

Rotorcraft 2017 Limited

Agreement as to Terms of Trade Version 1.01

1.0 DEFINITIONS

- 1.1 **Rotorcraft** refers to Rotorcraft 2017 Limited.
- 1.2 The **Buyer** refers to the person, firm, partnership, trust, company or corporate entity which has signed this agreement as Buyer.
- 1.3 **Goods** means any goods purchased by the Buyer from Rotorcraft at any time, including any products which Rotorcraft applies to or commingles with any other product or property of the Buyer.
- 1.4 **Services** means services, work and labour provided by Rotorcraft to the Buyer at any time.

2.0 PAYMENT

- 2.1 The Buyer will pay for all Goods and Services on or before the 20th of the month following delivery of Goods or provision of Services, unless otherwise agreed in writing.
- 2.2 All stated and quoted prices exclude GST. GST will be paid by the Buyer in addition to the stated price.
- 2.3 The Buyer reserves the right to reject any cheque other than a bank cheque and to place conditions (including but not limited to requiring identification) on any cheque or credit card payment.
- 2.4 The Buyer may not deduct or withhold any amount due to Rotorcraft. If the Buyer has any dispute with Rotorcraft's Goods and/or Services, the Buyer will pay the full amount due and raise any issues through the dispute resolution process set out in these terms.

3.0 INTEREST ON UNPAID SUMS

- 3.1 If the Buyer does not pay any sum by the date it is due, then without prejudice to Rotorcraft's other remedies, Rotorcraft may charge the Buyer interest on the unpaid overdue balance at the rate of 1.5% per month from the date payment was due until the date of payment.
- 3.2 The charging of penalty interest does not extend the due date of payment.
- 3.3 The Buyer agrees to pay or reimburse Rotorcraft all costs and expenses incurred by Rotorcraft in instructing a solicitor and/or debt collection agency to recover any amount overdue for payment. All such costs or expenses will incur interest from the date they are paid or incurred by Rotorcraft up to and including the date upon which the Buyer pays or reimburses Rotorcraft.

4.0 OWNERSHIP OF GOODS AND INTELLECTUAL PROPERTY

- 4.1 Ownership of any Goods supplied by Rotorcraft will not pass until all sums owing by the Buyer for the Goods and any services provided in connection with

those Goods have been received by Rotorcraft, and all other obligations of the Buyer to Rotorcraft in respect of those Goods have been met.

- 4.2 Until ownership passes to the Buyer, the Buyer will hold the Goods as bailee for Rotorcraft. The Buyer will clearly identify and store the Goods in a manner that makes it clear that the Goods are the property of Rotorcraft.

- 4.3 If the Goods used become part of another product or are changed in character in any way, title to the Goods shall continue in the reconstituted product to the fullest extent permitted by law.

- 4.4 The Buyer irrevocably authorises Rotorcraft and its agents to enter on and into any premises occupied by the Buyer to search for and remove any Goods supplied by Rotorcraft of which Rotorcraft retains ownership. Rotorcraft will not be required to give any notice to enter on or into the Buyer's premises. If the Goods are attached to or incorporated in any other goods, Rotorcraft may, where practical, disconnect or sever the Goods and remove them. Rotorcraft will not be liable to the Buyer or any person claiming through the Buyer if Rotorcraft exercises its rights under this clause.

5.0 RISK AND DELIVERY

- 5.1 Risk in the Goods will pass to the Buyer upon the delivery of the Goods.

- 5.2 Delivery will be deemed to have been made when:

- (a) If Rotorcraft is delivering the Goods to a Buyer's nominated site address, upon the Goods being delivered to that address;
- (b) If the Goods are being sold from Rotorcraft's premises and the Buyer is to collect, when Rotorcraft has placed the Goods at the disposal of the Buyer.

- 5.3 Where delivery is to be made to the Buyer's site address, delivery will be made to the road entrance of the site specified by the Buyer and on the date agreed by Rotorcraft and the Buyer for delivery. If requested, Rotorcraft will deliver on the site, but will not be responsible for any damages or incidents that occur on site.

- 5.4 Rotorcraft reserves the right to charge reasonable costs of delivery. The Buyer is responsible for any and all additional charges that may be incurred if on site delivery is requested.

- 5.5 All delivery dates are estimates only. Rotorcraft will not be liable to the Buyer for any non-delivery or delays in delivery. The Buyer will not be entitled to cancel the order or claim any sum as damages/compensation if estimated delivery dates are not met.

6.0 PERSONAL PROPERTY SECURITIES ACT 1999

6.1 The Buyer grants to Rotorcraft a security interest in:

- (a) All present and after acquired Goods, and goods which Rotorcraft has applied Services to or commingled with any of Rotorcraft's products; and
- (b) All proceeds of the Goods.

6.2 On the request of Rotorcraft, the Buyer will promptly execute any document and do anything else required by Rotorcraft to ensure that the security interest created under this agreement constitutes a first ranking perfected security interest over the Goods and their proceeds including providing any information Rotorcraft reasonably required to complete a financing statement or a financing change statement. The Buyer waives any right to receive a copy of the verification statement under the Personal Property Securities Act 1999 and the parties expressly contract out of the Buyer's rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of that Act.

