



**Airbus Group Australia Pacific
Process Framework and Document Suite**

No: 5.1.FM.08

Version: 1

Terms and Conditions of Equipment Lease / Rental

TERMS AND CONDITIONS OF EQUIPMENT LEASE / RENTAL

1. Law and jurisdiction

1.1 Governing law

This document is governed by the law in force in the country in which the document is signed.

1.2 Submission to jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in the country in which the document is signed and any courts that may hear appeals from those courts in respect of any proceedings in connection with this document.

2. General

2.1 Quiet enjoyment

If the Lessee pays the Rent and duly and punctually complies with all provisions of this document, the Lessee may peaceably possess and enjoy the Equipment during the Lease Term without any interruption or disturbance from the Lessor or any person lawfully claiming through the Lessor.

2.2 Lessee's obligations to apply during holding over

Unless this document expressly requires otherwise, the Lessee's obligations under this document (whether express or implied) bind the Lessee during the Lease Term and any period of holding-over.

2.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

2.4 Assignment

- (a) The Lessee may not assign or transfer all or any part of its rights or obligations under this document without the consent of the Lessor.
- (b) The Lessor may assign or transfer all or any part of its rights or obligations under this document without the consent of the Lessee.

2.5 Continuing indemnities

Each indemnity given by the Lessee in this document is a continuing obligation, separate and independent from the other obligations of the Lessee, and survives termination of this document.

2.6 Severability

Any provision in this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

2.7 Further assurance

Each party shall do, sign, execute and deliver and shall procure that each of its employees and agents does, signs,

executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to this document and the rights and obligations of the parties under it.

2.8 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

2.9 Consequences of an Event of Default

If an Event of Default has occurred and has not been remedied or the Lessee has repudiated this document, then the Lessor may at any time, by notice to the Lessee, do either or both of the following:

- (a) take action, either at law or in equity, to enforce performance by the Lessee of this document or to recover damages (or both); or
- (b) terminate the lease of the Equipment under this document.

2.10 Termination

Upon the termination of the lease of the Equipment under this document as provided in clause 2.9(b), the Lessor:

- (a) will be entitled to retain all Rent and other moneys previously paid by the Lessee to the Lessor under this document; and
- (b) may recover from the Lessee all Rent and other moneys due and owing under this document at the date of such termination.

3. Procedures on termination

3.1 Return of Equipment

- (a) Upon the termination of the Lease Term by expiration of time or otherwise (other than a termination pursuant to clause 8), the Lessee shall surrender possession of the Equipment:
 - (i) to the Lessor at the location specified in the Schedule;
 - (ii) in the condition contemplated by this document;
 - (iii) with all Technical Records; and
 - (iv) free and clear of all encumbrances and without any equipment, components or parts installed on it which are leased from, or otherwise owned, either wholly or in part, by, a third party.

4. Goods and services tax

4.1 Interpretation

Words or expressions used in this clause 10 which are defined in the (*Goods and Services Tax*) Act of Australia (or the equivalent legislation in New Zealand, as applicable) have the same meaning in this clause.

4.2 GST inclusive amounts

For the purposes of this document where the expression **GST inclusive** is used in relation to an amount payable or other consideration to be provided for a supply under this agreement, the amount or consideration will not be increased on account of any GST payable on that supply.

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4.3 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this document, unless specifically described in this document as **GST inclusive**, does not include an amount on account of GST.

4.4 Gross up of consideration

Despite any other provision in this document, if a party (**Supplier**) makes a supply under or in connection with this document on which GST is imposed (not being a supply the consideration for which is specifically described in this document as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this document but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

4.5 Reimbursements (net down)

- (a) If a payment to a party under this document is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- (b) That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

4.6 Tax invoices

- (a) The Recipient need not make a payment for a taxable supply made under or in connection with this document in respect of a taxable supply until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.
- (b) The Supplier must give the Recipient an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with this document within seven days after the date the Supplier becomes aware of the adjustment event.

