

## WHIRLWIDE HELICOPTERS – TERMS AND CONDITIONS

### 1 SERVICE DESCRIPTION

- 1.1 These terms and conditions (**Terms**) will apply to all Whirlwide Helicopter services that The Alpine Group Limited (144905) and its related companies and affiliates (together referred to in these terms as **Whirlwide**) provides to its clients (**Client/s**).
- 1.2 Whirlwide agrees to provide the client/s with the services and to use the products on the terms contained in this contract.
- 1.3 The client/s understand that Whirlwide's performance is dependent on the client/s timely and effective performance of the client/s responsibilities as set out in each Job Safety Analysis or under this Agreement. Except to the extent that the applicable Job Safety Analysis contains specific acceptance provisions, all Services carried out and Products used by Whirlwide will be deemed accepted by the client/s. If, within ten (10) days after delivery the client/s provide to Whirlwide written notice identifying specifically any basis for not accepting the services carried out or products used, Whirlwide will investigate, and if a defect of the Services provided is found commercially reasonable efforts to cure the defect or remedy the breach will be used (in Whirlwide's sole discretion).

### 2 ESTIMATES AND SPECIFICATIONS

- 2.1 The services and products to be used at the request of the client/s are as set out in the Job Safety Analysis Subject to clause 2.2 any Services or Products not in the Job Safety Analysis will not be supplied or used by Whirlwide unless otherwise agreed. Whirlwide is not liable for any errors or omissions arising from lack of instruction by the client/s.
- 2.2 Whirlwide shall carry out all reasonable variations required by the client/s to the Job Safety Analysis provided that all variations are in writing and the additional cost of the variation is agreed in writing; however where the cost for any variation is less than 10% of the project costs plus GST then Whirlwide is authorised to carry out that work without obtaining a variation in writing. Payment for each variation shall be due as per clause 4 Payment terms.
- 2.3 Project Costs provided by Whirlwide to the client/s may be withdrawn at any time prior to acceptance by the client/s. All written and verbal estimates or Project Costs that are not accepted by the Customer within 14 Working Days shall be deemed to be withdrawn by Whirlwide unless otherwise agreed in writing by Whirlwide.

### 3 ACCEPTANCE

- 3.1 Without limiting any other methods of acceptance, the Client's request for Whirlwide to provide the Client with Whirlwide's services constitutes the Client's acceptance of these Terms.
- 3.2 If there is more than one Client then these Terms bind those Clients jointly and severally. If a Client is making a booking for and on behalf of another person then that Client warrants that it has authority to act as agent on behalf of the other person and bind the other person to these Terms.
- 3.3 Whirlwide may vary these Terms from time to time by giving no less than 20 days written notice to the Client. Any variation of these Terms will apply to the provision of all Whirlwide's services after the notice period referred to above.

### 4 PAYMENT

#### Standard payment terms

- 4.1 Unless Whirlwide has approved a credit application for the Client or alternative payment arrangements with the Client, all charges are payable as follows:

- a. a deposit of 50% of the charge is payable at the time of booking;
- b. the balance 50% of the charge is payable prior departure.

#### Credit terms

- 4.2 If Whirlwide has approved a credit application, then Whirlwide will invoice the Client for all services provided by Whirlwide.
- 4.3 Whirlwide will send invoices to the Client following completion of Whirlwide's services to the Client.
- 4.4 All invoices are due for payment by the 20<sup>th</sup> of the month following the date of the invoice.
- 4.5 Whirlwide may also extend credit directly to the Client for additional goods or services that are requested by the Client during the course of Whirlwide's services or, where the charges are based on hours, in the event actual flight time exceeds estimated flight time. The Client agrees that it will pay such additional costs on conclusion of the services.

#### General

- 4.6 If Client fails to make payment in full by the applicable due date, Whirlwide may forfeit the Client's booking and retain any deposits that have been paid in relation to that booking.

#### Interest

- 4.7 Whirlwide may charge default interest of up to 10% per annum compounding monthly on all amounts that are not paid on time. If any amount that is owed by the Client continues to remain unpaid, Whirlwide may also take action to recover that amount and charge the costs incurred in doing so. Whirlwide also reserves all of its other rights including the right to suspend Whirlwide's services to the Client.

#### Currency

- 4.8 All Whirlwide's prices are inclusive of GST unless otherwise stated and priced in New Zealand dollars (NZD).
- 4.9 Any refund transactions are conducted in New Zealand Dollars (NZD).
- 4.10 Due to exchange rate fluctuations, at times there may be some variance in amounts paid or refunded. Whirlwide does not accept any liability to the Client for these variances or any subsequent credit card/bank charges relating to these transfers.

