

OPTIMARE SYSTEMS GMBH ["OPTIMARE"]- GENERAL TERMS AND CONDITIONS ("GT&C") FOR AIRCRAFT EQUIPMENT & MAINTENANCE AS WELL AS SUPPLIES & SERVICES

DEFINITIONS

Within the scope of this GT&C, unless otherwise individually stipulated, the following definitions shall apply:

1. ADDITIONAL WORK

Means any work additionally required to correct discrepancies as becoming apparent during the performance of the SERVICES and/or other work which is necessary (i) to enable or to facilitate the performance of the SERVICES or (ii) to gain Airworthiness, but has not been agreed in the Statement of Work.

2. AIRWORTHINESS

An aircraft or component is airworthy if it conforms to the valid type certificate data sheet and if the maintenance was carried out in accordance with the applicable maintenance requirements and if the aircraft or component was released to service.

3. CERTIFICATE OF RELEASE TO SERVICE

A statement by the maintenance organisation approved by the relevant aviation authority confirming that the corresponding works and/or services identified therein have been carried out in conformity with the applicable requirements, standards and stipulations [e.g. EASA Part-145] by authorised personnel, and that the respective aircraft/component has been released to service.

4. COMPONENTS

Means rotatable or repairable devices, modules or individual parts of an aircraft, including engine, flight or emergency equipment, whereupon

"rotatable" means serially numbered parts having life expectancy through repetitive overhaul under normal operating conditions equal to the life of any aircraft and

"repairable" means parts which are continually reworked to a fully serviceable condition using authorised repair procedures in the appropriate component maintenance manual until such rework becomes uneconomical.

5. CONSUMABLES

Means items which are only determined to be used once.

6. CUSTOMER

Means an awarding authority or contracting entity - whether public or private - who concludes a CUSTOMER CONTRACT with OPTIMARE.

7. CUSTOMER CONTRACT

Means the agreement of the Parties concerning SERVICES to be accomplished by OPTIMARE on specified aircraft or systems, and shall include but shall not be limited to:

- Scope of Work [„SOW“]
- Milestone Plan
- Place(s) of Performance
- Prices and Payment Terms
- Terms and Conditions
- Securities
- Import / Export regulations
- Test and Acceptance conditions / procedures
- Delivery instructions, including packing and shipping for MATERIALS, if applicable.

8. CUSTOMER MATERIAL

Means any documentation, tools, MATERIAL to be supplied by CUSTOMER for the execution of the SERVICES.

9. EXPENDABLES

Means items for which no authorised repair procedure exists and for which cost for repair would normally exceed cost for replacement.

10. INCOTERMS 2020

Means International Commercial Terms published by the International Chamber of Commerce in 2020, valid from 01.01.2020.

11. LAYOVER PERIOD

Means the time between the arrival of the aircraft at Braunschweig airport or any other location agreed upon and the redelivery date at the airport as agreed upon between the PARTIES.

12. LEAD TIME

Means the time between the release of an order and receipt of the ordered item at the delivery place.

13. MATERIAL

Means any documentation, goods, software, systems, COMPONENTS, CONSUMABLES, EXPENDABLES or other items integrated into the aircraft or supplied for the aircraft.

14. NON-ROUTINE WORK

Means corrective actions deriving from the performance of the ROUTINE WORK.

15. OVER AND ABOVE WORK

Means extra work or SERVICES agreed between CUSTOMER and OPTIMARE which do not form part of the originally contracted Scope of Work as per CUSTOMER CONTRACT.

16. PROPRIETARY INFORMATION

Means all such information, data, discoveries, inventions and improvements, samples, products, computer programmes, design, drawings, specifications, reports, manuals, documents, memoranda, coordination sheets, and all other information of a technical nature, as well as business planning, marketing and financial information, whether or not defined as business secret or being patentable or not, intended to be delivered by one party to the respective other party in writing or other tangible form as well as orally transmitted at the time of disclosure whether being prominently identified by the disclosing party as proprietary or not.

17. REJECTED MATERIAL

Means any MATERIAL being unserviceable and/or not fit for use.

18. REPAIRED MATERIAL

Means any MATERIAL which is repaired, refurbished or restored to serviceable condition.

19. ROUTINE WORK

Means the accomplishment of the maintenance task card set agreed upon.

20. SERVICES

Means the performance of inspection, maintenance, overhaul, repair, modification, conversion, painting, equipment, refurbishment and related work, delivery of MATERIALS or SYSTEMS, development of parts, systems and COMPONENTS, engineering, assignment of personnel including any work in accordance with the terms and conditions of this GT&C and the respective CUSTOMER CONTRACT.

21. SPARE PART

Means any new or replacement part having a part number which is subject to delivery or installed during the accomplishment of the SERVICES.

22. SUBCONTRACTOR

Means any person, legal entity or individual, other than employees of OPTIMARE, entrusted by OPTIMARE for the support in the performance of its obligations under the CUSTOMER CONTRACT.

23. SUPPLIER

Means any distributor, furnisher, provider, vendor, supplier of any MATERIAL ordered by OPTIMARE or its affiliates.

24. TECHNICAL EXPRESSIONS

Any technical expression(s) used in this GT&C and not defined herein shall, where the context so admits, have the meanings specified in the latest edition published from time to time of the World Airlines Technical Operating Glossary (WATOG) published by the International Airline Transport Association (IATA).

25. VICARIOUS AGENTS

Means OPTIMARE's personnel, borrowed workforce and other persons, e.g. SUBCONTRACTORS, to whom OPTIMARE assigns the support in the performance of its obligations under the CUSTOMER CONTRACT.

26. WORKING DAYS / DAYS

Means calendar days excluding German and/or relevant foreign public holidays, Saturdays and Sundays.

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Article 1 SCOPE AND EXCLUSIVE VALIDITY

- 1.1 These General Terms and Conditions shall exclusively apply to all CUSTOMER CONTRACTS and shall become an integral part thereof, unless OPTIMARE expressly waives its applicability in whole or in part, in written form, and as far as OPTIMARE and CUSTOMER have not agreed upon any other particular terms and conditions.
- 1.2 CUSTOMER's standard terms and conditions shall not apply and shall not become part of the CUSTOMER CONTRACTS, even if OPTIMARE has not expressly rejected their applicability. In case OPTIMARE replies to any communication of the CUSTOMER that refers to CUSTOMER's standard terms and conditions or any other standard terms and conditions [“Other Terms and Conditions”], such reply shall not constitute an acceptance of such Other Terms and Conditions, nor shall it result in the acceptance of such Other Terms and Conditions.

Article 2 CONCLUSION OF CUSTOMER CONTRACT

- 2.1 Any offer submitted by OPTIMARE shall be binding within the given validity period.
- 2.2 Orders submitted by CUSTOMER shall be binding for CUSTOMER and shall be binding for OPTIMARE only, if such orders are fully compliant and congruent with OPTIMARE's binding offer.
- 2.3 The CUSTOMER CONTRACT is concluded once OPTIMARE has submitted an order confirmation to CUSTOMER in writing by letter, fax or e-mail or once the Parties have signed the CUSTOMER CONTRACT.

Article 3 SERVICES

- 3.1 CUSTOMER agrees to place orders for SERVICES with OPTIMARE as agreed upon by the Parties.
- 3.2 OPTIMARE shall perform at its facilities SERVICES as specified in the CUSTOMER CONTRACT as requested by CUSTOMER and agreed upon by OPTIMARE. Such SERVICES may also be performed at CUSTOMER's or SUBCONTRACTOR's site or as otherwise agreed upon by OPTIMARE.
- 3.3 All SERVICES shall be performed in accordance with the applicable manufacturer's authorised manuals and other approved documents such as, but not limited to:
 - Aircraft Maintenance Manual (AMM)
 - Electrical Load Analysis (ELA)
 - Wiring Diagram Manual (WDM)
 - Illustrated Parts Catalogue (IPC)
 - Structure Repair Manual (SRM)
 - Non-destructive Test Manual (NDTM)
 - Service Letter (SL)
 - Service Bulletin(s) (SB)
 - Airworthiness Directive(s) (AD)
 - Engineering Order(s) (EO)
 - Vendor Overhaul Manual(s) (VOM)
 - Cabin Lay-out Drawing
 - Paint Drawing
 - as specified by CUSTOMER, in particular, maintenance task cards, SBs, EOs, ADs and other relevant documents.
- 3.4 All SERVICES will be carried out and inspected in accordance with OPTIMARE's own quality assurance system and additionally as requested by CUSTOMER and agreed upon by OPTIMARE.
- 3.5 If not agreed otherwise, all communication will be held and all documentation and reports will be prepared in the English and/or German language, whereupon in case of discrepancies the respective German version shall prevail over the English version and the English version shall prevail over any other version.

Article 4 CHANGE MANAGEMENT

- 4.1 No change to these GT&C, the terms and conditions of the CUSTOMER CONTRACT and its Appendices, the SERVICES, Scope of Work, Specifications, Deliverables, Work, Milestone Plans or in the place or time of acceptance or delivery of the Work shall be recognised by the Parties hereto unless such change shall be mutually agreed upon by the Parties and authorised by OPTIMARE.

- 4.2 Each Party may at any time and from time to time request to make changes to the SERVICES, Scope of Work, Specifications, Deliverables, Work, Milestone Plans or in the place or time of acceptance or delivery of the Work, in writing. OPTIMARE will submit a change proposal in writing within adequate time after delivery / receipt of such request. Said change proposal will include as a minimum:
 - (a) description and rationale of the change;
 - (b) detailed schedule for the change and resulting effect on the time required for its performance;
 - (c) cost breakdown including labour hours, materials and other expenses;
 - (d) payment schedule.

Article 5 SUBCONTRACTING

- 5.1 OPTIMARE may assign at its sole discretion certain parts of the SERVICES to other qualified software development, engineering, manufacturing and maintenance organisations, certified by the appropriate authority and complying with OPTIMARE's quality assurance regulations [“SUBCONTRACTORS”] to perform the subcontracted part of the SERVICES, whereupon OPTIMARE's suppliers shall not be deemed as SUBCONTRACTORS.
- 5.2 Towards the CUSTOMER, OPTIMARE shall remain responsible for the respective subcontracted part of the SERVICES in accordance with the terms of these GT&C.

Article 6 TOOLS

- 6.1 Standard tools to perform the SERVICES in accordance with the scope of work are available at OPTIMARE's facilities.
- 6.2 Any non-standard tools required for specific repair or modification shall be provided by CUSTOMER (with the assistance of OPTIMARE, if requested), and the cost incurred thereby shall be borne by CUSTOMER.

