

Standard Terms and Conditions for SMART SRU Manufacturing and Repair Technologies Services performed by Lufthansa

Technik AG

These Standard Terms and Conditions apply to each Service performed by Lufthansa Technik AG under a Customer Agreement concluded with a Customer.

- O. Definitions and Abbreviations**
The following terms, expressions and abbreviations used in these Standard Terms and Conditions shall have the following meanings:
- Airworthiness** An aircraft or Component is airworthy if it conforms with the applicable approved type, i.e. if it complies with the valid type certificate data sheet, which includes any supplemental type certificate (STC) and approved modifications incorporated into the aircraft and if any maintenance service was carried out in accordance with the applicable maintenance requirements and if the aircraft or Component was released to service.
- Certificate of Release to Service** The issuance of a Certificate of Release to Service by the maintenance organization approved by the competent authority confirming, unless otherwise specified, that the Maintenance Service listed therein has been carried out in conformity with the applicable requirements (e.g. EASA Part-145 requirements) by appropriate authorized personnel of the maintenance organization and in accordance with the applicable maintenance organization exposition, and that the Maintenance Object has been released to service.
- Components** Devices, modules or individual parts of an aircraft, including engine or flight equipment or emergency equipment. Components are always identified by a part number in the maintenance or operational documents issued by the respective aircraft or component design organization.
- Customer** A person or legal entity who or which, when entering into a Customer agreement with LHT, acts in exercise of his or its trade, business or profession.
- Customer Agreement** A contract between LHT and the Customer under which LHT agrees to perform a Service on one or more Service Object(s) in return for payment by the Customer.
- Customer's Working Equipment** Any technical equipment for use by LHT to perform the Service which the Customer is obligated to provide to LHT under the Customer Agreement as specified in the Customer Agreement.
- LHT** Lufthansa Technik AG.
Place of Performance Has the meaning set forth in Article 4.
- Service** A SRU Manufacturing and Repair Technologies (SMART) process as further specified in the Customer Agreement.
- Service Object** Any Object delivered to LHT by the Customer for a Service to be performed by LHT.
- Subcontractor** Any person or legal entity (other than employees of LHT), engaged by LHT to perform LHT's obligations under the Customer Agreement.
- Vicarious Agents** LHT's personnel and Subcontractors used by LHT to support LHT in the performance of its obligations under the Customer Agreement.
- 1. Scope and Exclusive Validity of these Terms and Conditions**
1.1 These Standard Terms and Conditions shall exclusively apply to all Customer Agreements, unless LHT expressly waives their applicability in written form, and only as far as LHT and the Customer have not agreed on any other terms and conditions provided by LHT.
1.2 Customer's standard terms and conditions shall not become part of the Customer Agreement, even if LHT has not expressly rejected their applicability. Further, if LHT replies to any communication of the Customer that refers to the Customer's standard terms and conditions or any other set of terms and conditions (each "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.
- 2. Conclusion of Customer Agreement**
2.1 Any offer submitted by LHT shall be non-binding.
2.2 Orders submitted by the Customer are binding for the Customer.
2.3 The Customer Agreement is concluded once LHT has submitted an order confirmation to the Customer in writing (letter, fax or e-mail).
- 3. Scope of Service**
3.1 The scope of the Service requested shall be stated in the order placed by the Customer and, if agreed, shall be confirmed in the order confirmation submitted by LHT.
3.2 LHT is entitled, without the prior consent of the Customer but at the Customer's expense, to perform additional services that LHT considers necessary for the proper performance of the Service if (i) the Customer's prior consent cannot be obtained without causing a delay in the completion of the services and (ii) the price for the additional services does not exceed ten percent of the value of the original order.
3.3 The Service shall be performed by LHT in accordance with the Lufthansa Technik Quality Manual and Procedures as approved by the competent authority unless otherwise agreed in writing between the Customer and LHT.
- 4. Place of Performance**
4.1 The Place of Performance of the Service shall be the LHT service facility site in Hamburg, Germany.
- 5. Customer's Obligations**
5.1 The Customer shall supply LHT with the Customer's Working Equipment and with all documents on the operation, maintenance and repair history of the Service Object necessary for completing the Service, including without limitation all relevant instruction manuals and special documentation, not at LHT's disposal) as well as with a sample of the Service Object at least six weeks prior to the performance of the Service, unless it has been expressly agreed upon otherwise in the Customer Agreement.
5.2 If the Customer fails to supply LHT with the documents as per Article 5.1 above or if such documents are incomprehensible or incomplete, LHT may request that the Customer supply any such documents, and any relevant undocumented information, within a reasonable period of time, for the purposes of Article 5.1. Documents include both printed documents and data in all other formats, including without limitation electronic formats.
