

## Domestic Terms of Trade Replica Cockpit Shells (RCS)

Effective Date: 21 May 2015

**Note: These Terms of Trade supersede and replace all previous Terms of Trade for Replica Cockpit Shells.**

### RCS General Terms and Conditions of Sale

Helicopter Windows General Terms and Conditions of Sale/Supply of RCSs are:

1. The Replica Cockpit Shells (RCS) manufactured by Helicopter Windows Pty Ltd are “made-to-order” and individually manually fabricated. As such, for legal and practical purposes, the units produced are considered bespoke items and thus cannot be taken to be identical to one another.
2. The RCS is “Acceptable” if the RCS meets the following **Acceptability Criteria**:
  - (a) Is manufactured per the Product Specification, the items of which are given by the relevant Product Specification and Quote Form – the details of which are constituted by the particular Product Information brochure for core and standard items plus the relevant Customisations Specification; and
  - (b) Is free of any warrantable defects (per clause 6 of the RCS Manufacturer’s Warranty).
3. **Payment Terms**, unless specifically varied by Helicopter Windows, are as follows --
  - 1<sup>st</sup> Instalment to be paid within 5 business days after receiving the Unit Invoice;
  - 2<sup>nd</sup> Instalment to be paid within 5 business days after receiving request for payment based on notification of shell de-moulding;
  - Final Instalment is due and payable no later than 10 business days either (i) after Acceptance of the RCS by the Customer or, (ii) in the case of #7 below, after stipulation by Helicopter Windows that the RCS meets the Acceptability Criteria per #2 above.
4. Payment of the 1<sup>st</sup> Instalment of the initial Unit Invoice of a Purchase Order signifies the Customer’s acceptance of Helicopter Windows (these) Terms of Trade and any Specific Terms and Conditions of Sales which may apply.
5. Acceptance of a payment outside the Payment Terms above, without an extension or other variation, does not constitute a waiver or a general variation of the Payment Terms.
6. Legal title to the RCS passes to the Customer only at the time the Final Instalment payment is received as clear funds in Helicopter Windows bank account.
7. Any dispute by the Customer in respect of the RCS meeting the Acceptability Criteria is to be finally determined by Helicopter Windows’s Production Manager whose stipulation will stand absolute, and no correspondence will be entered into.

8. All payments are to be made on Invoice (no statement issued) by Electronic Funds Transfer only. All payments received by Helicopter Windows are non-refundable, unless Helicopter Windows agrees otherwise in full or in part.
9. Any failure by Helicopter Windows to explicitly request an instalment or part payment which is provided for by the Payment Terms, and which has not been waived explicitly, shall not constitute a waiver of such by Helicopter Windows.
10. The Product Specification cannot be altered once the Purchase Order is raised because the Purchase Order relates to a specific Product Specification. Any changes to the Product Specification can only be implemented by the following procedure, unless specified otherwise by Helicopter Windows:
  - Cancellation of the existing Purchase Order,
  - A new Product Specification and Quote being produced by Helicopter Windows, and
  - A new Purchase Order being raised with respect to the new Product Specification.
11. Prior to the 1<sup>st</sup> Instalment payment of the initial unit of a Purchase Order, the Customer may give notice that the Purchase Order is to be cancelled. Prior to the 1<sup>st</sup> Instalment payment of any unit of a Purchase Order, the Customer may give notice that the Purchase Order is to be amended by cancelling a number of units ordered. In either of these cases any Unit Invoices which have been raised relating to the cancelled units will be cancelled by Helicopter Windows, without liability.
12. Prior to the 2<sup>nd</sup> Instalment payment of a unit of a Purchase Order, the Customer may give notice that that unit of the Purchase Order is to be cancelled. This will cause the balance of the related Unit Invoice to be written off without liability. Helicopter Windows, having retention of the legal title to the incomplete RCS, reserves the right to abandon the Product Specification and complete the RCS for sale to another party without notice to the Customer. If Helicopter Windows exercises this right then, unless rescheduled by Helicopter Windows, the unit will retain its production schedule place.
13. After the 2<sup>nd</sup> Instalment for a unit is paid, the unit cannot be cancelled and the Customer remains liable for the Final Instalment if and when requested, following Helicopter Windows stipulation that the RCS is Acceptable per #2 above. If the Customer gives notice of their intention to forfeit the RCS at any time after the 2<sup>nd</sup> Instalment is paid, Helicopter Windows, having retention of the legal title to the RCS, reserves the right to abandon the Product Specification and complete the RCS for sale to another party without notice to the Customer. If Helicopter Windows exercises this right then, unless rescheduled by Helicopter Windows, the unit will retain its production schedule place.
14. Failure by the Customer to pay either the 1<sup>st</sup> or 2<sup>nd</sup> Instalment of a unit within the Payment Terms shall effect:
  - (i) automatic cancellation of that unit of the Purchase Order and all remaining units ordered on the Purchase Order
  - (ii) automatic cancellation of any Unit Invoices which apply, without liability,
  - (iii) removal of the affected units from the production schedule.Any other units being manufactured under the Purchase Order will not be affected and the Purchase Order shall remain active.
15. Failure by the Customer to pay the Final Instalment of a unit within the Payment Terms creates a legal default by the Customer, since the work will already have been completed. Therefore the Customer remains liable for the balance owing of the Unit Invoice unless and until, Helicopter Windows, having retention of the legal title to the completed RCS, sells the RCS to another party in order to recover the balance owing. Such sale may proceed without