Article 7 MATERIAL

- 7.1 CONSUMABLES and EXPENDABLES required for the SERVICES shall be provided by OPTIMARE unless expressly otherwise agreed upon in the CUSTOMER CONTRACT.
- 7.2 All CUSTOMER MATERIAL and COMPONENTS required for the SERVICES shall be delivered by CUSTOMER to the respective place of integration as specified by OPTIMARE due time prior to the beginning of the respective LAYOVER PERIOD at CUSTOMER's own risk and expense, unless expressly otherwise agreed upon in the CUSTOMER CONTRACT.
- 7.3 All CUSTOMER MATERIAL and COMPONENTS must meet airworthiness standards and must be accompanied by certificates that meet the requirements of the aviation authorities concerned.
- 7.4 CUSTOMER MATERIAL and COMPONENTS shall be kept separate from OPTIMARE's inventories and shall be identified as property of CUSTOMER and shall be used solely in the performance of SERVICES pursuant to this GT&C and the CUSTOMER CONTRACT.
- 7.5 All CUSTOMER MATERIAL and COMPONENTS which are defect and not repairable or not airworthy may be disposed of by OPTIMARE without the consent but at the expense of CUSTOMER and CUSTOMER shall insofar indemnify and hold OPTIMARE harmless from any cost and expense.
- 7.6 If so instructed by CUSTOMER, OPTIMARE shall return to CUSTOMER all excessive CUSTOMER MATERIAL and COMPONENTS at the risk and expense of CUSTOMER, whereupon prepayment is required. If CUSTOMER fails to prepay and instruct OPTIMARE to return CUSTOMER MATERIAL, OPTIMARE may dispose of such MATERIAL or COMPONENTS at its sole discretion and at CUSTOMER's cost after 180 days following the completion of SERVICES under the respective CUSTOMER CONTRACT.

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7.7 OPTIMARE shall be entitled to charge CUSTOMER for the storage of CUSTOMER MATERIAL and COMPONENTS subsequent to redelivery of the aircraft to CUSTOMER.

Article 8 DOCUMENTATION

8.1 All documentation necessary to perform the contractual SERVICES as stipulated in the CUSTOMER CONTRACT shall be supplied by CUSTOMER and made available to OPTIMARE due time before the agreed start of work.

8.2 After completion of SERVICES (not applicable for MATERIAL), OPTIMARE shall supply to CUSTOMER:

- an inspection report in OPTIMARE standard form or as otherwise required by the relevant airworthiness authorities,
- a file containing structural repairs performed which are above the repair procedure as stipulated in the aircraft manufacturer's Structure Repair Manual (SRM),
- a list of deferred items including complete information about any further action necessary,
- Service Bulletin, Engineering Order and Airworthiness Directive listings as performed by OPTIMARE,
- a list of replaced serialised COMPONENTS by off/on serial number, part number and position,
- a list of MATERIAL to be returned to CUSTOMER,
- a Certificate of Release to Service (CRS) If required by CUSTOMER:
- STC-Document
- Flight Manual Supplement
- Maintenance Manual Report
- Weight & Balance Report
- Operating Manuals
- CoC.

Article 9 CUSTOMER'S SPECIFIC OBLIGATIONS

CUSTOMER shall be solely responsible for

- 9.1 the delivery of the end user certificate as well as any other forms required for any relevant export licenses and permits to OPTIMARE in due time;
- 9.2 the delivery of the aircraft being ready for the SERVICES together with its documentation necessary for the SERVICES, such as, but not limited to serial specific wiring diagram manuals, serial specific load analysis, weight and balance report etc. to OPTIMARE on CUSTOMER'S sole risk and expense, in due time;
- 9.3 the performance of any and all ferry and test flights with qualified pilots at CUSTOMER'S sole risk and expense, in due time;
- 9.4 the airworthy performance of preparation work on the aircraft due time prior to the start of the SERVICES according to the relevant Milestone Plan;
- 9.5 the communication, co-operation and decisions to be made by CUSTOMER during the whole SERVICE period, in due time;
- 9.6 the provision of any and all securities to be provided and payments to be made by CUSTOMER in due time;
- 9.7 the provision of any and all governmental decisions, approvals, certifications, whether concerning the aviation, customs, tax or other authorities in charge, in due time;
- 9.8 the redelivery of the aircraft to CUSTOMER at CUSTOMER'S sole risk and expense;
- 9.9 the availability of qualified experienced pilots with a suitable rating for the aircraft for all ferry and test flights, which pilots, ferry and test flights shall be paid by CUSTOMER.

Article 10 AUTHORISED REPRESENTATIVE

10.1 If required by OPTIMARE, CUSTOMER shall delegate one authorised representative at the respective site where the SERVICES are performed during the LAYOVER PERIOD, until completion of final acceptance of the SERVICES hereunder. The authorised representative of CUSTOMER may observe the performance and inspect the results of the SERVICES, provided that such inspection will not unreasonably interfere with the scheduled progress of OPTIMARE'S activities.

10.2 The authorised representative of CUSTOMER shall be OPTIMARE'S contact in all matters concerning the performance of the SERVICES. Such representative shall be fully authorised

by CUSTOMER to decide especially on issues as stipulated under Articles 4.2 (Changes), 9 (CUSTOMER'S Obligations), 10.3 (Inspection Findings), 10.4 (CUSTOMER Inspections), 11 (Test & Acceptance) and to decide on all matters brought forward to him by OPTIMARE. In the event such decision is required, the authorised representative of CUSTOMER shall promptly take the decision in order to avoid any delay in the progress of work.

10.3 Inspection findings affecting the agreed scope of SERVICES hereunder may require additional layover time. As a result thereof CUSTOMER shall accept all extensions required by OPTIMARE in respect of the LAYOVER PERIOD.