6.3 The Buyer will pay Rotorcraft all costs, expenses and other charges incurred, expended or payable by Rotorcraft in relation to the filing of a financial statement or a financing change statement in connection with these terms and conditions.

7.0 COSTS OF ENFORCEMENT

7.1 The Buyer will be liable for, and will indemnify Rotorcraft for:

- (a) all costs incurred by Rotorcraft in enforcing its rights under these terms of trade;
- (b) any losses suffered, and costs incurred by Rotorcraft (whether directly or indirectly) as a result of the Buyer breaching any of these terms of trade.

7.2 Any costs incurred or losses suffered by Rotorcraft under these terms will be payable by the Buyer upon demand in writing.

7.3 All such costs and expenses shall bear interest from the date upon which they are paid or incurred by Rotorcraft up to and including the date upon which the Buyer pays or reimburses Rotorcraft.

8.0 LIABILITY OF ROTORCRAFT

8.1 Any warranties (other than any express warranty that may be given by Rotorcraft to the Buyer in writing) in relation to the Goods and Services are expressly excluded to the fullest extent permitted by law.

8.2 In the event any Goods supplied by Rotorcraft are found to be defective or any services provided by

Rotorcraft are found to have not been carried out correctly, the maximum liability of Rotorcraft whether in contract, tort or otherwise will be lesser of:

- (a) the cost of the Goods or Services; or
- (b) the cost of remedying the defective Goods and Services; or
- (c) the actual loss or damage suffered by the Buyer.

8.3 Rotorcraft will not be liable for delay or failure to perform its obligations arising from any act of God, or if the cause of the delay or failure is beyond its control.

9.0 MISCELLANEOUS

9.1 If the Buyer is acquiring or holding itself out as acquiring the Goods and Services for a business purpose, the Consumer Guarantees Act 1993 and the Sale of Goods Act 1908 will not apply to the fullest extent permitted by law.

9.2 It is intended by these terms of trade that the Buyer is a legal entity. If that legal entity does not exist, any person signing this document shall be personally liable (and if more than one jointly and severally) to Rotorcraft for all amounts payable from time to time to Rotorcraft. If that legal entity does exist then the signatory warrants that it has the power and authority to bind that entity.

9.3 Rotorcraft reserves the right to withdraw at any time any credit that has been given. If Rotorcraft withdraws any credit that has been given Rotorcraft may suspend performance of its obligations until it has received payment in advance for any quoted work or subsequent orders.

9.4 These terms of trade can only be varied by written agreement between the parties.

9.5 These terms and any terms set out by Rotorcraft shall be included as terms in any contract resulting between the parties and in the case of any conflict arising between these terms or the terms of the Buyers order then these terms and conditions will prevail.

9.6 The placement of an order shall be deemed to be acceptance of these terms of trade.

9.7 Any disputes arising out of any order placed will first be attempted to be resolved by Rotorcraft and the Buyer through good faith negotiations and, if necessary, mediation in accordance with the protocols of the Arbitrators and Mediators Institute of New Zealand before any court proceedings are served.

9.8 These terms of trade are governed by the laws of New Zealand and subject to clause 8.7 the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

severed, and will not affect the validity of the rest of the terms of trade.

9.9 If any part of these terms of trade are deemed to be void, illegal, or unenforceable, that part will be

Buyer (name of legal entity): _____

I _____ (Full Name of authorised representative of Buyer)

_____ (Position/Designation):

- (a) Accept on behalf of the Buyer the terms of trade as set out above.
- (b) Guarantee to Rotorcraft the payment by the Buyer for all goods and/or services supplied from time to time by Rotorcraft to the Buyer, together with all interest charges and recovery costs charged by Rotorcraft to the Buyer.
- (c) Acknowledge that this guarantee will be a continuing guarantee to Rotorcraft for all debts contracted by the Buyer in respect of goods and services supplied to the Buyer by Rotorcraft and the obligations under this guarantee shall not be affected by any of the following:
 - i. Any indulgence or extension of time given to the Buyer or any variation of the terms of supply between Rotorcraft and the Buyer;
 - ii. The death or bankruptcy or winding up of the Buyer or any of the Guarantors;
 - iii. The Buyer's liability under the contract for supply being or becoming invalid illegal or unenforceable through any act or omission or in terms of any legislation;
 - iv. The release or discharge of or any indulgence extended to any of the Guarantors by Rotorcraft.
- (d) In the event of there being more than one Guarantor, then the obligations of the Guarantors shall be joint and several and the liability of the parties executing the guarantees shall not be affected by the refusal or failure of any of the intended Guarantors to sign the guarantee.
- (e) Although as between the Buyer and the Guarantor, the Guarantor may be surety only, as between the Guarantor and Rotorcraft, the Guarantor shall be deemed to be a principal debtor and shall not be released by any matter or thing which would otherwise release a surety.

Signature of Buyer

Signature of Witness

Signature of Guarantor

Name:
Address:
Occupation: