

GENERAL CONDITIONS

1. DEFINITIONS

In this Agreement unless the context otherwise requires:-

- "Agreement"** means this Cargo Aircraft Charter Agreement including the Schedule and any appendices or attachments thereto.
- "Aircraft"** means any aircraft for the time being operated in connection with any Flight.
- "Base Date"** means the base date stated in the Schedule.
- "Cargo"** means anything carried or to be carried in the Aircraft except mail, or baggage carried under a passenger ticket and baggage check, but includes baggage moving under an air waybill or shipment record.
- "the Carrier"** means the operator of the Aircraft as specified in the Schedule.
- "Charter Price"** means the amount set out in the Schedule.
- "Flight"** means a flight described in the Schedule.
- "Schedule"** means the schedule to this Agreement; and
- "STD"** means the scheduled departure time of any Flight.

2. CHARTER PRICE AND PAYMENT

- 2.1 The Charterer shall pay to the Supplier the Charter Price at the time, in the currency, in the amounts and to the address specified in accordance with the provisions set out therefor in the Schedule.
- 2.2 The Charter Price specified in the Schedule is based on aviation fuel costs calculated on the Base Date. If for any reason whatsoever there shall be any increase in the cost of aviation fuel between the Base Date and the date of operation of any Flight, then the Charterer shall pay to the Supplier on demand such amount as shall fully compensate the Carrier for such increase.
- 2.3 Time of payment of the Charter Price shall be of the essence of this Agreement.
- 2.4 No set-off or counterclaim (whether arising in respect of this Agreement or any other carriage) shall entitle the Charterer to withhold payment of any sums whatsoever payable to the Supplier under or by reason of this Agreement. In the event that the Charterer is required to withhold any part of any payment payable by it to the Supplier hereunder or to make any deduction therefrom, it shall pay such additional amount as may be necessary so that, after making such withholding or deduction, the Supplier shall receive from the Charterer the full amount of such payment.

3. AIRCRAFT AND CREW

- 3.1 The Carrier shall be responsible for providing the Aircraft at the commencement of the Flight properly manned and equipped fuelled and airworthy in accordance with the laws and regulations of the state of registration of the Aircraft and the Aircraft shall be

operated in accordance with all applicable laws and regulations during the period of the Flight(s).

- 3.2 The times set out in the Schedule are approximate and not guaranteed and the Carrier is entitled to deviate from the Flight schedule and/or the duration of the Flight and/or to reduce the maximum payload. The captain of the Aircraft shall have complete discretion concerning preparation of the load carried and its distribution and of the Aircraft for flight, whether or not a Flight shall be undertaken or abandoned once undertaken, any deviation from proposed route, where landing shall be made and all such other matters relating to the operation of the Aircraft and the Charterer shall accept all such decisions as final and binding.
- 3.3 All ground and operating personnel including cabin staff are authorised to take orders only from the Carrier unless specific written agreement shall first have been obtained from the Carrier whereby certain defined instructions may be accepted by such personnel from the Charterer.

4. TRAFFIC DOCUMENTS

The Carrier shall be responsible for supplying or procuring the supply of air waybills and all other necessary documents relating to the carriage of the Cargo and the Charterer shall give to the Supplier all necessary information and assistance to complete such documents as soon as possible after the making of this Agreement and, in any event, in sufficient time to be completed for issue to consignors.

5. ACCEPTABILITY OF CARGO

- 5.1 The Charterer shall deliver the Cargo at the place nominated in the Schedule properly packaged to the satisfaction of the Carrier.
- 5.2 The Carrier reserves the right without assuming any liability to refuse carriage of the Cargo in any circumstances whatsoever including, but not limited to, where:-
- 5.2.1 The transportation, or the exportation or importation of the Cargo is prohibited by the laws of any country from, to or over which the Aircraft is to be flown;
 - 5.2.2 the Cargo is packed in a manner unsuitable for carriage by aircraft;
 - 5.2.3 the Cargo is not accompanied by the requisite shipping documents;
 - 5.2.4 the Cargo is likely to endanger aircraft, persons or property, or cause annoyance to passengers;
 - 5.2.5 the carriage of Cargo is excluded by the Carrier's General Conditions of Carriage.
- 5.3 Any Cargo to be carried pursuant to this Agreement shall be deemed to have been accepted for transportation without a declaration of value or without an interest in delivery irrespective of any statement of value indicated on the air waybill or otherwise.
- 5.4 The Charterer shall be solely responsible for ensuring that the Cargo is packed in an appropriate way for air carriage so as to ensure that it can be carried safely on the Flights with ordinary care in handling and so as not to injure or damage any persons, goods or property.

