



MERCFUEL, INC. dba MERCURY FUELS  
A WHOLLY OWNED SUBSIDIARY OF MERCURY AIR GROUP INC.

# GENERAL TERMS AND CONDITIONS

IMPORTANT! PLEASE READ THIS ENTIRE DOCUMENT CAREFULLY

## 1. Application / Scope

The following terms and conditions shall apply to all purchases of jet fuel and other related products and services between Mercury Air Group, LLC (“MAG”), including MAG’s subsidiaries and trade names (Merconfuel, Inc., Mercury Fuels), and Customer, including Customer’s associates, affiliates, representatives, subcontractors, directors, officers, employees, agents and volunteers (collectively “Customer”), and shall constitute the general terms and conditions of MAG. MAG’s products and services (“Services”) are being provided to Customer conditioned upon Customer’s acceptance, without modification, of all the terms, conditions, and notices set forth herein (collectively, the “Terms and Conditions”) and Customer’s compliance with any other terms provided to Customer relating to the purchase of Services by Customer from, or through any arrangements made by, MAG, unless otherwise stated in writing.

## 2. Customer Representations / Responsibilities

**2.1** Customer warrants and represents that: (a) Customer is at least (18) years of age, if an individual, and if a business, Customer is legally authorized to do business in its state/country of operation and is in compliance with all applicable laws, regulations, codes and ordinances in performing such business; (b) possesses the legal and corporate authority to create a binding legal obligation and authority to accept the Terms and Conditions hereunder; (c) all information supplied by Customer to MAG, through any forum, including MAG’s website, is true, accurate, current and complete; and (d) Customer will safeguard its account information with MAG and will supervise and be responsible for any use of Customer’s account by anyone other than Customer.

**2.2** Customer acknowledges that MAG retains and reserves its right to deny its Services to Customer at any time and for any reason, including without limitation, for any violation of MAG’s Terms and Conditions, any violation of law regardless of whether or not Customer is prosecuted for this violation, and if prosecuted, regardless of the eventual disposition of the case, and any initiation of bankruptcy by Customer.

**2.3** Customer shall be solely responsible for the transfer of all jet fuel to Customer’s aircraft(s) or any Customer fuel holding facility provided for hereunder, regardless of whether MAG undertakes any part of such transfer. Further, Customer shall comply with all provisions of local airport regulations relating to the operation of its aircraft(s) or any Customer fuel holding facility, including any other applicable codes, regulations, governmental ordinances, statutes and governmental authority.

**2.4** In addition to section 12 below, Customer agrees to indemnify, defend, and save MAG and its respective members, officers, directors, employees, spouses, legal representatives, agents, successors, parent, affiliates, subsidiaries and assigns harmless from and against any and all losses, liabilities, claims, damages and costs (including reasonable attorneys’ fees and costs) which may arise out of or relating to Customer’s actions or omissions in the performance by Customer of the operations, activities, or transfer of jet fuel as described in this subsection, regardless of whether or not any of the foregoing operations, activities, or transfer of jet fuel is performed by MAG.

### 3. Fuel

**3.1** Any and all quantities of “Fuel” (as defined in section 3.3) purchased by Customer from or through MAG shall be measured and determined based upon meter readings at the delivery location at the time of delivery. Customer acknowledges and agrees that no adjustment for surrounding or ambient temperatures shall be made to Fuel quantities regardless of circumstances. Adjustments made for surrounding or ambient temperatures, if any, shall be determined by MAG in its sole and absolute discretion.

**3.2** Subject to applicable laws, regulations, codes, ordinances and approval by applicable authorities, Customer’s right to reasonably inspect and test fuel purchased pursuant to these Terms and Conditions shall be performed at Customer’s own expense at the time of Fuel delivery and prior to accepting such Fuel delivery. In the event any Fuel or Fuel delivery does not conform to section 3.3 herein or any applicable invoice or other written agreement between MAG and Customer, Customer shall have the right, prior to acceptance and by written notice to MAG, to either reject such Fuel or require its correction. If any Fuel is rejected by Customer or a request to correct has been provided to MAG, MAG has the right and opportunity to inspect such alleged nonconforming Fuel and to insure that such Fuel has not been modified, altered, combined with other products, stored, or used in violation of applicable industry standards. After MAG has received written notice of non-conformity and been provided an opportunity to inspect as set forth above, any Fuel that does not conform to the quality and specifications shall be corrected or removed at MAG’s expense. However, removal of Fuel under any other circumstances shall be at Customer’s sole expense. Any and all claims of nonconformity for quality, quantity or otherwise must be made within ten (10) days of delivery.