### 5 CANCELLATIONS AND REFUNDS

- 5.1 Minimum passenger numbers may apply. All reservations must be reconfirmed by 2.00pm the day prior to the scheduled departure date. If weather conditions prevent Whirlwide from flying, the Client may reschedule to the next available day, space permitting. Flight durations are indicative. Flight time and flight paths are at the discretion of Whirlwide, subject to safety, pick up locations and weather conditions.
- 5.2 Whirlwide reserves the right to cancel, delay or amend bookings or timetables for any reason (including without limitation due to adverse weather conditions). Whirlwide will use reasonable efforts to provide the Client with as much notice as possible in the circumstances. If Whirlwide cancels a booking then Whirlwide will refund any amounts already paid for that booking to the Client.
- 5.3 If the Client cancels a booking then the Client will be charged a cancellation charge based on a percentage of the total price of the booking as set out below:

#### Standard Booking

- Cancellation notified more than 24 hours prior to departure: 0% (no cancellation charge)  
Cancellation notified less than 24 hours prior to

departure: 25%  
'No Show': 100%

### Wedding Booking

Cancellation notified more than 7 days prior to departure: 0% (no cancellation charge)

Cancellation notified less than 7 days prior to departure: 100%

5.4 In circumstances where the Client is entitled to a refund of all or part of its deposit, payment of any refund to a credit card will incur an administration charge of 3% of the refund amount which will be deducted from the payment.

## 6 CLIENT CONDUCT AND PROPERTY

6.1 The Client agrees to comply with Whirlwide's rules of conduct and all reasonable directions given to the Client by Whirlwide or its personnel. Whirlwide reserves the right to decline to accept or retain any person on any flight if they fail to comply with such directions or rules of conduct or for any other reason including reasons of health or safety or the protection of property.

6.2 For safety reasons Whirlwide reserves the right to reject the carriage of any items that Whirlwide considers to be a risk to passengers, aircraft and personnel. The Client authorises Whirlwide to search the Client's personal property if Whirlwide considers that it may contain dangerous items that the Client has not declared.

6.3 The Client is responsible for all of the Client's personal property and the Client acknowledges that it carries all personal property at its own risk.

6.4 The Client shall ensure that all Whirlwide health and safety requirements detailed in the Job Safety Analysis are adhered to and that the Client/s clearly communicates their health and safety requirements to Whirlwide.

## 7 INSURANCE

7.1 The Client is responsible for holding and maintaining appropriate insurance for all insurable risks (including without limitation travel insurance) relating to the Client's booking and the Client's personal property.

## 8 ACKNOWLEDGMENT OF RISK AND WAIVER OF LIABILITY

8.1 The Client acknowledges that due to the environment that Whirlwide operates in and the nature of the services provided, Whirlwide cannot guarantee the Client's personal safety or the safety of the Client's personal property. If required by Whirlwide the Client agrees to enter into Whirlwide's standard form of Acknowledgment of Risk and Waiver of Liability as a condition of Whirlwide providing its services.

## 9 LIMITATION OF LIABILITY

9.1 Whirlwide and its directors, employees, agents and contractors (**Whirlwide's Personnel**) are not liable to the Client or to any third party:

- a. for any loss, damage, injury, death, delay, disruption, changes in transport timetables or services, inconvenience, cost or expense sustained or incurred arising out of or in connection with Whirlwide's service or products used unless it was directly caused by an act or omission of Whirlwide;
- b. for any failure to perform its services to the extent caused by any force majeure event or an act of God beyond Whirlwide's control (including but not limited to fire, floods, lightning, atypical weather conditions accidents to or failure of machinery or equipment); or
- c. for any special, indirect or consequential damage or loss of any kind (including without limitation loss of business, loss

of profits, business interruption) arising out of or in connection with Whirlwide's services or products used.

9.2 Despite anything to the contrary in these Terms, the liability of Whirlwide and Whirlwide's Personnel to the Client or their respective personnel or any third party in connection with the services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, is limited to the amount paid to Whirlwide for those of Whirlwide's services that are the subject of the particular claim.

9.3 The Client indemnifies Whirlwide and Whirlwide's Personnel against any loss or liability suffered or incurred at any time by Whirlwide and Whirlwide's Personnel that is directly or indirectly caused by a breach of the Client's obligations under these Terms.

