

Legal Terms

Standard Conditions for Technical Services performed by Lufthansa Technik Intercoat GmbH

1. Scope of Services

- 1.1 The scope of Services is stated in the order placed by Customer and confirmed by Lufthansa Technik Intercoat (LTI) in writing (letter, telex, fax or e-mail).
- 1.2 LTI is authorized without the prior consent of Customer to perform additional services at Customer's expense that LTI may consider necessary for the proper performance of the service if (i) Customer's decision cannot be obtained without causing a delay and (ii) the charges for the additional services do not exceed thirty (30) per cent of the value of the order.
- 1.3 The services carried out by LTI shall be performed in accordance with the Quality Manual and Procedures as approved by the German Airworthiness Authority (LBA) unless otherwise instructed by Customer. The certificate signature does constitute a Certificate of Release to Service for the work performed by LTI.

2. Delivery

Customer shall deliver the subject matter "Delivery Duty Paid" (DDP, Incoterms 2000) to LTI's repair facility. Customer will be responsible for loading, freight and insurance.

3. Redelivery

- 3.1 Redelivery dates are tentative, without any commitment, and shall serve as general information only unless they have been explicitly declared as binding.
- 3.2 In case of major postponement(s) of redelivery, LTI will notify Customer immediately.
- 3.3 In case of a non-binding redelivery date any notification by Customer requesting redelivery will allow a minimum of two (2) weeks or such other time that may be reasonable for LTI to perform the service.
- 3.4 Notwithstanding the provisions set forth in Sections 9.1, 9.1.1, 9.1.2 and 9.1.3 other remedies and claims are expressly excluded.

4. Redelivery/Transportation

Place of performance will be LTI facility performing the services. The transportation of the subject matter to such facility is at Customer's risk and expense. Redelivery shall be effected "Ex Works" (EXW, Incoterms 2000) excluding packing material. If Customer does not take delivery of the subject matter within one week after the redelivery date notified to Customer, LTI is entitled to charge storage fees in an amount of not less than EURO 75,- per day.

5. Warranty

- 5.1 In case of a defect Customer's warranty claims will be limited to LTI's obligation to rectify or to have rectified such defect(s) at no cost to Customer at one of LTI's facilities or such other place as the parties may agree. The cost of transport of such parts to and from such facility or other place will be borne by Customer. Should LTI's attempts to rectify the defect remain unsuccessful, Customer shall be entitled to either reduce the purchase price or rescind the contract.
- 5.2 LTI does not in any case assume any warranty obligation under the following conditions:
 - 5.2.1 LTI's warranty claims against manufacturers or subcontractors, if any, will be assigned to Customer by LTI; if Customer, due to circumstances beyond its control, is unable to enforce these claims against the manufacturer or subcontractor then said services will be performed by LTI in accordance with Art. 5.2, provided that exclusions of Art. 5.2.2 to 3 shall apply;
 - 5.2.2 for defective items which have been altered /overhauled or repaired by others than LTI during the warranty period, unless Customer can prove that LTI caused the defect; or for defective items which have been subject to tampering, foreign object damage (FOD), the elements or other similar external influences;
 - 5.2.3 for provisional (e.g. interim) repairs performed at Customer's special request except to the extent that such provisional repairs have not been properly performed;
 - 5.2.4 for claims made more than twentyfour (24) months after redelivery (term of Preclusion); the period of Preclusion starts to run at the Delivery Date;
 - 5.2.5 for any claims not made without undue delay (but not later than two (2) weeks after occurrence of the defect) and justified by a detailed written report within four (4) weeks after occurrence of the defect (term of preclusion);
 - 5.2.6 for defective items not delivered to LTI's facilities within four (4) weeks from the date of such notification (term of preclusion);
 - 5.2.7 for parts or material not stored, handled or operated by Customer in accordance with manufacturer's recommendations;
 - 5.2.8 for claims based upon normal wear and tear; they are explicit excluded
- 5.3 LTI shall not be liable for consequential losses, loss of production, loss of profits or other indirect losses.

6. Payments

- 6.1 Any amount invoiced for the services is due according stated on the invoice. Any fees charged by a bank shall be paid by Customer. If Customer is in default of payment LTI shall have the right to charge daily interest at a rate equivalent to 5 % per annum above the basic interest rate of the European Central Bank from due date. In addition, LTI is entitled to charge Customer EURO 25,- for each reminder of payment regarding past-due invoices.