**3.3** MAG warrants and represents that all aviation fuel (the “Fuel”) supplied pursuant to these Terms and Conditions shall meet the specifications as set forth in the relevant purchase order or other written agreement between Customer and MAG specifying the quality and quantity of Fuel to be delivered.

### 4. Delivery, Title, and Risk of Loss

All sales of Fuel shall be, as applicable, either “Into Wing” or “Into Storage” transactions. As used hereunder, “Into Wing” transactions means that (a) delivery shall be complete when the Fuel is delivered into the fuel tanks of Customer’s aircraft and (b) title to and risk of loss for the Fuel shall pass from MAG to Customer after the Fuel has passed through the connecting hoses into the fuel tanks of such aircraft. As used hereunder, “Into Storage” transactions means that (a) the Fuel shall be delivered into the appropriate storage tank(s) of Customer at or near the designated airport or Customer facility and (b) title to and risk of loss for the Fuel delivered hereunder shall pass from MAG to Customer after the Fuel has passed through the connecting hoses into the appropriate storage tank(s). In any transaction, either Into Wing or Into Storage, the Customer shall have the right to designate and retain an Into Wing Agent of its own choosing and, if, in the absence of such selection, MAG assists Customer by selecting an Into Wing Agent, the identity of such agent shall be furnished to Customer and shall be subject to change in Customer’s sole discretion upon written notice. Any Into Wing Agent determined pursuant to the proceeding sentence is referred to herein as the Designated Into Wing Agent. As a convenience to Customer, MAG may pay the designated Into Wing Agent and rebill the Customer for such services at cost.

### 5. Pricing

**DISCLAIMER:** Total Price is quoted based upon the most recent data available to us and is subject to change without notice due to market variation, changes in fees, taxes, government surcharges and exchange rate fluctuations (where applicable). Taxes, duties, and fees are specifically provided as a courtesy and are subject to change by the local airport/municipal authorities and or FBO operator without notice. Unless noted, international prices do not include taxes/fees, VAT, MOT etc. Mercury Fuels passes through all third party charges as incurred. As a result of the aforementioned factors, the actual cost to

the consumer may differ from the price quoted on this site. While we provide price notices in .csv and excel format that can be uploaded into third party software programs, Mercury Fuels is not subject to or responsible for manipulation by these programs and any errors resulting from uploads to these programs.

**5.1** Pricing and other charges for Fuel shall be established from time to time solely by MAG in U.S. Dollars and shall not include any taxes, governmental taxes, duties, assessments, fees, or other charges, whether domestic or foreign, including, without limitation, sales tax, use tax, VAT, GST, mineral oil tax, or any other tax, license fees, inspection fees, airport fees, or any other fees related to the buying, selling, loading and unloading of aviation fuel, subject to any applicable laws, regulations, codes and ordinances. Any proposal, purchase order and/or invoice, including any addendums, amendments, or modifications, whether issued directly by MAG and/or any of its parents, subsidiaries or affiliates, is subject to these Terms and Conditions.

**5.2** MAG reserves the right to increase or decrease prices and quotations, including, without limitation, taxes and fees, at any time, regardless of whether set forth in any proposal, purchase order and/or invoice, without notice due to market variations, exchange rate fluctuations and/or for happening of any event which may cause the price(s) of Fuel to increase.

**5.3** If MAG's cost of supplying Fuel or other Services to Customer increases as a result of MAG being unable to obtain supplies of Fuel or Services from its normal sources and recognized routes for such supplies, or otherwise due to circumstances beyond MAG's control including being unable to obtain commercially reasonable terms, MAG shall have the right to give Customer written notice of its intent to increase the price payable at any affected delivery location by adding a surcharge (or an estimate of such surcharge if such amount cannot be reasonably ascertained) regarding such increase and/or change in price terms. The above surcharge shall be effective upon MAG's notice of same as provided for herein. Customer shall thereafter have the right to give written notice to MAG within ten (10) days of MAG's notice to withdraw any affected delivery location. Customer's withdrawal of the affected delivery location shall be effective twenty (20) days after the date of Customer's notice of withdrawal as provided for herein. Any price change caused by official government action, whether domestic or foreign, shall be effective from the date of the official government action and shall not be subject to any notice as provided for herein.