5. Notices**5.1 Method of giving Notices**

A notice, consent, approval or other communication (each a Notice) under this document shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered;
- (b) sent by pre-paid mail; or
- (c) transmitted by facsimile,

to that party's address.

5.2 Time of receipt

A Notice given to a person in accordance with this clause is treated as having been given and received:

- (a) if delivered, on the day of delivery if delivered before 4:00pm (local time at the place of receipt) on a Business Day, otherwise on the next Business Day;

- (b) if sent by pre-paid mail, on the day of actual delivery if delivered before 4:00pm (local time at the place of receipt) on a Business Day, otherwise on the next Business Day; and

if transmitted by facsimile and the transmission report states it was sent in full and without error, on the day of transmission if that report states that the transmission was completed before 4:00pm (local time at the place of receipt) on a Business Day (or the equivalent in another time zone), otherwise on the next Business Day.

5.3 Address for Notices

For the purpose of this clause, a person (**sender**) may take the address and facsimile number of another person (**recipient**) to be the address and number as specified in the notice details for that party in this document, or where the recipient notifies the sender of another address or number, the last address or number so notified to it.

5.4 Notification on seizure of Equipment

If any person seizes or attempts to seize or interfere with the Equipment, the Lessee shall:

- (a) notify that person of the Lessor's title to and rights in relation to the Equipment; and
- (b) Immediately inform the Lessor by notice of that seizure, attempted seizure or interference.

5.5 Name plates

The Lessee may not remove or change any name plate, identification number or other marking on the Equipment without the consent of the Lessor.

5.6 Operation of Equipment

The Lessee at its own expense shall only fit and use the Equipment on aircraft operated by competent and (where appropriate) properly qualified, trained and licensed personnel approved by the Lessor and by appropriate methods and standards of operation.

5.7 Lessee to act at own risk

Except to the extent that this document expressly requires otherwise, the Lessee shall:

- (a) operate, use and keep the Equipment; and
- (b) comply with its obligations under this document,

at its sole risk and expense.

6. Insurance**6.1 Lessee to take out insurances**

The Lessee shall effect the following insurances (and shall cause reinsurance of those insurances to be effected) and keep them current at all times during the Lease Term:

- (a) the insurances specified in the Schedule; and
- (b) insurance of the Equipment against any insurable risk commonly insured with respect to equipment of a similar nature to the Equipment.

6.2 Maintenance of insurances

- (a) The Lessee shall punctually pay all premiums necessary to maintain current the insurances required by clause 6.1 and shall provide the Lessor upon request with satisfactory evidence with respect to those insurances.
- (b) The Lessee may not at any time do or permit anything to be done to the Equipment, or use, modify or otherwise

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affect the Equipment, if this could render void or voidable any of the insurances required by clause 6.1.

- (c) The Lessee shall not use, operate or hold the Equipment during any period in which insurances are not maintained in accordance with this clause or in any area which is excluded from the coverage of the insurances nor cause or permit the Equipment to be used, operated or held in any place or manner for any purpose inconsistent with the terms of, or otherwise outside the cover provided under, insurances then in effect in accordance with this clause.

7. Default

7.1 Events of Default

Each of the following, unless waived by notice from the Lessor, is an Event of Default:

- (a) **(non-payment)** if the Lessee fails to pay on time any amount which is due and payable by it under this document;
- (b) **(other obligations)** if the Lessee fails to perform any provision of this document requiring performance by it (other than a failure referred to elsewhere in this clause) and that failure is incapable of remedy or, if capable of remedy, continues for seven Business Days after the Lessee receives a notice from the Lessor requiring that the failure be remedied;
- (c) **(voluntary winding up)** if the Lessee or any of its subsidiaries passes a resolution for its winding up, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the Lessor before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) **(administrator)** if the Lessee or any other person appoints an administrator to the Lessee or any of its subsidiaries, or takes any step to do so;
- (e) **(insolvency)** if the Lessee:
- (i) suspends payment of its debts;
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts; or
 - (iv) is taken to fail to comply with a statutory demand in accordance with the Corporations Act;
- (f) **(compromise or arrangement)** if the Lessee or any of its subsidiaries takes any step for the purpose of entering into a compromise or arrangement with any of its members, or creditors, generally or any class of them; and
- (g) **(distress or other execution)** if the process of any court or authority is invoked against the Lessee or any of its subsidiaries or any of its or their property:
- (i) to obtain an order to restrain any dealing with property; or
 - (ii) to enforce any judgment or order for the payment of money or the recovery of property,