10.4 CUSTOMER'S authorised representative may request particular or additional CUSTOMER inspections in the routine progress meetings. Such request shall be made in due time, whereupon the requested additional inspection shall not interfere with the progress of the SERVICES.

10.5 On request of the CUSTOMER, OPTIMARE shall provide a furnished office for up to 2 (two) CUSTOMER representatives, secretarial services and communication equipment at additional cost. Telephone and telefax shall be free of charge except for long distance connections, which will be charged at actual cost.

10.6 CUSTOMER'S representatives shall strictly observe OPTIMARE'S rules and regulations for safety and security at OPTIMARE'S premises.

10.7 OPTIMARE will delegate an authorised employee as official contact person for CUSTOMER in all matters concerning the SERVICES and related contractual matters.

Article 11 TESTS AND ACCEPTANCE OF SERVICES

11.1 All SERVICES performed by OPTIMARE are subject to tests as well as intermediate and/or final acceptance by CUSTOMER in accordance with the respective stipulations and forms of the CUSTOMER CONTRACT [such as Preliminary Design Review (“PDR”), Critical Design Review (“CDR”), Site Acceptance Test (“SAT”), Incoming Inspection, Ground Test, Flight Test, Final Acceptance Test (“FAT”)]. Such tests shall be conducted by CUSTOMER and supported by OPTIMARE and said declarations of acceptance shall not be unreasonably withheld.

11.2 Upon acceptance by CUSTOMER, OPTIMARE shall be provided with a signed Certificate of Acceptance as per the attachment to the respective CUSTOMER CONTRACT, signed by the authorised representative of CUSTOMER.

11.3 OPTIMARE'S SERVICES shall be deemed accepted by CUSTOMER if an authorised representative of CUSTOMER is not available to perform the acceptance procedures within seven (7) days after written notice to CUSTOMER'S address.

11.4 After completion of SERVICE and after successful Ground Test, CUSTOMER may conduct a Flight Test of the contractual aircraft in order to verify the operational functions of the systems integrated by OPTIMARE. Such Flight Test shall be performed by CUSTOMER'S flight crew under CUSTOMER'S sole responsibility at his own costs and risks.

11.5 In case OPTIMARE'S VICARIOUS AGENTS attend said Flight Tests, they will simply act as observers and not as crew members and CUSTOMER shall make sure that those VICARIOUS AGENTS of OPTIMARE will become additionally insured in the passenger insurance of the respective aircraft.

11.6 Malfunctions and discrepancies found and caused due to OPTIMARE'S faulty MATERIAL or workmanship will be rectified by OPTIMARE as per Article 14. Other malfunctions and discrepancies will be treated as ADDITIONAL WORK or OVER AND ABOVE WORK and will be rectified as agreed upon with CUSTOMER at CUSTOMER'S expense.

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Article 12 COMMERCIAL TERMS AND CONDITIONS

- 12.1 In addition to the Articles contained in these GT&C, all other applicable commercial terms and conditions shall be specified in the CUSTOMER CONTRACT.
- 12.2 If not expressly agreed otherwise in the CUSTOMER CONTRACT, deliveries made by OPTIMARE shall be effected according to “EX WORKS” OPTIMARE’s premises in Bremerhaven, Germany or “EX WORKS” SUBCONTRACTOR’s or SUPPLIER’s facilities as named in the CUSTOMER CONTRACT, INCOTERMS 2020.
- 12.3 Prices are net prices, excluding any existing or future customs duties, sales tax, value added tax and other taxes, levies, duties, charges, whatsoever imposed on the supply of goods or the provision of Work and Services, which shall be borne by CUSTOMER in addition to the quoted prices. If any payment by the CUSTOMER is subject to withholding tax, CUSTOMER agrees to pay an additional amount, as is necessary to ensure that OPTIMARE receives the same amount it would have received if there had been no withholding.
- 12.4 CUSTOMER shall provide OPTIMARE with his VAT identification number and/or furnish proof of his capacity as entrepreneur according to German VAT law.
- 12.5 CUSTOMER shall make payments in the contractually agreed currency. In case of doubt the contractual currency shall be deemed to be agreed upon in EURO.
- 12.6 If not expressly agreed otherwise in the CUSTOMER CONTRACT, prices for SERVICES according to OPTIMARE’s respective price list effective at the time of conclusion of the CUSTOMER CONTRACT according to Article 2.3 shall apply on a time and material basis. Vendor parts and MATERIAL shall be charged with an adequate mark-up.
- 12.7 Fixed Prices for OPTIMARE’s SERVICES are subject to a written agreement by the Parties and shall be binding unless changed in accordance with Article 4 [Change Management] by mutual decision of the Parties.
- 12.8 OPTIMARE shall have the right to claim payment in advance of an adequate portion of the estimated total contract amount due time prior to the start of work or SERVICES.
- Payment of invoices for time and material based SERVICES shall be due upon receipt of the respective invoice, however, upon final acceptance of the contractual SERVICES or due time before handing over the aircraft to CUSTOMER at the latest.
- Payment of Fixed Prices shall be made in accordance with the Payment Milestone Plan as stated in OPTIMARE’s corresponding proposal or as agreed upon in the prevailing CUSTOMER CONTRACT.
- 12.9 If for reasons beyond OPTIMARE’s control the execution of SERVICES is delayed or partially prevented, OPTIMARE shall be entitled to claim for advanced payment or invoice an adequate and reasonable amount for SERVICES already rendered by OPTIMARE and/or its SUBCONTRACTORS.
- 12.10 If CUSTOMER is in default of any payment or other contractual obligation, OPTIMARE may suspend the fulfilment of its own contractual obligations until such due payment is made. Further, OPTIMARE shall have the right to claim compensation for any and all damages caused by such default according to German law. If CUSTOMER fails to fulfil or meet his obligations, OPTIMARE hereby reserves all its rights and recourses under these GT&C, the CUSTOMER CONTRACT and/or according to law.
- 12.11 CUSTOMER is not entitled to offset any of his claims against OPTIMARE’s claims for payment or to exercise a right of retention unless such counter claim has been accepted by OPTIMARE in writing.
- 12.12 Title to any and all MATERIAL supplied by OPTIMARE under the CUSTOMER CONTRACT shall remain with OPTIMARE until complete payment of all amounts due has been effected. Further, OPTIMARE shall be granted a contractual lien as well as a statutory lien and a right of retention on the contractual

