractor are based.
Order	Customer's request to the Contractor to enter a Contract on the basis of the Offer
Contract	The contract between the Customer to the Contractor for the supply of Product(s) and/or Service(s) in accordance with the Offer and these conditions.
Product	The object(s) to be supplied.
Service	Inspection, overhaul, re-bearing, repair, replacement of wearing parts and related activities Offered by the Contractor on the Customer's Equipment.
Delivery	Delivery is deemed to have occurred when the Product(s) and/or Serviced Equipment is made available for collection in the Contractor's workshop, regardless of which party has organised the carriage.
Equipment	Such plant, machinery or parts of plant or machinery on which or with respect to which the Contractor shall perform the Services

## 3. BASIS OF CONTRACT

- 3.1 The Contract shall come into existence when the Contractor acknowledges the Customer's Order either verbally, in writing or by virtue of starting work as described in the Offer.
- 3.2 Any samples, drawings, descriptive matter or advertising issued by the Contractor shall not form part of the Contract.

## 4. DELIVERY, PASSING OF RISK

- 4.1 Any agreed trade term shall be construed in accordance with the INCOTERMS 2010 (until 31 December 2019) or INCOTERMS 2020 (from 1 January 2020). Unless otherwise agreed, the Delivery shall be ex works (EXW).
- 4.2 For UK deliveries only, transport insurance coverage shall be provided by the Contractor only where the Contractor arranges transport and only on an indemnity basis (not new replacement value basis). Additional coverage will only be offered upon the explicit request by the Customer and at Customer's cost. The choice of the means and route of transport shall be made by the Contractor according to its best judgment.
- 4.3 Partial shipments shall be permitted unless otherwise agreed.
- 4.4 Notwithstanding any rights the Customer has under clause 12 (Warranty), proof of dispatch or collection EXW signed either by the Customer or by the carrier signifies the Customer's acceptance that the service has been completed to the Customer's satisfaction.

## 5. SCOPE OF SERVICE – REPAIR OF CUSTOMER EQUIPMENT

- 5.1 Inspection will be carried out by the Contractor to the extent necessary to prepare the Offer.
- 5.2 Standard Service unless otherwise agreed, shall include cleaning and inspecting the equipment, removing minor defects to the extent possible or practical, replacement of standard service parts (e.g. bearings, joints and seals), manual check of smooth turning, finish painting and preparation for shipment on a pallet.
- 5.3 In general, there is no charge for the inspection required to assess the repair requirements and prepare the Offer. There will be a charge due to the Contractor if the Customer requires a written report of findings or if the Customer requires a return of their unrepaired equipment (which in such case would be returned disassembled).
- 5.4 In the event that a price has been quoted from a standard price list prior to inspection and following dismantling a defect is uncovered which requires repair, the cost of the extra work will be added to the Offer for acceptance by the Customer. The Contractor reserves the right to correct the defect by machining parts of the equipment or replacing parts either with new or used parts.

## 6. SALE OF USED, OVERHAULED EQUIPMENT

- 6.1 Where the Contractor Offers overhauled equipment using Equipment from Contractor's stock, the scope of service will be the same or similar to that included in the repair of Customer Equipment.
- 6.2 From time to time the Contractor may offer a rebate in case the Customer has identical Equipment to return to the Contractor (Exchange basis). In such a case, the rebate offered will only be validated and credited to Customer's account if after inspection the Customer's Equipment is found to be in a condition to be satisfactorily serviced (in the sole discretion of the Contractor).

## 7. SALE OF NEW PARTS OR EQUIPMENT, OR THIRD PARTY SERVICING OF CUSTOMER EQUIPMENT

- 7.1 Where we act as a distributor for third party Products and/or Services, our warranty obligations will be limited to those of our supplier, which will be passed through to the Customer to the extent possible.
- 7.2 Sale of New, Old Stock (NOS) parts is on an as-is basis with no warranty.

## 8. SALE OF USED PARTS OR EQUIPMENT

- 8.1 Sale of used parts or equipment which has not been Serviced is on an as is basis with no warranty express or implied. We will describe the state of equipment to the best of our knowledge, but the risk of suitability is entirely with the Customer.