and the Lessee or the relevant subsidiary is unable, within 5 Business Days, to satisfy the Lessor that there is no substantial basis for the judgment or order in respect of which the process was invoked.

8. Payments generally

8.1 Manner of payment

The Lessee shall make each payment to the Lessor under this

document not later than 4pm (local time) on the due date for payment to whatever address or account the Lessor specifies by notice to the Lessee from time to time.

8.2 Grossing up

If at any time any applicable law requires the Lessee to make any deduction or withholding in respect of Taxes from any payment to the Lessor under this document, the Lessee shall:

- (a) notify the Lessor of the nature of that requirement promptly after the Lessee becomes aware of it;
- (b) ensure that any such deduction or withholding does not exceed the minimum amount legally required;
- (c) pay to the relevant Government Agency the full amount of any such deduction or withholding within the time for payment allowed under applicable law;
- (d) pay the Lessor, at the time that payment is due, such additional amounts as are necessary to ensure that, after the making of that deduction or withholding, the Lessor receives a net sum equal to the sum which it would have received had no such deduction or withholding been made;
- (e) indemnify the Lessor against, and pay the Lessor on demand the amount of, any losses, liabilities, costs or expenses incurred by the Lessor by reason of any failure of the Lessee to make any such deduction or withholding; and
- (f) promptly deliver to the Lessor copies of any receipts, certificates of other proof evidencing the amounts (if any) paid or payable in respect of any such deduction or withholding.

9. Indemnities and release

9.1 General indemnity in respect of the Equipment

The Lessee assumes liability for, and indemnifies the Lessor, its agents and employees against, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and Taxes, of whatever kind or nature (including claims for strict liability in tort and claims for breach of copyright), arising:

- (a) on account of its use or operation of the Equipment during the leasing of the Equipment and in any event from the date on which it accepts delivery of the Equipment until its disposition of the Equipment; or
- (b) in respect of any damage to property or death of or injury to any person which may be suffered or sustained in connection with the Lessee's use or operation of the Equipment.

9.2 General release in respect of the Equipment

The Lessee releases the Lessor to the fullest extent permitted by law from all claims and demands of every kind arising out of the leasing of the Equipment, including any liability which may arise in respect of any accident or damage to property or death of or injury to any person of whatever nature or kind in or near the Equipment. The Lessee agrees that the Lessor will have no responsibility or liability for any loss of or damage to any property of the Lessee.

9.3 Continuation of indemnity and release

The assumption, indemnity and release contained in clauses 9.1 and 9.2 continue in full force and effect notwithstanding any termination of the lease granted under this document (whether by expiration of time or otherwise).

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10. Provisions relating to the Equipment**10.1 Lessee may not dispose of the Equipment etc**

- (a) The Lessee shall not part with possession of the Equipment.
- (b) The Lessee shall at all times keep the Equipment free from distress, execution or other legal process.