- notice to the Customer. If the RCS is sold to another party, the Customer's liability for the balance owing on the RCS is automatically discharged upon payment by the other party. In lieu of selling the RCS, Helicopter Windows reserves the right to commence legal action to recover the balance owing.
16. In the case that Helicopter Windows is effectively permanently prevented from completing one or more RCS units due to a force majeure event, (a) the Customer's Purchase Order shall automatically terminate, and (b) Helicopter Windows shall be under no liability or obligation to refund any payments made to that date.
  17. In the case that Helicopter Windows is delayed in completing one or more RCS units due to a force majeure event, (a) the Customer's Purchase Order shall remain in effect, unless cancelled by the Customer per #11 or #12, (b) Helicopter Windows shall resume production on the unit/s as soon as practicable, and (c) Helicopter Windows shall be under no liability or obligation to pay the Customer for losses or costs of any kind incurred by the Customer due to the delay.
  18. Helicopter Windows makes no claims in relation to the suitability for use, or capabilities or capacities of the Replica Cockpit Shells it supplies and disavows any and all liability associated with their use or misuse.
  19. If for commercial use in a system/device which requires National Airworthiness Authority (NAA) approval or certification, then the Customer takes full responsibility for obtaining any and all approvals, certifications, authorizations, or such from their domestic NAA as required for the use of the RCS in that system/device.
  20. **IMPORTANT** – In order not to void the RCS Manufacturer's Warranty, the following restrictions on the use of RCSs must be observed. The RCS must be:
    - (i) Located inside a building or enclosed space, that is, not outside or where it is subject to exposure to direct sunlight or the elements generally; and
    - (ii) Kept within an ambient temperature range of between 0 and 50 degrees Celsius.
  21. RCSs are supplied domestically under the following terms:
    - a. EXW Factory (Killarney, Queensland).
    - b. Freight/transport is required to be arranged and paid by the Customer.
    - c. Delivery by Helicopter Windows will be considered only in exceptional circumstances.
  22. Delivery of the goods and/or legal possession is deemed to have passed to the Customer, in respect of each of the following INCOTERMS/scenarios:
    - EXW Factory - at the time the unit or goods leaves the factory in Killarney, Queensland.
    - Postage Pre-paid - at the time the package is posted.
    - Delivery by HW - at the time of delivery.
  23. Having taken possession/delivery, the Customer assumes full responsibility and liability for the goods, including where they are (a) delivered by a 3<sup>rd</sup> party and (b) packed by Helicopter Windows on behalf of the Customer.
  24. Helicopter Windows reserves the right to modify or extend any or all of these general terms and conditions of sale for a specific transaction, and such Specific Terms and Conditions of Sale shall be read with these General Terms and Conditions of Sale.

## **RCS Manufacturer's Warranty**

1. The "Base Shell" of Helicopter Windows' Replica Cockpit Shells (RCS) consists of the Product Specification, including any Structural Customisations, which Helicopter Windows has produced and expressly excludes any transparencies.
2. This warranty applies to the Base Shell only as manufactured and delivered by Helicopter Windows, and as such does not apply to the following:
  - a. Any modifications or additions made to the Base Shell which are not performed by Helicopter Windows;
  - b. Any part of the Base Shell structure which is impacted directly or indirectly by any modifications or additions made to the Base Shell which are not performed by Helicopter Windows.
3. This warranty does not apply to RCS transparencies. These are covered under the following Helicopter Windows' General Manufacturer's Warranty.
4. Except in the case of incorrect paint colour, use of the RCS in contravention of the usage restrictions given in the Terms and Conditions of Sale, even if temporary, voids any claim under this warranty.
5. With respect to the Base Shell, this warranty does not cover:
  - a. Non-standard paintwork
  - b. Superficial or cosmetic flaws, that is, which do not significantly impact on the Base Shell's fitness for purpose
  - c. Any damage which occurs to the Base Shell (a) after delivery to the Customer, or (b) whilst in possession of or in transit with a freight company (or any of their agents)
  - d. Normal wear and tear
  - e. Labour or other costs incurred in the fit-out, commissioning or commercialisation of the RCS
  - f. Packing and return freight or delivery by the Customer to the factory
  - g. Packing and freight or delivery by the manufacturer to the Customer.
6. The Base Shell is covered for defective materials and workmanship for a period of 36 months from the date it leaves the factory (the "Warranty Period"), specifically:
  - (i) Structural defects such as (a) cracking or bulging, (b) breaks, or (c) deformation or warping;
  - (ii) Fading or peeling of the paintwork;unless such are caused by or related to something done to the Base Shell after the Customer has taken possession.
7. If the Base Shell painting is not as ordered, then Helicopter Windows will rectify it prior to delivery, except where the Customer inspected the Base Shell and accepted the paintwork prior to taking possession.
8. In order to claim under this warranty, the Customer must within the Warranty Period:
  - a. Notify the manufacturer by email advising that you are making a claim and the condition stated in #6 above under which the claim is being made, and
  - b. Dispatch the Base Shell to the factory in Killarney, Queensland; unless given an extension in writing by the manufacturer.