5.3 If the Customer does not comply with the request according to Article 5.2 in due time, LHT is entitled to terminate the Customer Agreement with immediate effect. In such case, LHT shall be entitled to claim payment for the Service to the extent it was performed prior to the date of termination.
5.4 The Customer must ensure that the Service Object is suitable for surface treatment as indicated in the Customer Agreement. The Service Object must be free from cast rind, form sand, scales, oil carbon, burned-in grease, welding slag, graphite, coats of paint, pores, blowholes, cracks, inclusions and other impairments. Confidential information shall include, but not be limited to, the contents of the negotiations leading up to the Customer Agreement, any business, technical and strategic data disclosed by LHT or its Subcontractors at any time for any reason, comprising any and all such information in oral or visual form and including but not limited to prices for materials and Services, the scope of Services offered, legal provisions, turnaround times and man-hours needed.
- 6. Delivery**
6.1 The delivery of each Service Object and the Customer's Working Equipment to the Place of Performance of the Service shall be at the Customer's risk and expense, unless otherwise agreed in the Customer Agreement.
6.2 The Customer provides LHT with a written delivery note at the time of the delivery of the Service Objects specifying the exact number of the Service Objects delivered.
- 7. Redelivery Dates**
7.1 Unless they have been explicitly and in writing been declared as binding, redelivery dates indicated by LHT are provisional, non-binding, and shall serve as general information only.
7.2 If LHT becomes aware that it is likely to miss the redelivery date, LHT will promptly notify the Customer.
- 8. Redelivery**
8.1 Redelivery of the Service Object shall be effected ex works (EXW, Incoterms 2010) the Place of Performance excluding packing material.
8.2 No later than one week after (i) LHT has notified the Customer that the Service has been completed or (ii) the date of termination of the Customer Agreement, whichever may occur first, the Customer shall exercise best efforts to immediately collect the Service Object at the Place of Performance.
8.3 If the Customer fails to comply with Article 8.2, the Customer shall compensate LHT for any costs and expenses it incurs in connection with the storage of the Maintenance Object according to LHT's then current price list.
8.4 Customer may request that LHT supports Customer in arranging for shipment of the Service Object to another place as the one specified in Article 8.1 above. Any shipment arrangements made by LHT shall be in the name and on behalf of Customer. The Customer shall bear all shipping cost including the cost for packing material.
- 9. Warranty**
9.1 A defect shall only be subject to warranty, if it arises within twelve months after redelivery.
9.2 A warranty claim must be raised by Customer within thirty days after the defect has or could have become reasonably apparent and LHT must be notified prior to the delivery of the Service Object. LHT must be notified within additional thirty days after the warranty claim has been raised. If a defect arises on a non-removable part of an aircraft the Parties shall in good faith agree how to remedy such defect in a way convenient for Customer and reasonably acceptable for LHT.
9.3 LHT hereby advises the Customer that due to the specific nature of the Service certain visual variations of the final surface quality of the Service Object in regard to previously supplied samples are technically unavoidable and are in the nature of the Service. Such reasonable variations do not constitute a defect.
9.4 If the Service Object contains hollows, corrosion at such hollows is to be expected after the performance of the Service due to condensed moisture and corrosion caused by friction. LHT will not perform any treatment on hollows of the Service Object, unless expressly otherwise agreed in the Customer Agreement. If such treatment in regard to hollows is not agreed upon, LHT shall not be liable for such corrosion. Further, any warranty for defects or damages caused by corrosion that occurs due to the discharge of moisture from double layers or other inaccessible hollows of the Service Object shall be excluded. In the event the Customer provides LHT with packaging material and requests LHT to use such packaging material for the redelivery of the Service Object, LHT shall not be liable for corrosion arising from the packaging or the performance of the Service.
9.5 The Customer acknowledges that the process of analyzing a Service Object with regard to its suitability for hydrogen de-embrittlement is complex, cost-intensive and time-consuming. Therefore, in the event the Customer wishes hydrogen de-embrittlement of the Service Object, LHT will not analyze the Service Object with regard to its suitability for such treatment. LHT's warranty in this regard is limited to the professional performance of such Service. LHT shall not be liable for any defects or damage that the Service Object may suffer as a result of the performance of such treatment, unless the Customer can establish that the defect or damage specifically results from a fault of LHT in performing the hydrogen de-embrittlement of the Service Object.

- 9.6 If, upon the request of the Customer, LHT provides the Customer free of charge with internal documents in regard to short-time tests or other chemical and/or mechanical examinations of the Service Object, measurement reports and/or examination certifications, LHT does not warrant the accuracy and/or the completeness of such examinations, reports and certificates.