10.2 Lessee to maintain the Equipment in good condition and repair

- (a) The Lessee shall at all times keep and maintain the Equipment in the same condition and repair as at the Commencement Date (with due allowance for normal wear and tear).
- (b) The Lessee will have all maintenance carried out by the Lessor, with work carried out in accordance with the Eurocopter Maintenance Manual being at no cost to the Lessee and the Lessee acknowledges that the Equipment remains under the maintenance control of the Lessor's Chief Engineer at all times.
- (c) The Lessee indemnifies the Lessor against, and shall pay the Lessor on demand the amount of, any loss of or damage to the Equipment or any part of it (however occasioned) and shall give reasonable notice to the Lessor in writing of any such loss or damage of a substantial or material nature.
- (d) The Lessee will not carry out or allow to be carried out any structural modifications to the Equipment without the prior agreement of the Lessor.

10.3 Lessee to comply with safety rules and registration requirements

- (a) The Lessee shall at its own expense comply with all applicable laws, regulations, rules and requirements necessary for the safe and lawful operation of the Equipment and with all reasonable requirements of the manufacturer or supplier of the Equipment.
- (b) Any addition, replacement or alteration required to be made to or installed on the Equipment as a result of such compliance will, without any further act of the Lessor or the Lessee, become the property of the Lessor and be considered part of the Equipment for all purposes of this document.

10.4 Maintenance of records

The Lessee shall:

- (a) maintain all records and other details and materials which are required under or pursuant to any law, regulation, requirement of any Government Agency or rule or condition imposed by any insurer in respect of the Equipment; and
- (b) promptly provide the Lessor upon request with such information as the Lessor may reasonably require to enable the Lessor to file any report required to be filed by it with any Government Agency in relation to the Equipment.

These Terms and Conditions of Lease / Rental shall be read with and form part of the Lease / Rental Agreement to which they relate.

11. Definitions

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general banking business, and the Lessor is open for business, in the place specified in the Schedule.

Commencement Date means the date specified in the Schedule.

Corporations Act means the *Corporations Act* applicable in the location referred to in clause 1.1

Dollars and \$ means, except where otherwise stated, the lawful currency of Australia if a state of Australia is referred to in clause 1.1 or New Zealand if New Zealand is referred to in clause 1.1.

Equipment means the equipment as described in the Schedule.

Event of Default means any of the events or circumstances described in clause 7.1.

Government Agency means a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law.

Lease Expiry Date means the date specified in the Schedule.

Lease Term means the term of the lease of the Equipment under this document which commences on the Commencement Date and ends, unless terminated sooner, on the Lease Expiry Date.

Part Number means the part number specified in the Schedule.

Rent means the rent payable under clause 13.1.

Rent Payment Date means the date specified as such in the Schedule.

Tax means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on overall net income.

Transport Container Markings means the transport container markings specified in the Schedule.

11.1 Interpretation

In this document, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any party to this document or any other document or agreement includes administrators, successors and permitted assigns;
- (e) a reference to **bankruptcy** or **winding up** includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in the Corporations Act); and
- (f) the words '*related body corporate*', '*holding company*', '*subsidiary*' and '*financial statements*' have the same meanings as in the Corporations Act.

11.2 Business Day

If the day on which any act, matter or thing is to be done under or pursuant to this document is not a Business Day, that act, matter or thing:

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- (a) if it involves a payment other than a payment which is due on demand, shall be done on the preceding Business Day; and
- (b) in all other cases, shall be done no later than the next Business Day.

12. Leasing of the Equipment**12.1 Lease on Commencement Date**

The Lessor shall on the Commencement Date give possession of the Equipment to the Lessee at the location specified in the Schedule.

12.2 Lessor retains ownership

- (a) The Lessor agrees to lease, and the Lessee agrees to take on lease, the Equipment for the Lease Term on the terms and conditions set out in this document.

- (b) The rights of the Lessee under this document are as Lessee only.

13. Rent and other payments**13.1 Instalments of Rent**

- (a) The Lessee shall pay to the Lessor, on each Rent Payment Date, the instalment of Rent set out in the Schedule beside that date.
- (b) Rent is payable in accordance with the Schedule.

13.2 Other payment

The Lessee shall pay to the Lessor the other payments (other than Rent) set out in the Schedule on the date(s) set out in the Schedule.

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