- 6.2 For orders with an order value of under EURO 150,- LTI is entitled to add a handling charge covering the difference between the order value and EURO 150,-
- 6.3 Complaints regarding invoices must be made in writing not later than thirty (30) days after the invoice has been submitted (term of preclusion).
- 6.4 Notwithstanding the provisions set forth in Section 6.1 LTI is entitled to demand advance payment up to the full estimated amount to be invoiced. In such case LTI is not required to begin or continue any work or services or to redeliver the subject matter until advance payment is effected.
- 6.5 Unless otherwise agreed upon in writing, payments must be made in the currency and to one of the bank accounts stated on the invoice.
- 6.6 Customer is not entitled to set off any claims against LTI's claims nor to claim a right of retention unless such rights are acknowledged by LTI or by the final decision of a competent court.
- 6.7 Customer hereby irrevocably authorizes LTI to collect or to have collected any sums due via IATA Clearing House.

7. Reservation of Property Rights

- 7.1 LTI reserves its ownership rights on all parts , components, accessories and spares supplied until full payment of all invoices has been made.
- 7.2 In case of non-payment by Customer, both parties agree that LTI has by virtue of its work performed, a right of retention as well as a contractual lien on the subject matter being in the custody of LTI. The right of retention as well as the contractual lien on any other assets (physical and intangible) may also be applied on account of claims from previous order or supplies or any other supplies or claims from the business relationship.

8. Intellectual Property Rights

The sale of the subject matter does not convey to Customer any right or license of any kind under any patent owned or controlled by LTI or under which LTI is licensed.

9. Liability/Insurance

- 9.1 Notwithstanding the provisions set forth in Sections 9.1.1 and 9.2.2, Customer shall indemnify and hold harmless LTI, its personnel and its subcontractors from all liabilities towards any third party arising in any way in connection with this order and the services performed.
 - 9.1.1 LTI shall, however, be liable for any culpable breach by LTI or LTI's vicarious agents of major contractual duties jeopardising the purpose of the contract, in particular in the event of culpable default or impossibility. In any case, LTI's indemnification duty shall be limited to such damage LTI would have had to anticipate upon conclusion of the contract as being a possible consequence of the act giving rise to liability. LTI shall not be liable for any consequential damages also under this section 9.1.1.
 - 9.1.2 Section 9.1 and 9.1.1 sentences 2 to 3 shall not be applicable if and to extent the damage is based upon gross negligence or wilful acts or omission.
 - 9.1.3 LTI shall not be liable for any information supplied. The supply of such information shall not establish a contract relationship with LTI.
- 9.2 The liability of LTI to pay damages is limited as follows: In case of breach of material contractual obligations LTI shall only be liable up to the amount of the typically foreseeable damage at the time of entering in the contract. LTI shall not be liable for consequential losses, loss of production, loss of profits or other indirect losses.
- 9.3 Customer agrees to effect and maintain in full force Hull All Risks Insurance and Risk All Property Insurance containing a waiver of subrogation in favour of LTI, its personnel and its subcontractors as well as comprehensive Legal Liability Insurance including LTI, its personnel and its subcontractors as additional insured. In case the services have been ordered on behalf of third party Customer guarantees that such parties effect and maintain such insurance in full force.

10. Force Majeure

Events which are unforeseeable, unavoidable and lie beyond the sphere of influence of LTI and for which LTI does not bear responsibility, such as Acts of god, war, natural disasters, strikes, actions requested by governmental authorities or lack of transportation facilities, shall release LTI for the duration of such event from its obligation to make timely delivery or perform timely.

11. Jurisdiction and Governing Law

- 11.1 Each party consents to the exclusive jurisdiction of the courts of Hamburg, Germany, with respect to all claims, courses of action and disputes arising out of this agreement. Notwithstanding such stipulation, LTI may also take action against Customer at the business seat of Customer. Moreover, LTI may take action against Customer at any other venue of Customer.
- 11.2 This agreement shall be governed by and interpreted in accordance with the laws of Germany.

12. Passing of Title

Title to parts which are replaced during the performance of the work will pass to LTI.

13. Partial Nullity

In case of partial nullity of these conditions, both parties agree that such part or parts thereof which are not invalid shall remain in force.

14. Exclusive Validity of these Conditions

The above stated terms and conditions of LTI are exclusive and take precedence over the terms and conditions of any other document of Customer concerning the services performed hereunder. General terms used by Customer cannot be applied and will be considered null and void.