- 5.5 Dangerous goods, live animals, perishables, fragile goods, human remains, and other special Cargo are acceptable only under the conditions set forth in the Carrier's General Conditions of Carriage applicable to the carriage of such Cargo.
- 5.6 Loading and unloading shall be at the risk of the Charterer.
- 5.7 The Charterer shall indemnify and keep indemnified the Supplier and its officers, employees, agents and sub-contractors against any and all costs or expense whatsoever incurred by the Carrier or the Supplier in respect of the carriage of any cargo. The indemnity contained in this Clause 5.7 shall survive the termination of this Agreement.
- 5.8 Without prejudice to the generality of Clause 5.7 above, the Charterer shall pay to the Supplier on demand any costs incurred by the Carrier in returning or transporting any Cargo to the point of origin of the Flight or to any other point pursuant to the direction of any competent authority in any country to, from or over which the Aircraft is flown.

6. OBLIGATIONS OF THE CHARTERER

- 6.1 The Charterer shall comply with all the requirements of the Supplier in relation to the performance of all of the Charterer's obligations as set out in this Agreement.
- 6.2 The Charterer shall hold harmless and indemnify the Supplier from and against all claims, demands, liabilities, actions, proceedings and costs of any kind whatsoever arising from any default on the part of the Charterer in complying with any of the provisions of this Agreement.
- 6.3 The Charterer shall be responsible for the issue and delivery of all airwaybills and other necessary documents to all consignors of the Cargo.
- 6.4 The Charterer shall comply in all respects with the conditions of all permits, licences and authorities granted for the Flights.
- 6.5 The Charterer shall comply and will procure compliance on the part of all owners or other persons interested in the Cargo with all applicable laws, customs and other government regulations of any country to, from or over which the Cargo may be carried including those relating to the packaging, carriage or delivery of the Cargo and shall furnish such information and deliver such documents as may be necessary to comply with such laws and regulations.
- 6.6 The Supplier shall be under no liability whatsoever to the Charterer or to any other person for loss or expense due to the Charterer's failure to comply with the provisions of Clauses 6.4 and/or 6.5 hereof. The Charterer shall be liable to the Supplier for any damage suffered by the Supplier occasioned by the failure of the Charterer to comply with these provisions.
- 6.7 The Carrier and the Broker shall not be liable for the refusal by the Carrier to carry any Cargo if the Carrier reasonably determines in good faith that such a refusal is required by any applicable law, government regulation, demand, order or requirement.
- 6.8 The Charterer shall be solely responsible for the correctness of the particulars and statements relating to the Cargo in any shipping documents and the Charterer shall indemnify and keep indemnified the Supplier against all damage suffered the Supplier or by any other person to whom the Supplier is liable, by reason of the irregularity, incorrectness or incompleteness of any particulars and statements in any shipping documents relating to the Cargo.

6.9 The indemnities contained in this Clause 6 shall survive the termination of this Agreement.

7. EXCLUSION OF LIABILITY/INDEMNITY

7.1 The Supplier shall be under no liability to the Charterer for any failure by it to perform its obligations under this Agreement arising from force majeure, labour disputes, strikes or lock-outs or any other cause beyond the control of the Supplier including accidents to or failure of the Aircraft, its engines or any other part thereof or any machinery or apparatus used in connection therewith.

7.2 The Supplier shall be under no liability to the Charterer or to the owners of or other persons having an interest in the Cargo in respect of any delay or variation to or cancellation of any Flight which results from the acts or omissions of the Carrier, or for any failure by the Carrier to perform any Flight and the Charterer acknowledges to the Supplier that in any such event the Charterer shall only have recourse against the Carrier.

7.3 The Charterer shall indemnify the Supplier against any claim by any person arising out of any such variation, cancellation, non-availability or failure to perform referred to in Clause 7.2.

7.4 The Charterer shall indemnify the Supplier against any loss, damage, liabilities, costs or expenses of whatsoever nature caused to be suffered or incurred by the Supplier and its officers, employees agents or subcontractors arising out of any act or omission of the Charterer or its officers, employees or agents whether arising in contract or tort (including negligence) or otherwise.

7.5 The Carrier shall not be deemed to undertake any carriage to which this Agreement relates as a common carrier.

7.6 Carriage performed under this Agreement shall be subject to the conditions of carriage contained or referred to in the traffic documents of the Carrier including its General Conditions of Carriage.

7.7 The indemnities contained in this Clause 7 shall survive the termination of this Agreement.

7.8 The carriage of the Cargo on international flights shall be governed by the rules and limitations established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, Poland, on October 12, 1929, as amended by the Protocol signed at The Hague, Netherlands, on September 28, 1955 (herein collectively called the "Warsaw Convention") and/or by the rules and regulations established by the Montreal Convention on the Unification of Certain Rules for International Carriage signed in Montreal on 28th May 1999 ("the Montreal Convention") which rules and limitations shall, to the extent such Warsaw Convention and/or the Montreal Convention is/are applicable, apply to the Flight(s) hereunder.