**5.4** MAG reserves the right to charge a \$50 hookup fee for fuel uplifts less than 500 USG.

**5.5** Customer also agrees to pay MAG an administrative fee equal to 10% of all non-aviation fuel items including but not limited to ancillary services such as ground handling, catering and transportation. Customer further agrees to pay, discharge and/or reimburse MAG for (i) cash and credit advances and fees; and (ii) all additional third party charges and disbursements incurred for Customer's benefit.

## **6. Taxes**

**6.1** In addition to the price of Fuel, Customer shall also pay to MAG all taxes and fees (governmental taxes, duties, assessments, fees, and other charges, whether domestic or foreign, including, without limitation, sales tax, use tax, VAT, GST, mineral oil tax, or any other tax, license fees, inspection fees, airport fees, or any other fees related to the buying, selling, loading and unloading of aviation fuel), now or hereafter assessed, imposed or levied relative to Customer's purchase of Fuel. Any reference of tax estimate or fee estimate included in any proposal, purchase order and/or invoice is for information purposes only, and its applicability may vary according to the laws of any particular state, country or nation. Omission or failure to add such tax, governmental tax, duty, assessment, fee or other charge to any proposal, purchase order and/or invoice shall not relieve Customer from liability therefrom. In the event any additional tax, governmental tax, duty, assessment, fee or other charge is assessed to MAG, or deemed applicable by the local authority, MAG may assess such additional taxes or fees to Customer through supplementary invoices which Customer agrees to pay.

**6.2** It is the Customer's responsibility to ensure that all exemption documentation is presented for any tax exempt flight directly to the fueler and that the exemption is recorded properly at the time of the fueling. In the event that MAG is charged the taxes for any exempt flight, MAG will pass through to the Customer those taxes as charged. Customer, at its discretion, may seek to reclaim taxes for an exempt flight through the taxing authority that assessed those taxes. MAG will not be able to submit a request for credit, or reclaim any international taxes that were charged in error.

**6.3** Customer agrees to indemnify and hold MAG harmless from and against any claim, loss, liability, damage or expense (including attorneys' fees and costs) MAG may incur due to Customer's failure to comply with this section.

## **7. Invoices**

MAG shall invoice Customer for all sums due and owing for Services furnished to Customer, including Fuel, pursuant to these Terms and Conditions or any other term and condition provided for by written agreement between the parties. Any invoice between MAG and Customer is subject to these Terms and Conditions, including any additional terms provided for in the invoice. Any claims or disputes arising out of or relating to such invoice must be delivered to MAG by hand delivery, registered mail, overnight courier, electronic mail or facsimile within ten (10) days of the invoice date. In the event Customer fails to dispute the invoice within the ten (10) days, the invoice shall be deemed correct and payable by Customer. All prices included in any invoice, including taxes, fees, and assessments or otherwise, shall be denominated in U.S. Dollars, unless otherwise specifically set forth therein.

## **8. Payments**

**8.1** All payments to MAG shall be made in U.S. Dollars, regardless of what denomination is set forth in any invoice, payable to the account of MAG as set forth and/or indicated on any applicable invoice. Unless otherwise agreed by written agreement between the parties, Customer must make all payments prior to the delivery of any Services, including Fuel, sold pursuant to these Terms and Conditions. The delivery of Services, including Fuel, shall be stayed/tolled until such time as MAG receives full payment from Customer (in cleared funds), and MAG shall not be responsible for any damages, including (without limitation) consequential, incidental and/or special damages, to Customer caused by any delay in delivery of any Services due to nonpayment. Past due amounts shall accrue interest at 1.5% per month and be subject to a \$100 late fee, but not to exceed the maximum rate allowed by applicable law. Waiver by MAG of any applicable interest charge or fee on any particular invoice or past due amount shall not be construed as a waiver by MAG of its right to impose such charge or fee on other or subsequent deliveries, invoices or past due amounts.

