



## TERMS AND CONDITIONS

### 1. Applicability of Terms

- a. The following Terms and Conditions shall apply to the provision of Services between the Supplier and the Client as defined by Clause 2.A below.
- b. With the exception of any agreed Contract for Services between the Supplier and the Client these Terms and Conditions will take priority over any other terms or contracts between the Supplier and the Client.

### 2. Definitions and Interpretation of Terms

- a. In the following Terms and Conditions the following expressions and terms will carry the corresponding meanings and definitions as herein explained:

<b>“Business Day”</b>	Any day including or between Monday and Friday upon which common banks execute transactions and engage in business;
<b>“Client”</b>	Any individual, firm or corporate body (including its successors and assignments) which has purchased Services from the Supplier;
<b>“Commencement Date”</b>	The date upon which a binding agreement between the Supplier and Client is signed which shall in turn constitute the formal start of a business relationship between the Supplier and Client.
<b>“Contract for Services”</b>	An agreement or contract made between the Supplier and Client which fully incorporates these Terms and Conditions whilst retaining supremacy over them should any modifications be agreed.
<b>“Duration”</b>	The reporting period of 1st January till 31st December of each calendar year which in turn shall include any additional time required to reach final verification (usually taking place at the end of April in the following year). See “Reporting Period” and “Final Verification”.
<b>“Fees”</b>	The fees payable by the Client under Clause 4 of these Terms and Conditions and in accordance with the Terms of Payment. The amount of the Fees shall be stipulated by the Schedule at the bottom of these Terms and Conditions unless otherwise specified by the Contract for Services.

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 Tel +351 915 801 007/+44 7907 504 298

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<b>“Reporting Period”</b>	One (1) Calendar year during which emissions have been monitored and reported,
<b>“Final Verification”</b>	The sum of all activities carried out by a verifier in providing a verification opinion as described in Article 15 and Annex V of the Directive 2003/87/EC,
<b>“Services”</b>	The Services which are to be provided by the Supplier to the Client as set out in these Terms and Conditions,
<b>“Supplier”</b>	<b>ETS Aviation Limited,</b>
<b>“Specification Schedule”</b>	A schedule which can be found attached to these Terms and Conditions describing the Payment Terms,
<b>“Payment Terms” or “Terms of Payment”</b>	Set out in the appended Specification Schedule.

### 3. The Services

- a. Upon Commencement Date and receipt of Fees in accordance with the Terms of Payment, the Supplier shall provide the Services to the Client so long as all obligations are met and no terms are breached by either the Client or the Supplier.
- b. The Supplier shall use reasonable care and skill to perform the Services in question.
- c. The Supplier shall undertake all reasonable endeavours to meet its obligations under these Terms and Conditions and the Terms of Contract.

### 4. Fees

- a. The Client agrees to pay the Fees in accordance with the Terms of Payment as per the Specification Schedule.
- b. The Supplier shall be entitled to recover from the Client all reasonable incidental expenses for materials and third party goods used in the course of fulfilment of these Terms and Conditions.
- c. The Client agrees to, in accordance with the applicable daily rate at time of performance, reimburse the Supplier for any additional Services which may be provided by the Supplier which are not specified for in the Schedule, or these Terms and Conditions. Such additional Services must be agreed upon in writing between the Client and Supplier.
- d. All sums payable by either Party pursuant to these Terms and Conditions are exclusive of any VAT (Value Added Tax) or any other Tax on profit which either Party may be liable to pay.

### 5. Payment

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- a. All required payments by either party are to be made within 7 days of the date of relevant invoice in the respective invoice currency using cleared funds to such bank in Gibraltar as the other Party may from time to time nominate, without any set-off, withholding, or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.
- b. This agreement shall be automatically renewed each reporting period unless otherwise advised in writing by the Client. Subscription renewal for years following each reporting period shall be invoiced in early December of the preceding year.
- c. If the Client fails to make any required Payment within the 7 days stipulated in Clause 5.a then the Supplier shall, without prejudice to any right with the Supplier may have pursuant to any statutory provision, have the right to charge the Client interest on a daily basis a rate equal to the aggregate of 4% **of the annual fee** and the base rate of Barclays Bank on any sum due and unpaid. Such interest shall be calculated cumulatively on a daily basis and shall accrue until fully paid.
- d. If the Client should fail to make any payment within the 7 days stipulated in Clause 5.a then the Supplier shall have the irrevocable right to suspend any Services until the outstanding amount has been recovered in full.

## 6. **Amendments and Renewal**

- a. These Terms and Conditions are deemed to expire upon completion of the Duration of the Reporting Period. Barring Clause 7 termination, these Terms and Conditions are automatically renewed for one calendar year on the day after the Duration of the Reporting Period,
- b. The Supplier reserves the right to make changes to the Terms and Conditions with the understanding that such changes will be notified in digital or physical writing to the Client upon each date of renewal and will correspondingly take effect upon said date of renewal.
- c. Any immediate changes effected or requested by either Client or Supplier to the Terms and Conditions or any other contract signed by the Parties will not take effect until such changes are notified and accepted in writing by the other party.

## 7. **Termination**

- a. The Supplier reserves the right to terminate these Terms and Conditions and any other Contracts immediately if:
  - i. The Client breaches any of his obligations hereunder or within the Terms of Contract;
  - ii. The Client has entered into liquidations (other than for the purposes of bonafide amalgamation or reconstruction in a Merger), whether compulsory or voluntarily,
  - iii. The Client has become bankrupt or shall be deemed unable to pay his debts by virtue of application of Section 123 of the Insolvency Act 1986;
  - iv. The Client ceases or threatens to cease to carry on business; or

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- v. Any other circumstance whatsoever beyond the reasonable control of the Supplier (including but not limited to the termination of the service through no fault of the Supplier) arise that necessitate, for whatever reason, the termination of the provision of Services.