- 9.7 (i) LHT's warranty on the part of LHT shall be excluded if (ii) if the Service Object has been re-shaped after redelivery, even if such re-shaping of a sample of the Service Object was successfully performed without any chipping of the coating or other such damages, or (iii) if the Service Object is exposed to extraordinary wear or is used under extreme climatic conditions, or (iii) if the Service Object has been altered and/or repaired during the warranty period by persons other than LHT or its Vicarious Agents, unless the Customer can establish that the defect does not result from an event as described in (i) to (iii). Further, as long as the Customer is in default with its payment obligations, LHT may exercise its right of retention and may therefore reject warranty claims until full payment has been made.
- 9.8 LHT's warranty shall further be excluded if the Service Object consists of small mass parts. In this case LHT's warranty in regard to a total loss of up to three percent of the total amount of the delivered Service Objects shall be excluded, unless expressly agreed otherwise in the Customer Agreement.
- 9.9 LHT shall correct any defect covered by this warranty at its own cost and expense at the Place of Performance or at any other place Customer and LHT may agree upon from time to time. If the Customer requests LHT to correct the defect at another location as the Place of Performance, the Customer shall arrange at its own risk and expense for the removal and transport of the defective parts to and from the location where the repair shall be made.
- 9.10 The warranty set forth in this Article 9 shall be the exclusive and sole remedy for Customer in case of any defect.
- 9.11 Articles 9.1 and 9.2 shall not apply to a possible claim of Customer for damages. The same applies if LHT has concealed the defect intentionally or has given a written durability guarantee or warranted certain properties of the Service.
- 9.12 Articles 9.1, 9.2, 9.4, 9.5, 9.7 and 9.8 shall not affect any other limitations of LHT's liability, or restrictions of the Customer's rights and claims against LHT in these Standard Terms and Conditions and/or under applicable law.
- 10. Limitation of Liability**
10.1 LHT's liability for damages in case of slight negligence (so-called "leichte Fahrlässigkeit") of LHT, its statutory representatives and Vicarious Agents shall be excluded, provided such liability does not result from the violation of any material contractual obligations of particular significance for the purpose of the Customer Agreement which the Customer may rely on, damages arising from injury to life, limb or health or from violation of a guarantee. LHT's liability under the Product Liability Act shall remain unaffected.
10.2 To the extent LHT is liable in accordance with Article 10.1, LHT's liability shall be further limited as follows: LHT shall not be liable for non-foreseeable damages which are not typical for Services of the kind constituting the Service under the relevant Customer Agreement and which are neither based upon a violation of a guarantee, nor upon intentional acts (or upon intentional acts of LHT's statutory representatives or its Vicarious Agents), nor are caused by injury to life, limb or health, nor are damages to be compensated in accordance with the Product Liability Act.
- 11. Insurance**
11.1 The Customer agrees to obtain and maintain in full force during the term of the Customer Agreement the following insurances:
 - Hull All Risks Insurance as well as an All Risk Property Insurance including war risks containing a waiver of subrogation in favour of LHT, its personnel and its Subcontractors.
 - Comprehensive Civil Liability Insurance including aircraft third party, passenger and war risk liability with a combined single limit in accordance with article 7 Regulation (EC) No. 785/2004 naming LHT, its personnel and its Subcontractors as additional insured parties.
- 11.2 If the Customer has ordered the Service from LHT on behalf of a third party, the Customer shall ensure that such third party obtains and maintains the insurances specified according to Article 11.1.
- 12. Payments**
12.1 Prices for the Service(s) are set forth in the Customer Agreement.
12.2 Invoices are quoted as net prices. Any tax (including, but not limited to, value added tax), duty, fee or other public charge whatsoever imposed on the invoiced prices shall be borne by the Customer or shall be refunded by the Customer to LHT. In the event any such tax or duty is recoverable, LHT shall use reasonable efforts to recover such tax or duty paid.
12.3 LHT shall issue an invoice after redelivery of the Service Object according to Article 8 and the Customer shall pay within ten days from receipt of LHT's invoice.
12.4 Customer agrees that any dispute with regard to a payment obligation and any claim for reimbursement shall be made within one month after receipt of the invoice as per Article 12.3. After one month the lapse of time shall not be entitled to waive or to dispute any such claims.
- 12.5 The Customer shall make payment in the contractually agreed currency. Any payment made in any currency other than contractually agreed shall be exchanged at the exchange rate on the date the payment is valued to LHT's account. Customer remains liable for any shortfall to the amount owed resulting from such exchange.