aircraft and CUSTOMER’s MATERIAL and COMPONENTS in custody of OPTIMARE as well as a contractual lien on CUSTOMER’s MATERIAL and COMPONENTS during the term of the CUSTOMER CONTRACT according to German law to secure any claims of OPTIMARE against CUSTOMER out of or in connection with any CUSTOMER CONTRACT as well as to secure any claims of affiliates of OPTIMARE against CUSTOMER.

These rights as well as a set-off right may also be claimed by OPTIMARE for SERVICES performed or MATERIAL and/or COMPONENTS supplied to CUSTOMER previously.

The lien and the right of retention as well as the set-off right may also be applied with respect to claims resulting from CUSTOMER’s relation to any affiliates of OPTIMARE.

Article 13 TAXES, DUTIES, CUSTOM FEES, EXPORT LICENSES AND IMPORT CLEARANCE

- 13.1 CUSTOMER shall bear any and all taxes, duties, custom’s fees and/or equivalent charges whatsoever which may be levied in connection with this GT&C, except those taxes, levies, charges and fees levied against OPTIMARE by any relevant German authority resulting from the CUSTOMER CONTRACT.
- 13.2 OPTIMARE will undertake every reasonable effort to obtain all relevant export and transportation licences as well as other permits for the MATERIAL and SERVICES that are the subject of the CUSTOMER CONTRACT from the competent authorities of Germany and/or of any other country from which the contractual supplies originate.

CUSTOMER shall be responsible for the timely import of any and all contractual supplies and shall bear and assume all formalities required for import authorisation and all other formalities as may be required by his country’s legislation and/or regulations for importing and customs clearance concerning any and all MATERIAL being subject of the CUSTOMER CONTRACT.

Failure of the German Government or the Government of any other country involved to issue or to maintain any required export licenses or permits shall be deemed and treated as a case of Force Majeure according to Article 21 and shall relieve OPTIMARE of its obligations under the CUSTOMER CONTRACT without any liability.

The same shall apply if the respective Government delays the required export license or permit, or deviates from the respective application for such export license or permit or withdraws or terminates issued export licenses or permits.

Article 14 WARRANTY

- 14.1 OPTIMARE warrants that all SERVICES performed including MATERIAL provided by OPTIMARE will be in accordance with aviation standards as are customary in the aviation business and will be free from defects in material and workmanship under normal use and service for the warranty periods as defined in Articles 14.4 and 14.5 below.
- 14.2 Warranty shall expressly be limited to the correction of defects due to faulty parts or workmanship having become apparent within the warranty periods as defined in Articles 14.4, 14.5 and OPTIMARE’s obligation hereunder shall be limited to the correction by repair of the defect or defect part or the replacement of the defective part at OPTIMARE’s sole discretion.
- 14.3 Concerning delivered or embedded proprietary software, OPTIMARE warrants to correct or bypass, pursuant to its respective own standards, any and all reproducible malfunctions or functional discrepancies in the software within a reasonable period of time, depending on the severity of such malfunctions or anomalies, during the warranty period defined in Article 14.4.

In case of such malfunction or functional discrepancy, Customer shall provide an accurate description of the failure and the conditions under which the software failure occurred, including without limitation the conditions prevailing during the most recent operation of the software.

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This warranty does neither apply to any software supplied under license from third parties nor to any modification on software carried out by Customer or any third party not authorised by OPTIMARE, nor to any discrepancy caused by interface modifications, nor to any use of the software which is not in accordance with the Customer Contract.

For the software supplied under license from third parties, the warranties are those which OPTIMARE is authorised to provide to its customers.