**8.2** In the event multiple invoices or obligations are outstanding, MAG reserves the right to apply Customer payments to any outstanding invoice or obligation of Customer in any manner it chooses in its sole discretion. Customer is liable to pay all reasonable attorneys' fees and costs incurred by MAG in collecting any unpaid invoices, amounts or obligations owed by Customer, regardless of whether suit be brought or not. In addition to the rights set forth in these Terms and Conditions and/or all other remedies and rights available to it under the law, whether it be in law or in equity, MAG reserves the right to cease any deliveries or provide any Services to Customer if Customer fails to make any payment provided for herein, and may demand payment of all outstanding invoices or monetary obligations. MAG's right to cease any deliveries of Fuel or provision of Services to Customer applies to any Customer for which credit terms have been extended pursuant to Section 9 below, without limitation, but in particular if Customer's outstanding balances exceed the applicable credit limits and MAG becomes insecure with regard to Customer's financial condition or creditworthiness.

**8.3** Notwithstanding any dispute including, without limitation, disputes regarding the quality or quantities of Fuel, accuracy of amounts owed or any other matter, Customer must timely pay the full amount due under any invoice regardless of whether

Customer disputes the whole or part of any amount due. Any disputes shall be resolved between MAG and Customer only after such payment has been made. Any refund due by MAG upon resolution of such dispute shall be paid to Customer.

## 9. Credit Application / Terms

**9.1** Any extension of credit by MAG to Customer shall be subject to these Terms and Conditions, including any term or condition as set forth in Customer's credit application or other written agreement between the parties. Customer's credit limit shall be determined by MAG within its sole discretion. MAG reserves the right to curtail, modify or eliminate any credit availability or credit limit within its sole discretion from time to time upon notice to Customer.

**9.2** In furtherance of Section 9.1 above, and in accordance with Article 17 below, Customer grants MAG and its agents, employees, representatives, parent, subsidiaries, and affiliates the right to obtain and request from any person, source, credit bureaus, financial institutions, credit unions, banks or otherwise any information regarding Customer's and/or any personal guarantor(s)' financial status, credit history, credit score, deposits, balances, income sources, assets, debts, security interests and mortgages.

**9.3** MAG shall endeavor to maintain its information regarding Customer and/or users of this site as accurate as possible. If Customer or any potential customer and user of this site would like to review or change the details you have supplied to MAG, please contact MAG.

## 10. Force Majeure

MAG shall not be required to perform any obligation to Customer if MAG's performance is delayed or precluded by any conditions beyond MAG's reasonable control; MAG shall promptly inform Customer of any such condition. In no event shall such condition excuse Customer's payment for Services, including Fuel that has been provided to Customer.

## 11. Disclaimer of Warranty / Limitation of Liability

**11.1** MAG MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY FUEL AND/OR SERVICES SOLD TO CUSTOMER HEREUNDER. MAG EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY WAIVES, ALL WARRANTIES, GUARANTEES, OBLIGATIONS, LIABILITIES, RIGHTS AND REMEDIES WITH RESPECT TO SAID FUEL AND SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO (a) AN IMPLIED WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED WARRANTY ARISING FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE OR (c) ANY IMPLIED WARRANTY OF FITNESS. UNLESS CAUSED SOLELY BY MAG'S GROSS NEGLIGENCE OR INTENTIONAL ACT, MAG SHALL HAVE NO LIABILITY TO CUSTOMER RELATIVE TO ANY CLAIM, LOSS OR DAMAGES, OF ANY KIND OR CHARACTER, ATTRIBUTABLE TO THE FUEL AND/OR SERVICES FURNISHED BY MAG HEREUNDER. MAG AND CUSTOMER AGREE THAT MAG SHALL NOT BE LIABLE DIRECTLY OR INDIRECTLY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES IN ANY WAY ARISING FROM THE SALE, HANDLING, SUPPLY, OR USE OF THE GOODS AND SERVICES SOLD, INCLUDING FUEL, OR FROM ANY OTHER BREACH OF THESE TERMS AND CONDITIONS, ANY PURCHASE ORDER, QUOTATION, PROPOSAL OR ANY OTHER AGREEMENT BETWEEN MAG AND CUSTOMER. IT SHALL BE THE RESPONSIBILITY OF CUSTOMER TO MAKE ANY AND ALL INSPECTIONS AND INVESTIGATIONS AS CUSTOMER DEEMS NECESSARY TO ASCERTAIN THE INTEGRITY, FITNESS OR SUITABILITY OF THE GOODS AND SERVICES, INCLUDING FUEL, HEREUNDER.