12.6 The Customer shall not be entitled to set off any claims against LHT's claims, unless such claims are determined by the final decision of a court or are undisputed. The Customer may only exercise a right of retention if its counterclaim has been determined by the final decision of a court or is undisputed.
12.7 In the event that Customer is a member of the IATA, Customer hereby irrevocably authorizes LHT to take all steps necessary for the collection of late payments via IATA Clearing House. LHT is entitled to such collection for all late payments plus late payment charges.
- 13. Property Rights and IP**
13.1 Title to all material supplied by LHT under the Customer Agreement shall remain with LHT until complete payment of all amounts due under the Customer Agreement has been effected.
13.2 Title to all intellectual property rights (including, but not limited to copyrights, trademarks, patents, inventions, utility patents, registered design rights or in connection with the Customer Agreement as well as to secure any claims of affiliates of LHT against Customer. Such right may also be asserted for services previously performed or materials previously supplied and with respect to claims resulting from a contractual relationship of Customer and Deutsche Lufthansa AG and/or any of its affiliates. The contractual lien shall entitle LHT and/or any of its affiliates to publicly offer the Service Object for sale no earlier than one month after advising the Customer of its intent to do so. To effect such sale LHT shall not be required to obtain an enforceable title or to comply with the regulations governing forced sale.
- 14.2 Title to all material supplied by LHT under the Customer Agreement shall remain with LHT until complete payment of all amounts due under the Customer Agreement has been effected.
14.3 LHT shall have by virtue of the Service performed a right of retention with respect to the Service Object in its custody as well as with respect to any other items of Customer in LHT's custody to secure any claims of LHT against Customer out of or in connection with the Customer Agreement as well as to secure any claims of affiliates of LHT against Customer. Such right as well as a set-off right may also be asserted for services previously performed or materials previously supplied. The right of retention as well as a right to set off any due claims of LHT against Customer with claims of Customer against LHT may also be exercised with respect to claims resulting from a contractual relationship of Customer and Deutsche Lufthansa AG and/or any of its affiliates.
- 14.3 LHT shall also have the right to cease any ongoing Service without notice until all payments due under the Customer Agreement or any other contractual relationship between Customer and LHT or Customer and Deutsche Lufthansa AG and/or any of its affiliates have been made.
- 15. Customs Clearance**
According to applicable laws of the European Union the Customer is obligated to perform the customs clearance for import (to be defined as the entry into the customs territory of the European Union) and export (to be defined as exit from the customs territory of the European Union) of any aircraft (or parts thereof) and any other goods. The Customer is obligated to comply with all existing import and export prohibitions and restrictions of the European Union. If assigned and agreed in writing, LHT will perform the necessary customs clearance in the name and on behalf of the Customer or on behalf of LHT. In these cases, the Customer is obligated to provide LHT with all necessary information and documentation (especially any required licenses regarding prohibitions and restrictions). LHT shall not be liable for any delay due to the late delivery of information and documentation by Customer or due to delays in the customs clearance process. All duties and taxes that may occur due to the importation or exportation (defined above) have to be borne by the Customer or will be charged by LHT to Customer.
- 16. Customer Compliance**
Customer shall comply with all applicable domestic and foreign export compliance requirements, including applicable US export laws and regulations (e.g. ITAR, EAR and OFAC sanctions regulations) and those of other relevant foreign jurisdictions. Upon LHT's request, Customer shall promptly provide LHT with appropriate certifications as required by such applicable export laws and regulations, or as necessary to ensure continuing compliance with such applicable export laws and regulations.
- 17. Applicable Law and Venue**
17.1 The Customer Agreement and these Standard Terms and Conditions and any legal relationship with the Customer that may arise therefrom shall be exclusively subject to and construed exclusively in accordance with the laws of the Federal Republic of Germany excluding their conflict of laws rules. The United Nations Convention on the International Sale of Goods (CISG) shall not apply. In the event of a conflict between the English and the German meaning of any expressions used in these Standard Terms and Conditions or any part thereof the German legal meaning shall prevail.
- 17.2 The courts of Hamburg, Germany, shall have jurisdiction. In case of any claims against LHT, this jurisdiction shall also have an exclusive effect.
- 18. Waiver of Sovereign Immunity**
LHT and Customer hereby agrees that Customer Agreement and any legal relationship that may arise therefrom are commercial transactions and Customer undertakes not to claim any immunity from suit, execution, pre-judgment or post-judgment attachment or other legal process in any jurisdiction.
- 19. Amendments**
Any amendments to these Standard Terms and Conditions including this clause as well as to the Customer Agreement need to be agreed upon between LHT and the Customer in writing.