- 14.4 The warranty period for workmanship and MATERIAL manufactured by OPTIMARE is twelve (12) months - alternatively five hundred (500) flight hours from the date of Final Acceptance or handing-over to CUSTOMER's representatives, whatever occurs first.
- 14.5 The warranty and the warranty period for MATERIAL procured, processed and supplied by OPTIMARE are limited to the original manufacturers', suppliers', vendors' or licensor's warranty conditions. OPTIMARE hereby assigns its corresponding warranty rights and claims towards the respective manufacturer, supplier or vendor to CUSTOMER.
- 14.6 In order to preserve CUSTOMER's warranty rights, warranty claims shall be brought to OPTIMARE's attention in writing within fourteen (14) DAYS after detection of the defect in question at the latest. Upon receipt of such claim by OPTIMARE and if accepted as warranty case by OPTIMARE, the Parties shall mutually agree on ways and means to rectify such defect, considering also the relevant lead times for MATERIAL.
- All warranty claims against OPTIMARE for any defect shall be excluded if the underlying defect was not communicated by CUSTOMER to OPTIMARE within said 14 DAYS.
- Once OPTIMARE has been notified of a defect, OPTIMARE may request from CUSTOMER a detailed written report specifying the occurrence, extent and possible cause(s) of such defect. Should OPTIMARE not receive such a written report within thirty (30) DAYS after receipt of OPTIMARE's request by CUSTOMER, all warranty claims related to such defect shall be excluded.
- 14.7 CUSTOMER's MATERIAL as well as used, repaired and overhauled MATERIAL and parts are excluded from any warranty claims.
- 14.8 Warranty claims shall be excluded if the aircraft and/or the MATERIAL have not been operated, handled or maintained in accordance with
- the regulations of the applicable airworthiness authorities and/or
 - the respective manufacturer's or OPTIMARE's aircraft operating manuals, maintenance manuals and inspection programs, or when alterations, repairs, overhauls or changes of the MATERIAL integrated and/or delivered by OPTIMARE have been accomplished during the warranty period without the prior written consent of OPTIMARE, unless CUSTOMER demonstrates that such deficiency is unrelated to any of such circumstances. OPTIMARE shall be granted unrestricted access to the appropriate documentation by CUSTOMER immediately after detection of the related defect.
- OPTIMARE shall not be liable for any defects of MATERIAL which have been tampered with by others than OPTIMARE or its VICARIOUS AGENTS, which have suffered a "Foreign Object Damage" ["FOD"] or were damaged by the elements or by similar external influences or by normal wear and tear, whereupon the aforementioned warranty restrictions do not apply in cases where CUSTOMER has proven that OPTIMARE and/or one of its VICARIOUS AGENTS caused the defect in question.
- 14.9 If the rectification of a defect is neither economically nor technically feasible, OPTIMARE's warranty shall be limited to the respective original MATERIAL value of such defective part.
- 14.10 After warranty repairs have been performed, the remaining portion of the original warranty period shall apply. Any further

rights and claims against OPTIMARE, especially claims regarding the compensation of damages, shall be excluded.

- 14.11 After written authorisation by OPTIMARE, CUSTOMER shall have the right to perform warranty repairs by himself. OPTIMARE shall reimburse CUSTOMER for material and man-hours expended, provided the Parties have agreed upon the man-hour rate and the estimated expenditure of time. In any event CUSTOMER's labour rate for ADDITIONAL WORK shall not exceed OPTIMARE's labour rate according to OPTIMARE's effective price list [see Article 12.5]

Article 15 LIABILITY / INDEMNIFICATION

OPTIMARE's liability as well as the individual liability of its shareholders, directors, servants, agents, SUBCONTRACTORS, VICARIOUS AGENTS and persons employed by OPTIMARE in the performance of its obligations, - irrespective of the legal grounds - shall be limited as follows:

- 15.1 OPTIMARE's liability for any damages sustained by CUSTOMER, its shareholders, directors, employees, servants, vicarious agents and subcontractors due to, or in connection with, or in consequence of the initiation of the CUSTOMER CONTRACT or the performance or non-performance of SERVICES under the CUSTOMER CONTRACT caused by slight negligence [ordinary negligence ("leichte Fahrlässigkeit")] shall be limited to the extent of OPTIMARE's existing insurance coverage at the time of causation, provided such damages have not been caused by wilful misconduct or any breach of material / major contractual obligations ["Kardinalpflichten"] or by a violation of a guarantee or are related to injury or death of natural persons or a claim under the German Product Liability Act.
- 15.2 To the extent OPTIMARE is liable pursuant to Article 15.1, OPTIMARE's liability shall be further limited as follows:
- OPTIMARE shall not be liable for non-foreseeable damages which are not typical for SERVICES of the kind as being subject of the relevant CUSTOMER CONTRACT and which are neither caused by wilful misconduct or any breach of material / major contractual obligations ["Kardinalpflichten"] nor by a violation of a guarantee and are not related to injury or death of natural persons or a claim under the German Product Liability Act.
- 15.3 In all other cases which are neither caused by wilful misconduct or any breach of material / major contractual obligations ["Kardinalpflichten"] nor by a violation of a guarantee and are not related to injury or death of natural persons or a claim under the German Product Liability Act OPTIMARE's liability shall be limited to direct damages up to an amount of EURO 1,000,000 globally, and for financial damages as consequential damages, including but not limited to loss of profit or loss of revenue, up to an amount of EURO 100,000 per occurrence; per insurance year no more than twice as much each.
- 15.4 Any exceeding claims against OPTIMARE, its shareholders, directors, servants, agents, SUBCONTRACTORS, VICARIOUS AGENTS and persons employed by OPTIMARE in the performance of its obligations, irrespective of their legal ground (e.g. advice, positive violation of contractual duty, tort), especially in case of indirect or consequential damages, shall be excluded.
- 15.5 OPTIMARE shall not be liable for the replacement or the reconstruction of data files, unless OPTIMARE caused their destruction intentionally or by gross negligence and CUSTOMER has assured that the data concerned can be reconstructed with justifiable expenditure out of the data material kept ready in computer-readable form.
- 15.6 To the extent the liability of OPTIMARE, its shareholders, directors, servants, agents, SUBCONTRACTORS, VICARIOUS AGENTS and persons employed by OPTIMARE is excluded hereunder CUSTOMER shall indemnify, defend and hold harmless OPTIMARE, its shareholders, directors, servants, agents, SUBCONTRACTORS, VICARIOUS AGENTS and persons employed by OPTIMARE from any and all such claims including cost and expenses incident hereto.