## 12. Indemnification

**12.1** CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND SAVE MAG AND ITS RESPECTIVE MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, SPOUSES, LEGAL REPRESENTATIVES, AGENTS, SUCCESSORS, PARENT, SUBSIDIARIES AND ASSIGNS HARMLESS FROM AND AGAINST ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES AND COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) WHICH MAY ARISE AS A RESULT OF ANY CLAIM BROUGHT BY ANY THIRD PARTY IN CONNECTION WITH ANY FUEL OR SERVICES PROVIDED HEREUNDER. IN NO EVENT SHALL MAG BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCES, EVEN IF MAG HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

## 13. Export Control

THE WORD "RESTRICTED COUNTRY" SHALL MEAN THE COUNTRIES LISTED IN COUNTRY GROUPS Q, S, W, Y, AND Z IN SECTION 770 SUPPLEMENT NO. 1 OF THE EXPORT ADMINISTRATION REGULATIONS OF THE UNITED STATES (15 D.F.R. PART 770). CUSTOMER EXPRESSLY AGREES NOT TO REEXPORT AND SHALL NOT DIRECTLY OR INDIRECTLY RELEASE OR MAKE AVAILABLE ANY JET FUEL SOLD TO CUSTOMER FROM MAG TO ANY RESTRICTED COUNTRY OR ENTITY IN A RESTRICTED COUNTRY (OR ANY OTHER COUNTRY AS MAY BE DESIGNATED FROM TIME TO TIME BY THE UNITED STATES DEPARTMENT OF COMMERCE, OR ANY UNITED STATES LAW, RULE, REGULATION OR ORDER, OR ANY TREATY) OR FOR USE IN SERVICING EQUIPMENT OWNED, CONTROLLED OR USED BY SUCH MILITARY OR POLICE ENTITIES.

## 14. Third Parties

MAG has developed and continues to develop a worldwide network of persons and entities to provide MAG's Services, including Fuel, requested by Customer ("Third Party Providers"). Third Party Providers are independent contractors and MAG does not have the right to supervise and does not supervise details of their operations. MAG shall not be liable for the acts and omissions of any such Third Party Providers. MAG's sole obligation shall be to use ordinary care in the selection of any such Third Party Providers. MAG Disclaims all liability for any acts or omissions of any Third Party Providers, including, without limitation, agents, independent contractors, subcontractors, transporters, into-plane agent or service providers.

## 15. Confidentiality

Customer acknowledges that these Terms and Conditions, including, without limitation, pricing information and/or any other terms relating the supply of Fuel or Services, are confidential. Neither Customer nor MAG shall disclose any such information to any third party without the prior written consent of the other party, unless required and mandated by court order or other applicable law.

## 16. Privacy Policy

**16.1** This privacy policy covers MAG's collection or use of Customer's personal information (including, without limitation, first and last name, corporate information, telephone numbers, postal and email addresses, fax numbers, billing information and credit information), which is collected through or in connection with the Fuel or Services provided to Customer, or if viewing these Terms and Conditions via MAG's website, in connection with the use of the website. For the purposes of this policy, "this website" means [www.mercfuels.com](http://www.mercfuels.com), which may link to other MAG websites.

**16.2** MAG collects and uses personal information in order to, without limitation: monitor quality control and insure compliance with any and all applicable laws, regulations, codes and ordinances; respond to queries or requests submitted by Customer; process orders or applications submitted by Customer; manage Customer accounts; administer or otherwise carry out MAG's obligations in relation to any agreement Customer may have with MAG, including these Terms and Conditions; anticipate and resolve problems with any Fuel or Services supplied to Customer; process Customer's credit application pursuant to Article 9

above and/or analyze Customer's credit worthiness, risks or other matter relating to any extension of credit by MAG to Customer; and create products or Services that may meet Customer's needs.

**16.3** Customer grants MAG the right to disclose any personal information relating to Customer to: any agents, employees, representatives, parent, subsidiaries, affiliates, assigns, and Third Party Providers of MAG which may perform Services arising out of or relating to Customer's account; credit bureaus and/or reporting agencies; any person, entity or governmental officer/agency/authority as required or permitted by law; and/or any person or entity as MAG may deem necessary or appropriate.

**16.4** MAG reserves the right to demand any and all outstanding monetary obligations due and payable immediately, without regard to any extension of credit or otherwise, in the event MAG determines and/or discovers that the information provided by Customer is inaccurate, fraudulent, or misrepresented in any material respect, regardless of any intent or willful conduct of Customer.