## 9. DELAYS FOR WHICH THE CONTRACTOR SHALL NOT BE LIABLE

- 9.1 The Contractor shall not be liable for delayed performance or partial or total non-fulfilment of the Offer to the extent such delay or partial or total non-fulfilment is due to reasons which shall not be ascribed to the Contractor, such as:

- (a) Actions or omissions of the Customer, for which the Customer is liable and which have a significant effect on the performance of the Services by the Contractor;
  - (b) Actions or omissions by the Contractor's supplier, where Contractor is acting as a distributor of supplier's Products or Services; or
  - (c) Force majeure.
- 9.2 The Contractor shall notify the Customer within appropriate time periods of any circumstances which will lead to a delay, interruption or non-performance of the Services. The Contractor shall notify the Customer of the estimated consequences on the time schedule and deadlines.
- 9.3 Additional costs due to delays not exclusively ascribed to the Contractor shall entitle the Contractor to recover the additional costs from the Customer.
- 9.4 The Contractor shall be entitled to rescind the Offer if the Customer has not accepted the offer within 60 days. Further, if the Offer is not accepted within 120 days, any Equipment left at the Contractor's premises by the Customer will become the property of the Contractor.
- 9.5 The Customer shall not be entitled to any compensation for the Contractor's delay.

## **10. PAYMENT, DELAY OF PAYMENT**

- 10.1 Unless otherwise agreed, all fees and prices are in Pounds Sterling. The offers, prices and fees of the Contractor are without engagement, unless otherwise expressly agreed in writing.
- 10.2 Payment shall be made against invoice no later than 30 days after invoice date. Regardless of the payment method used, payment shall not be deemed to have been effected until the Contractor's account has been fully and irrevocably credited.
- 10.3 In the event of non-payment, incomplete payment or late payment by the Customer, the Contractor shall be entitled to suspend the performance of the Services. Any additional costs arising in connection with such suspension shall be borne by the Customer.
- 10.4 Furthermore, the Contractor is entitled to charge interest for default from the day of maturity. Unless otherwise agreed, the rate of interest shall be 5 percentage points above the on maturity date defined base rate, which is set by the Bank of England.
- 10.5 Any set-off of liabilities of the Customer against accounts receivable of the Contractor resulting from the Contract in connection with counter-claims against the Contractor shall be prohibited.

## **11. TERMINATION**

- 11.1 In the event the Customer terminates the Contract for any reason prior to completion of the delivery, the Contractor will be entitled to reimbursement of any costs incurred, up to the value of the Contract.
- 11.2 In the event the Contractor is obligated to terminate all or a portion of the Contract, e.g. due to non-availability of stock, the Contractor shall refund any deposits made and have no further obligation to the Customer.
- 11.3 All Offers are made subject to prior sale of the Offered Product(s) or Service parts.

## **12. WARRANTY**

- 12.1 The Contractor warrants that the delivered Products and/or parts used are free of any material defects and that the Services to be performed pursuant to the Offer shall be performed by specialised personnel in accordance with the Offer.
- 12.2 In order for the Contractor to consider a claim under warranty, any defects on parts or Services should be notified to the Contractor in writing immediately following their discovery and the defective Product or Equipment returned to the Contractor's premises. Failure of the Customer to meet this condition releases the Contractor from any performance under the warranty.
- 12.3 The Customer shall at his own expense arrange for any dismantling (other than the part or Equipment itself), transportation to Contractor's premises and eventual recommissioning of Equipment.
- 12.4 Where the Contractor is acting as a distributor for Products and/or Services of its supplier, insofar as possible the Contractor will pass on the supplier's warranty provisions in lieu of Contractor's standard warranty provisions described herein.
- 12.5 Defective parts which have been replaced shall be made available to the Contractor and shall become the Contractor's property.
- 12.6 The period for the Customer to claim a defect for the Services rendered or the parts used while executing the Contract is 12 months from the date of Delivery..
- 12.7 The warranty claim with respect to Products, used parts and/or Equipment shall be limited to the repair (improvement), replacement (exchange) including used equipment or refund of the Contract value by the Contractor at Contractor's sole discretion. Any additional costs incurred with respect to parts delivered, repaired or replaced in connection with the warranty, including travel expenses, shall be borne by the Customer.
- 12.8 Warranty claims shall be performed and completed within a reasonable time period.
- 12.9 If the Customer has claimed any defect and no defect is found for which the Contractor is liable, the Customer is liable for, and shall reimburse to the Contractor, the costs incurred from processing the warranty claim.
- 12.10 No warranty shall apply for defects or damage attributed to normal use of wearing parts, or which result from defective maintenance or faulty installation, improper commissioning, changes or other actions by the Customer or third parties, incorrect storage, use of inadequate operational materials or lubricants, improper operation or other similar circumstances.
- 12.11 The Contractor is not liable for defects arising out of materials provided or a design stipulated or specified by the Customer.
- 12.12 Warranty claims will not be considered in the event the Customer's account is overdue.
- 12.13 The Customer shall not have any additional rights or claims and any such rights and claims are hereby expressly excluded, in particular with respect to damage claims for non-fulfilment or faulty performance by the Contractor, except in the case of gross negligence or wrongful intent of the Contractor. In such case, the claim for damages shall however be limited to direct damages and any indirect damages or consequential damages shall be excluded..

