

TERMS AND CONDITIONS FOR SERVICE EXCHANGE AGREEMENT

1. These Terms and Conditions apply to the Service Exchange of a Component by Monarch and in requesting a Component Customer agrees to be bound thereby.
2. Definitions:-
 - “Agreement” the agreement for a Service Exchange to which these Terms and Conditions apply.
 - “Monarch” Monarch Airlines Limited, Monarch Aircraft Engineering Limited, their respective agents, subcontractors, officers, directors and employees.
 - “Customer ” the other party to the Agreement.
 - “Component” a rotatable or repairable item the subject of the Agreement
 - “Price ”the OEM's current list price for the Component at the time the Service Exchange Period commences.
 - “Serviceable” in serviceable condition with the corresponding dual release form, EASA Form 1 or FAA 8130-3 approved certificate.
 - “Service Exchange ”the supply of a Replacement Component by Monarch to Customer and return of the Replaced Component by Customer to Monarch.
 - “BER” Beyond Economical Repair. Meaning the cost of repair equals ‘OEM’ original equipment manufacturer.
3. The Service Exchange period (“Service Exchange Period”) will commence from the date Monarch despatches the Replacement Component as evidenced by Monarch's despatch note and will terminate when the Replaced Component is received by Monarch either in:-
 - a) Unserviceable condition or
 - b) Serviceable condition (if agreed between Customer and Monarch) complete with an original dual release form, EASA form 1 or FAA 8130-3 approved certificate at the address stated on the Agreement.and in either case Customer must advise Monarch the hours and cycles applicable to the Replaced Component.
4. Customer must deliver the Replaced Component to Monarch not more than 14 days after the date of despatch of the Replacement Component by Monarch. If Customer defaults on this requirement Customer will become liable for loan charges at a loan rate specified and back dated to the date the Replacement Component was despatched. Such charges are in addition to the agreed cost of the Service Exchange and based on 2% per day of the Price plus a 5% administration charge.
5. The cost of the Service Exchange will be 15% of the Price (unless some other cost is agreed prior to or at the time Monarch despatches the Replacement Component to Customer) plus the cost of restoring the replaced component to Serviceable Condition. Serviceable condition shall mean that the Replaced Component is to the same or better modification status than applied to the Replacement Component.

6. If Customer has agreed to return a Serviceable Component and fails to return same within the specified time in clause 4 and if Monarch has an urgent requirement therefore Customer must locate and supply a Serviceable Component at cost to Customer. If Customer is unable to supply a Serviceable Component and Monarch has to obtain such from another source, Customer agrees to pay the loan/exchange costs thereof until either Monarch returns the loan item or Customer returns the Serviceable Component to Monarch.
7. If Customer returns a Serviceable Component which does not have the relevant approved release certification as specified in clause 3 or if the paperwork does not clearly state that the Component is Serviceable Monarch will contact Customer requesting clarification. If no response is received from Customer within 24 hours from the time of such request Monarch reserves the right to send the Component to a repair agency and treat the Component as unserviceable. Customer will pay all costs of transport, repair, test and rectification.
8. Replaced Components returned to Monarch that are declared BER will be charged to Customer at the Price plus 20% in addition to any previously accrued charges.
9. All Service Exchange charges are based on the Price, unless otherwise agreed in writing between Monarch and Customer.
10. If a Replacement Component becomes unserviceable within 24 hours of commencement of the Service Exchange Period Monarch must be advised immediately by fax and the Component returned to Monarch in unserviceable condition. If the Component is subsequently found to be Serviceable i.e. no fault found, then all costs, including Service Exchange charges, will be payable in accordance herewith.
11. Any Service Exchange request cancelled by Customer prior to despatch of the Component, or within the first 24 hours thereof, will be charged an access fee of 5% of the Price plus administration charges.
12. Title to a Replacement Component shall remain with Monarch until the Replaced Component (whether unserviceable or Serviceable) is delivered to Monarch in accordance herewith at which time title to the Replacement Component shall pass to Customer. Risk in the Replacement Component shall pass to Customer at time of despatch to Customer and risk in the Replaced Component shall pass to Monarch at time of delivery to Monarch.
13. Packing, transportation and freight from Monarch to Customer and return packing, transport and freight to Monarch will be for Customer's account.
14. Import duties, customs charges, freight agent charges and any other levies will be for Customer's account.

15. The Agreement is indefinite and these Terms and Conditions shall apply to each and every Service Exchange as if separately supplied on each occasion. Either party may terminate the Agreement by giving not less than 1 months prior written notice to the other providing that any existing Service Exchange shall remain subject to the Terms and Conditions for the remainder of the Service Exchange Period.
16. Monarch in no way represents or warrants that any Replacement Component is of merchantable quality or fit for the purpose for which it may be intended, and will not be liable to Customer (whether in contract or otherwise) for any damages losses or other consequences, howsoever caused, suffered by Customer as a result of a Component supplied hereunder.
17. During the Service Exchange Period Customer will insure the Replacement Component for the Price.
18. Where Replaced Components are sub contracted for maintenance repair/overhaul work Monarch will charge the Customer therefore plus 20%
19. Unless otherwise stated Service Exchange and other charges are quoted exclusive of VAT and duties. Monarch shall not be responsible or liable for any expenses, taxes or other costs sustained in any shipment of Components between the parties; Customer is to pay Monarch's invoice within 30 days of date of invoice to Monarch's account specified on the invoice. Foreign currency amounts may be converted to sterling using prevailing exchange rates determined by Monarch at its sole discretion. Monarch reserves the right to charge and recover interest at the rate of 3% (three) per annum over the base rate of Barclays Bank PLC from time to time from the date any amount becomes due but is unpaid until the date full payment is received.
20. Customer shall indemnify and hold harmless Monarch, its corporate affiliates, agents and sub-contractors and its and their respective employees ("the Indemnified Parties") from and against any and all legal actions, claims, costs, damages or losses howsoever arising in respect of death of or injury to any person or loss of or damage to any property, including, but not limited to, the aircraft of attachment and Customer's property, arising out of or in respect of the Service Exchange of any Component unless caused by wilful misconduct of the Indemnified Parties acting in the scope of their employment or sub-contract, but in no circumstances shall Monarch be liable for any consequential damage or financial loss (including loss of profit, revenue or business opportunity) and Customer shall hold the Indemnified Parties harmless there from.
21. Regardless of where executed, the Agreement shall be construed in accordance with the laws of England. Any dispute concerning the validity, scope, meaning, interpretation or effect of the Agreement may be brought only in accordance with the following:

If any dispute arises out of the Agreement the parties will endeavour to settle such dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation procedure.

If the parties have not settled the dispute within 3 (three) months of initiation of the said Model Mediation procedure the dispute shall be referred to and finally resolved by arbitration under the Rules of the International Chamber of Commerce, which Rules are deemed to be incorporated herein by reference to this clause, such arbitration to be in London.