## **17. Waiver of Consumer Rights**

Customer waives any and all rights, claims, causes of action and remedies provided for under the Florida Deceptive and Unfair Trade Practices Act (§§501.201, et seq., Florida Statutes) and/or Texas Deceptive Trade Practices Consumer Protection Act (§§ 17.41, et seq., Business & Commerce Code), a law which gives consumers special rights and protections. Customer acknowledges that it has consulted with an independent attorney of its own selection, and otherwise voluntarily consents to this waiver.

## **18. Waiver of Jury Trial**

THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY LAWSUIT BROUGHT BY ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

## **19. Notices**

All notices, requests, demands, or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given upon receipt in person, or by overnight courier, facsimile, e-mail transmission, or upon the expiration of three (3) days after the date sent via certified mail return receipt requested. All notices sent by mail, courier service or other related service shall be sent to MercFuel, Inc., 3808 World Houston Parkway, Suite B, Houston, Texas, 77032, and if to Customer, at the address provided by Customer. Either party may by written notice to the other change the address, telephone numbers or facsimile number, or electronic messaging system details to which notices or other communications are to be sent.

## **20. Waiver**

Failure by MAG to enforce any of its rights hereunder shall not constitute a waiver of such rights or any other rights hereunder. No waiver or amendment of any of the provisions herein shall be effective unless it is in writing, and signed by MAG and Consultant. Any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

## **21. Amendments**

MAG may revise these Terms and Conditions at any time without notice. Customer should request updated Terms and Conditions from MAG or revisit this site periodically to make sure Customer is aware of the most recent Terms and Conditions because any such modification, amendment or revision will be binding on Customer. Customer's use of the website, or purchase of Fuel or Services after such changes constitutes Customer's agreement to any such changes, amendments, modifications or revisions. If viewing these Terms and Conditions on MAG's website, Customer is further advised to check each page you visit on this site.

Some locations may have special additional Terms and Conditions that apply to use of or interaction with that location. The terms and conditions applicable to any given page on this site may also be changed at any time without notice. Your use of that location constitutes your acceptance of those special additional terms and conditions.

## **22. Binding Effect / Assignment**

This Agreement shall be binding upon the parties hereto, their heirs, legal representatives, successors and assigns. Customer shall not assign any right or obligation arising out of these Terms and Conditions without the prior written consent of MAG. Any attempt by Customer to assign or delegate any obligation hereunder shall be deemed null and void.

## **23. Headings**

The headings used herein are for convenience only and shall not control or affect the meaning or construction or limit the scope or intent of any of the provisions hereunder.

## **24. Severability / Reformation**

The invalidity or unenforceability, in whole or in part, of any covenant, promise or undertaking, or any section, subsection, paragraph, sentence, clause, phrase or word or of any provision hereunder by any tribunal sitting, in whole or in part, for that purpose, shall not affect the validity or enforceability of the remaining portions thereof. Moreover, the parties hereby agree that any invalid provision shall be reformed by the tribunal so as to be valid and enforceable to achieve as nearly as possible the original purpose and intentions of the parties.

## **25. Governing Law, Jurisdiction and Venue**

These Terms and Conditions, including any other written agreement between the parties, are deemed to have been delivered in the state of Texas and shall in all respects be governed by, and construed, enforced and governed in all respects in accordance with the internal substantive laws of the state of Texas applicable to contracts made in such state by residents thereof and as if performed entirely within such state, including all matters of construction, validity and performance. These Terms and Conditions and any amendment hereto may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. The parties consent to the exclusive jurisdiction of the State courts located in Texas and venue of any lawsuit or legal proceeding shall be in the District Courts of Harris County, Texas, or the United States District Court of the Southern District of Texas, Houston Division, except to the extent that the law of some other jurisdiction may be mandatorily applicable to proceedings taken for the enforcement by MAG of its rights hereunder; provided that any remedies herein provided which shall be valid under the laws of the jurisdiction where proceedings for the enforcement hereof shall be taken shall not be affected by any invalidity hereof under the laws of the State of Texas.

## **26. Attorney Fees**

In the event of any legal action to collect amounts due for aviation fuel sold or services provided hereunder, MAG shall be entitled to recover all reasonable costs, expenses and attorneys' fees incurred in connection with such litigation.

## **27. Survival**

Any termination of these Terms and Conditions shall not, however, affect the ongoing provisions of these Terms and Conditions which shall survive such termination in accordance with their terms.