## **13. INSURANCE**

The Contractor has entered into a factory insurance and product liability insurance covering the usual risks and undertakes to maintain this insurance coverage throughout the performance of the Offer. For insurance purposes, the Customer's Equipment awaiting overhaul shall be insured for one-third the replacement value, not to exceed GBP 10,000 each item and once overhauled, two-thirds the replacement value, not to exceed GBP 20,000, unless the Customer makes specific alternate arrangements with the Contractor.

## **14. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 14.1 Nothing in the Contract limits any liability which cannot legally be limited. The Contractor shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss, loss of profit, loss of revenue, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, production stop, restriction of the use of the Equipment or parts of the Equipment or other installations of the Customer, costs of eventual replacements or other substitutions, costs of energy supply etc., including interest for late payment. In particular, the exclusion of liability includes any damage claims related to defects of the Equipment, which were not readily discoverable and which arise or show effects in connection with the provision of Services by the Contractor.
- 14.2 The Contractor's total liability under this agreement shall not exceed the fees paid for the applicable goods and services.

- 14.3 The restrictions on liability in this Clause 14 apply to every liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.4 The Contractor shall not be liable for parts or services provided by the Customer. The Contractor shall not be required to examine such parts or services other than the Equipment to be inspected, serviced or repaired according to the Offer, except as specifically agreed in advance.
- 14.5 In view of warranty commitments set out above, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 and any other terms that may be implied by law are, to the fullest extent permitted by law, excluded from this Agreement.
- 15. FORCE MAJEURE**  
Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control.
- 16. INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS**
- 16.1 The Contractor warrants that the Services provided and deliveries made by the Contractor shall not interfere with the rights of third parties.
- 16.2 In the event of any claims by a third party against the Customer as a result of a breach of 16.1, the Contractor shall defend such claims at his own costs provided the Customer immediately informs the Contractor of such claims and fully cooperates with the Contractor to defend such claims on behalf of the Customer.
- 16.3 All intellectual property rights in or arising out of or in connection with the Services shall be owned by the Contractor.
- 17. CONFIDENTIAL INFORMATION**
- 17.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 17.2 Each party may disclose the other party's confidential information to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract.
- 17.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 18. GENERAL**
- 18.1 Severance: If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall not affect the validity and enforceability of the rest of the Contract.
- 18.2 Waiver: No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, neither shall it prevent or restrict the further exercise of that or any other right or remedy.
- 18.3 Third party rights: A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 18.4 Variation: No variation of the Contract shall be effective unless it is agreed in writing by the parties.
- 19. APPLICABLE LAW AND JURISDICTION**  
Except to the extent otherwise agreed in the Offer, the contractual relationship between the parties shall be exclusively governed by English law and the Customer submits to the jurisdiction of the courts of England and Wales but without prejudice to the Contractor's right to bring proceedings in the Courts of any territory in which the Customer carries on business or may have assets.