- b. In the event of termination under sub-Clause 7.a(i) the Supplier shall retain any sums already paid to it by the Client without prejudice to any other rights the Supplier may have, whether at law or otherwise.

## 8. **Sub-Contracting**

Either Party may sub-contract the performance of any of its obligations under these Terms and Conditions to a Third Party non-participant to this agreement without the prior written consent of the other Party. Should either Party choose to sub-contract the performance of any of its obligations under these Terms and Conditions to a Third Party (the Sub-Contractor), that Party shall be responsible for every act or omission of the Sub-Contractor as if it were an act or omission of the Party itself.

## 9. **Liability and Indemnity**

- a. Except in event of death of personal injury caused by the Supplier's negligence, the Supplier will not by reason of any representation, implied warranty, condition, or other term, or under any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special, or consequential loss, damage, costs, expenses or other claims (whether caused by the Supplier's servants or agents or otherwise) in connection with the performance of its obligations under these Terms and Conditions or with the use by the Client of the Services supplied.
- b. The Client shall indemnify the Supplier against all damages, costs, claims and expenses suffered by the Supplier arising from loss or damage to any equipment (including that of third parties) caused directly by the Client or where the Client has acted through his agents, employees, or contracted Third Parties.
- c. The Supplier shall not be liable to the Client or be deemed to be in breach of these Terms and Conditions by reason of any delay in performing or any failure to perform any of the Supplier's obligations if said delay or failure was due to causes beyond the Supplier's reasonable control (see Clause 10).

## 10. **Force Majeure**

Neither the Client nor the Supplier shall be liable for any failure or delay in performing their obligations under these Terms and Conditions where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

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## 11. **Waiver**

- a. No waiver by the Supplier of any breach of these Terms and Conditions by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision, or condition of these Terms and Conditions shall be effective only where it is made in writing and signed by the waiving Party and then only for the purpose for which the waiver is given.
- b. No failure or delay on the part of either Party in exercising any right, power or privilege under these Terms and Conditions shall be deemed to operate as a waiver of these terms and conditions; nor shall any single or partial exercise of any such right, power, or privilege, preclude any other or further exercise of any other right, power, or privilege.

## 12. **Severance**

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions be found to be unlawful, invalid, or otherwise unenforceable, that those provisions shall be deemed severed from the remainder of these Terms and Conditions. The remainder of these Terms and Conditions shall be valid and enforceable.

## 13. **Publicity**

- a. Either party may publicise its relationship with the other as set out in clauses 13.b and 13.c, but neither may make claim to represent the other's business, intent, or opinions unless so authorised in writing by the other party seven (7) working days prior to acting upon making any such claim.
- b. The Supplier may publicly state that the Client has purchased the Services in question and may name the number of aircraft involved and specify their class and type, but may not further or otherwise disclose information about the Client's Services without the approval of the Client.
- c. Subject to the prior approval of the Supplier (which is not to be unreasonably withheld) the Client may state publicly that it has purchased Services from the Supplier.
- d. From time to time the Supplier may wish to pass the Client's contact details on to prospective customers of the Supplier with the intent that these prospective customers may wish to contact the Client with a view to obtaining an informal reference as to the suitability of the products and of the Supplier as a provider for their particular requirements. The Supplier nonetheless undertakes not to disclose contact details for the Client onto prospective customers pursuant to this clause 13.D without first obtaining the written permission of the Client (email being acceptable for this purpose).
- e. Either party may only use the other's official trading name(s) and logo on promotional materials (including but not restricted to websites and marketing materials) as provided in this clause 13.E subject to the prior written consent of the other Party and subject to any

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conditions or restrictions as a part of such consent. Notwithstanding the grant of any such consent, both Parties undertake to remove the other's trading name(s) and logo from any such material as soon as it is practically possible upon the other's written request.

#### 14. **Copyright**

The Supplier reserves all copyright and any other rights (if any) which may subsist in the products of, or in connection with, the provision of the Services or facilities. The Supplier reserves the right to take such actions as may be appropriate to restrain or prevent infringement of such copyright.

#### 15. **Notices**

- a. All notices under these Terms and Conditions shall be made in writing and deemed duly given if signed by or on behalf of a duly authorized officer or agent of the Party given the notice.
- b. Notices shall be deemed to have been duly given at the point of time that:
  - i. Delivery by courier or other messenger (including registered mail) during the normal business hours of the recipient is accepted by the recipient; or
  - ii. Delivery by fax or e-mail of notices is followed by a successful transmission report or return receipt (generated or manually input); or
  - iii. Five business days have elapsed after Notice being sent using postage prepaid national mail; or
  - iv. Ten business days have elapsed after Notice being sent using postage prepaid airmail.
- c. Amending any document for the purposes of any legal proceedings concerning or arising out of these Terms and Conditions may be effected by either Party where the Party delivers such document to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.

#### 16. **Law and Jurisdiction**

- a. This Agreement shall be governed by the laws in force in England and Wales.
- b. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity shall attach only to such provision or part of such provision and the remaining part of such provision and all other provisions of it shall continue in full force and effect.

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## SPECIFICATION SCHEDULE

### Fees

As per the Agreement

Description of Services	Payment Terms
Subscription to use Aviation Footprinter <sup>tm</sup>	Payment in full within 7 days of invoice date.
ETS Support Service	Payment in full within 7 days of invoice date.
MRV Report	Payment in full to be received before commencing preparation
Manual	Payment in full to be received before commencing preparation
Consulting Contract	Payment in full to be received before commencing contract

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