9. If the claim is accepted, then within 30 calendar days of the receiving the Base Shell the manufacturer shall, as applicable:
  - a. Repair any structural defect to as-new condition
  - b. Reapply any paintwork as necessary to re-establish the original finish
  - c. Repaint the Base Shell to comply with the Product Specification
  - d. Dispatch or deliver the Base Shell to the Customer, after payment of the packing and/or delivery charges by the Customer.
10. The warrantor is Helicopter Windows Pty Ltd, 52 Ivy Street, Killarney 4373, Queensland, Australia, +61 7 4664 1222, [sales@helicopterwindows.com.au](mailto:sales@helicopterwindows.com.au)
11. This warranty is provided in addition to the general rights and remedies available to the consumer under Australian Consumer Law and as such the Customer's rights under this warranty sit alongside the basic guarantees which pertain to goods under that law.
12. This warranty is subject to change without notice.

## **General Manufacturer's Warranty (for transparencies)**

1. This warranty applies to all manufactured products and components except the "Base Shell" of Replica Cockpit Shells.
2. This warranty does not cover:
  - a. Untrimmed or uncut sheet plastic which is sold out of inventory
  - b. Any damage which occurs to the product (a) after delivery to the Customer, or (b) whilst in possession of or in transit with a freight company or Australia Post (or any of their agents)
  - c. Labour or other costs incurred in the installation or de-installation of the defective product, to return it or to re-install it
  - d. Packing and return freight of the "defective" product by the Customer
  - e. Packing and freight of the replacement item by the manufacturer.
3. Unless otherwise stated and accepted by the Customer in a Specific Term and Condition of Sale, the Customer shall be entitled to a replacement product under the following conditions:
  - (i) The product is not fit for use, such as being deformed to such an extent that it cannot be installed or used as is normally the case or as specified by the manufacturer. This claim condition does not apply to bespoke items which are made to the Customer's express or implied specification – these are sold ASIS.
  - (ii) The product contains discernible optical distortions which are significant enough to make it unusable or a risk to safety if used or installed. This claim condition does not apply to items which are sold Ex-Works Factory and which are inspected by the Customer prior to taking possession.
  - (iii) The colour of the transparency is not as ordered.
4. In order to claim under this warranty, the Customer must within 30 calendar days of receiving the goods (the "Warranty Period"):
  - a. Notify the manufacturer by email that you intend to make a claim, and

- b. Provide evidence that the product is defective in respect of one of the conditions stated in #3 above, either photographically or by returning the product to the factory in Killarney, Queensland. If the product is returned it must be dispatched within this time frame; unless given an extension in writing by the manufacturer.
5. The remedies available under this warranty are limited as follows:
  - a. If the claim is accepted: then within 30 calendar days of the earlier of either (a) receiving the defective product or (b) accepting the evidence of defect, the manufacturer shall manufacture and dispatch a replacement product (after payment of the packing charges by the Customer, if applicable)
  - b. If for any reason the manufacturer cannot perform within this or an extended period of time granted by the Customer, then the Customer shall be entitled to a refund of the product cost only. Such refund shall be made by Electronic Funds Transfer (EFT) to the Customer's bank account within five (5) business days of the manufacturer receiving the Customer's banking coordinates.
  - c. No other remedy is available under this warranty.
6. The warrantor is Helicopter Windows Pty Ltd, 52 Ivy Street, Killarney 4373, Queensland, Australia, +61 7 4664 1222, [sales@helicopterwindows.com.au](mailto:sales@helicopterwindows.com.au)
7. This warranty is provided in addition to the general rights and remedies available to the consumer under Australian Consumer Law and as such the Customer's rights under this warranty sit alongside the basic guarantees which pertain to goods under that law.
8. This warranty is subject to change without notice.