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- 15.7 CUSTOMER is obliged to notify OPTIMARE without undue delay and in writing of any damages and losses he intends to claim.
- 15.8 CUSTOMER's claims shall become time-barred one year after completion of the related contractual SERVICE.

Article 16 INSURANCE / GOVERNMENT OWNED AIRCRAFT

- 16.1 During the period any aircraft is serviced hereunder and for the term of the CUSTOMER CONTRACT in respect of such aircraft, CUSTOMER shall obtain and maintain or have effected and maintained insurances with the following coverage and provisions:
- 16.1.1 Hull All Risks Insurance as well as All Risk Property Insurance including war risks containing a waiver of subrogation in favour of OPTIMARE, its personnel and its SUBCONTRACTORS covering also engines and parts whilst not installed on the aircraft.
- 16.1.2 Comprehensive Aviation General Legal Liability Insurance including Third Party-, Passenger-, and war risk liability insurances with a combined single limit in accordance with article 7 regulation (EC) Nr. 785/2004 as a minimum, naming OPTIMARE, its personnel and SUBCONTRACTORS as additional insured parties with a waiver of subrogation in favour of OPTIMARE, its personnel and its SUBCONTRACTORS.
- 16.2 In case CUSTOMER is not a party to the insurer of the contractual aircraft and/or has ordered the SERVICES from OPTIMARE either for or on behalf of a third party being the owner or registered keeper of such aircraft, CUSTOMER shall make sure that such owner, registered keeper or third party obtains and maintains the insurances as specified in Articles 16.1.
- 16.3 CUSTOMER shall provide OPTIMARE with a certificate evidencing the respective insurance coverage as set out above.
- 16.4 In case Government owned aircraft are not covered by the aforementioned insurances CUSTOMER and/or its Government shall indemnify, defend and hold harmless OPTIMARE, its shareholders, directors, servants, agents, SUBCONTRACTORS, VICARIOUS AGENTS and persons employed by OPTIMARE from any and all third parties' claims including cost and expenses incident thereto and, OPTIMARE, its shareholders, directors, servants, agents, SUBCONTRACTORS, VICARIOUS AGENTS and persons employed by OPTIMARE shall be treated as if CUSTOMER and/or its Government had such complete insurance coverage as specified in Articles 16.1 and as if OPTIMARE, its shareholders, directors, servants, agents, SUBCONTRACTORS, VICARIOUS AGENTS and persons employed by OPTIMARE were additional insureds to such insurances.

Article 17 NOTICES AND ADDRESS

- 17.1 All notices and inquiries shall be in writing, either via normal mail service or by fax or e-mail. The date of receipt by the recipient shall be considered the effective date of such notice or inquiry, regardless of the date of such notice or inquiry.

All notices and inquiries for OPTIMARE shall be addressed as follows:

Optimare Systems GmbH
Fischkai 1
27572 Bremerhaven
GERMANY
Attn.: Executive Officer
Fax: +49-471-48361-11
E-mail: info@optimare.de

- 17.2 Written notices or inquiries handed over to CUSTOMER's authorised representative shall be deemed to have been received by CUSTOMER.

Article 18 EXCUSABLE DELAY

- 18.1 OPTIMARE shall not be liable for the extension of the agreed LAYOVER PERIOD and/or the Milestone Plan or single elements thereof as well as for any default in the performance of the agreed SERVICE, provided:

- 18.1.1 A significant unscheduled repair or rectification or modification has to be performed which is beyond the expected level of defect normally associated with the depth of inspection and the type of check being accomplished on the specific aircraft or in cases where extensive ADDITIONAL WORK has to be performed;
- 18.1.2 MATERIAL and/or COMPONENTS duly and timely ordered are not supplied;
- 18.1.3 CUSTOMER fails to act in a timely manner as required by this GT&C and/or the CUSTOMER CONTRACT;
- 18.1.4 a delay and/or any default in the performance of the agreed SERVICE in terms of non- or misperformance or any other breach of duty was caused by a case of Force Majeure according to Article 21.
- 18.2 The Parties shall inform each other of the events mentioned above and shall use their best endeavours to overcome such a deferment. On the occurrence of an event as described hereunder, OPTIMARE shall be entitled to reasonably adjust the contractual period affected by such deferment, taking into account all circumstances of the particular case.

Article 19 NON-EXCUSABLE DELAY / LIQUIDATED DAMAGES

- 19.1 In case OPTIMARE and/or its SUBCONTRACTORS fail(s) to perform its work and services in accordance with the agreed schedule as specified in the CUSTOMER CONTRACT for causes other than those stated in ARTICLE 18 [“Excusable Delay”] and, if as a consequence thereof (i) redelivery of the aircraft is delayed and (ii) CUSTOMER has suffered direct damages by such delay, CUSTOMER shall be entitled to claim a penalty of 0,1 % of the value of the delayed item per each calendar day from the first day after expiration of a grace period of ten (10) days, however, with a maximum of 5% of the total Contract Price as agreed upon in the CUSTOMER CONTRACT, such penalty to be paid to CUSTOMER within 10 days after receipt of CUSTOMER's penalty claim by OPTIMARE together with the proof of CUSTOMER's own direct damages caused by such delay.

Upon payment of above penalty to CUSTOMER any and all damage claims arising from such non-excusable delay shall be deemed compensated and CUSTOMER waives all possible further rights and claims, whereby OPTIMARE accepts this waiver.