9.4 All warranties and representations (including those expressed or implied by law) in respect of Whirlwide's services are excluded to the extent permitted by law. If the Client is acquiring services from Whirlwide for the purposes of a business then the guarantees contained in the Consumer Guarantees Act 1993 are excluded.

9.5 Whirlwide warrants that the Services to be performed by it will:

- a. conform to their description as set out in the applicable Job Safety Analysis; and
- b. be performed in a professional manner with due care and skill.

The Client's exclusive remedy for any breach of this warranty will be to advise Whirlwide not later than 10 days after the work was performed of any defect in the Services or breach of the above warranty and upon receipt of written notice Whirlwide shall use commercially reasonable efforts to cure the defect or remedy the breach at its expense by either (in Whirlwide's sole discretion):

- (i) the supplying of the Services again; or
- (ii) paying the cost of having the Services supplied again; or
- (iii) returning that part of the fee for the Services paid to Whirlwide for the work related to the defect.

Provided that where any defect or breach is brought to Whirlwide's attention later than 10 days after that work was performed then Whirlwide shall be under no obligation to provide any remedy whatsoever. For the avoidance of doubt a lack of results or functionality shall not be a defect as the Client has sole responsibility for the Products used by Whirlwide.

9.6 If as a result of an aircraft emergency or issue with any load Whirlwide is required release a load in flight then Whirlwide's liability for any damage to the load and/loss or damage suffered to the Client's property carried by the helicopter and/or on the ground shall be limited to the amount of any insurance claim that that is paid out by Whirlwide's insurance payment. For the avoidance of doubt where the loss or damage is not covered by insurance for any reason then Whirlwide shall have no liability to the Client for the loss suffered.

## 10 DEFAULT

10.1 If the Client defaults on a term in this Contract, Whirlwide reserves the right to discontinue the Service(s) provided to the Client.

## 11 INTELLECTUAL PROPERTY

11.1 Title to, and all intellectual property rights in connection with Whirlwide's services remains the property of Whirlwide. If the Client provides any ideas, comments or suggestions relating to the services then all intellectual property rights in that feedback, and anything created as a result of that feedback (including new

material, enhancements, modifications or derivative works), are owned solely by Whirlwide.

## **12 GOVERNING LAW**

12.1 These terms are governed by, and must be interpreted in accordance with, the laws of New Zealand. The Client submits to the exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms.

## **13 DISPUTE RESOLUTION**

13.1 Before taking any Court action, a party must use best efforts to resolve any dispute under, or in connection with, these Terms through good faith negotiations but this requirement does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

## **14 PRIVACY**

14.1 Any personal information received by Whirlwide will be used, processed, transmitted, and disclosed to the extent necessary to perform the services and in accordance with Privacy Act 1993 and any privacy policy adopted by Whirlwide from time to time.

14.2 Except to the extent the Client or their respective business or brand can be readily identified, the Client agrees that Whirlwide may take photographs or videos from time to time as part of its daily operations. The Client irrevocably grants Whirlwide an unrestricted, non-exclusive, perpetual, transferable and royalty free licence to copy, use and disclose such photographs or videos (including for promotional purposes).

14.3 The Client authorises Whirlwide to disclose any necessary personal information about them to any third parties or credit agencies for the purpose of carrying out credit enquiries about the Client to assess their credit worthiness or to exercise any power of enforcement of Whirlwide under these Terms and to provide credit reporting services.

## **15 GENERAL**

15.1 Whirlwide is an independent contractor and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.

15.2 These Terms are personal to the Client and the Client is not entitled to assign or transfer its rights or obligations in respect of the services or under these Terms to another party without Whirlwide's written consent. Whirlwide may assign or transfer its rights or obligations under these Terms without the Client's consent.

15.3 To waive a right under these Terms that waiver must be in writing and signed by the waiving party.

15.4 If there is any conflict between these Terms and any other agreement with the Client then the provisions of these Terms will prevail except to the extent that:

- a. any credit application form entered into by the Client provides otherwise; or
- b. Whirlwide notifies the Client in writing.

15.5 Any benefits expressly conferred on any third parties named or referred to in these Terms (including all related companies and affiliates of The Alpine Group Limited (including without limitation Minaret Station Limited (675982), The Alpine Group Limited T/A Alpine Helicopters (144905) and Southern Lakes Heliski LP (2621634)) and Whirlwide's Personnel are intended to be enforceable by those third parties for the purposes of section 12 of the Contract and Commercial Law Act 2017.

15.6 Any illegality, unenforceability or invalidity of a provision of these Terms does not affect the legality, enforceability or validity of the remaining provisions of these Terms.