- 19.2 In case CUSTOMER fails to
- deliver the aircraft and/or CUSTOMER MATERIAL or COMPONENTS to OPTIMARE in due time,
 - act in a timely manner as required by this GT&C or any CUSTOMER CONTRACT,
- OPTIMARE shall be entitled for compensation of its damages caused by such failure, provided that CUSTOMER's obligation to act or deliver was not deleted, hindered or prevented by an event of EXCUSABLE DELAY hereunder.

Article 20 NON-DISCLOSURE

- 20.1 In respect of any and all information supplied by one party to the other party or acquired by either party directly or indirectly from the other party, each party undertakes:
- not to disclose PROPRIETARY INFORMATION to any third party without the written permission of the other party except only to the extent necessary to those to whom such disclosure is reasonably necessary for the performance of the SERVICES, such as OPTIMARE's VICARIOUS AGENTS;
 - not to use PROPRIETARY INFORMATION for any purpose other than performing the SERVICES unless previously authorised in writing by the other party;
 - not to copy PROPRIETARY INFORMATION except as may be reasonably necessary for the purposes specified above;
 - to return to the appropriate party on demand all PROPRIETARY INFORMATION which have been supplied by the other party in the form of drawings or written material including all copies, provided such information is no longer required for the performance of the SERVICES.
- 20.2 The Parties shall be responsible for the observance of the provisions of Clause 20.1 above by its employees.

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20.3 Clause 20.1 above will not apply to any PROPRIETARY INFORMATION which:

- is or becomes generally known in the aviation industry, or
- was in the recipient's possession by virtue of being recorded in its files, or
- has been in the recipient's use prior to the receipt or acquisition from the other party
- is required by law and/or any public authority.

20.4 The obligations imposed on both Parties by this Article 20 shall survive the expiration or termination of the CUSTOMER CONTRACT and will remain in full force and effect until such time as and to the extent that the information referred to in this clause is or becomes generally known in the aviation industry otherwise than by a breach of these stipulations.

Article 21 FORCE MAJEURE

21.1 None of the Parties shall be liable nor shall be held responsible for the non-performance, misperformance or delay or other default in the performance of the SERVICES as well as other work, services, deliveries and obligations under the CUSTOMER CONTRACT, which is caused by an event that is reasonably beyond the control of the respective Party and/or its suppliers and subcontractors, and without the fault or negligence of the respective Party and/or its suppliers and subcontractors which shall constitute a case of force majeure, such as, but not limited to Acts of God, acts of Government, fires, floods, wars, riots, civil commotions, strikes, lockouts, epidemic, pandemic, quarantine restrictions, embargoes, unusually severe weather and difficulties in the procurement of materials, parts and equipment from manufacturers.

21.2 Any delay caused by CUSTOMER in providing its contractual obligations, contributions and personnel to OPTIMARE and/or its suppliers or SUBCONTRACTORS, shall constitute an excusable delay for OPTIMARE.

Article 22 GOVERNING LAW AND VENUE

22.1 Unless otherwise agreed upon in the CUSTOMER CONTRACT, these GT&C and any CUSTOMER CONTRACT under these GT&C shall be deemed to be subject to, and have been made under, and shall be governed by, construed and interpreted in accordance with the laws of the Federal Republic of Germany without regard to its laws on conflicts of laws. The Convention on the International Sale of Goods [CISG] shall not apply.

22.2 The Parties agree upon the exclusive jurisdiction of the courts of Hamburg, Germany, with respect to all claims, causes of action and disputes arising out of these GT&C and/or any CUSTOMER CONTRACT.

Article 23 MISCELLANEOUS

23.1 The invalidity in whole or in part of any provision of these GT&C shall not void or affect the validity of any other provision. The Parties agree to replace any invalid provision by one most similar to it in legal and commercial contents. The same shall apply to any provision in any CUSTOMER CONTRACT.

23.2 CUSTOMER CONTRACT(s) and its Appendices are to be considered as integral parts hereof.

23.3 The headings to clauses of these GT&C are inserted for convenience only and shall not affect the construction and interpretation of the provisions of these GT&C.

23.4 The terms and conditions of these GT&C in connection with any CUSTOMER CONTRACT shall supersede any and all representations, agreements, statements and understandings made prior to the date of these GT&C relating to the same subject matter given orally or in writing. Changes, additions and amendments to the terms and conditions of these GT&C including this sub-article 23.4 and any related CUSTOMER CONTRACT shall only be valid if executed by the Parties in writing.

23.5 It shall be the obligation of each party to exercise due diligence to discover and bring to the attention of the other party at the earliest possible time any ambiguities, discrepancies, inconsistencies or conflicts herein or in or between any

documents attached hereto or incorporated by reference herein. Ambiguities, inconsistencies or conflicts will not be strictly construed against the drafter of the GT&C language; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the Parties at the time of contracting.

23.6 In the event that there is any conflict or any inconsistency between the provisions of these GT&C and the CUSTOMER CONTRACT hereto, the provisions of these GT&C shall prevail.

23.7 CUSTOMER shall not be entitled to assign its rights to any third party without prior written consent of OPTIMARE. OPTIMARE shall not unreasonably withhold such consent.

23.8 The respective operator, if any, shall be named in the respective CUSTOMER CONTRACT.

23.9 Upon request of OPTIMARE, CUSTOMER shall appoint a qualified responsible as his process agent and agrees to maintain the process agent in Germany to be notified to OPTIMARE.

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27572 Bremerhaven
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