8. TERMINATION

This Agreement may be terminated immediately upon notice from the Supplier to the Charterer upon the occurrence of any of the events specified below:-

8.1 the Charterer defaults in the payment of any amount payable hereunder on due date; or

- 8.2 the Charterer is in breach of any of its other obligations hereunder which if capable of remedy has not been remedied within [14] days of receipt of written notice from the Carrier requiring remedy of such breach; or
- 8.3 the Charterer admits in writing its inability to pay or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1996); or
- 8.4 an administration order is made in relation to the Charterer; or
- 8.5 proceedings are started or any steps are taken for the winding-up or dissolution of the Charterer or for the appointment of a receiver, administrative receiver, trustee, supervisor or similar officer of the Charterer or any or all of its revenues and assets, or the Charterer is unable to pay its debts ;or
- 8.6 an encumbrancer takes possession of any of the Charterer's revenues or assets, or any security created by the Charterer becomes enforceable and the mortgagee or chargee takes steps to enforce the same (including without limitation by appointing a receiver or administrative receiver to any of the assets of the Charterer); or
- 8.7 the Charterer convenes a meeting or takes any steps for the purpose of making or proposes to enter into or make any arrangement or composition for the benefit of its creditors; or
- 8.8 a distress or other execution is levied or enforced upon or against any part of the Charterer's property; or
- 8.9 the Charterer suspends or ceases or threatens to suspend or cease to carry on its business or (except in the ordinary course of business) it sells, leases, transfers or otherwise disposes of or threatens to dispose of all or any substantial part of its undertakings or assets (whether by a single transaction or by a series), or all or any substantial part of its assets are seized or appropriated by or on behalf of any governmental or other authority or are compulsory acquired; or if any thing analogous to the events referred to in 8.3 to 8.8 above occurs in any jurisdiction in which the Charterer conducts its business; or
- 8.10 in the opinion of the Carrier a material adverse change occurs in the business, assets, condition, operations or prospects of the Charterer; or
- 8.11 any of the events specified in this Clause 8 occur in relation to any guarantor of the Charterer's obligations hereunder.

9. EFFECT OF DEFAULT

- 9.1 If this Agreement is terminated under Clause 8, then the Charterer shall (without prejudice to any other rights and remedies which the Supplier may have) pay forthwith to the Supplier all amounts then due and unpaid to the Supplier hereunder, together with interest thereon (if any) at the rate specified in the Schedule and the Charterer shall indemnify and keep the Supplier indemnified against all loss, damage, costs, expense, claim or liability incurred or sustained by the Supplier as a result of such termination and the Supplier shall be entitled to retain any initial deposit paid by the Charterer pursuant to any provisions therefor set out in the Schedule.
- 9.2 The indemnities contained in this Clause 9 shall survive the termination of this Agreement.

10. SET-OFF AND APPLICATION OF MONEYS

The Supplier may at any time without notice to the Charterer at its discretion set-off any amounts paid by the Charterer to the Supplier hereunder against any amounts then due to the Supplier under this Agreement or against any amount due at such time from the Charterer to the Supplier.

11. GENERAL

- 11.1 Any notice required to be given under this Agreement shall be in writing and shall be deemed duly given if left at or sent by first class post or facsimile message to the address herein stated of the party to whom it is to be given. Any such notice shall be deemed to be served at the time when the same is handed to or left at the address of the party to be served and if served by post on the day (not being a Sunday or Public Holiday) next following the day of posting or if served by facsimile message upon the day such facsimile message is sent.
- 11.2 This Agreement sets out the entire agreement and understanding between the parties or any of them in connection with the charter of the Aircraft as described herein and supersedes any prior representations, agreements, conditions, negotiations and undertakings whether made orally or in writing in relation thereto.
- 11.3 No party has relied on any warranty or representation of any other party except as expressly stated or referred to in this Agreement.
- 11.4 No claims shall be made against the Broker in respect of any representation warranty indemnity or otherwise arising out of or in connection with the charter of the aircraft except where such representation, warranty or indemnity is expressly contained or incorporated in this Agreement.
- 11.5 No variation of this Agreement shall be effective unless made in writing and signed by both parties.
- 11.6 The Charter Price, payment terms and other commercial terms contained in this Agreement are confidential to the parties and may not be disclosed to third parties without prior approval.
- 11.7 No failure by the Supplier to exercise and no delay by the Supplier in exercising any right, power of privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies provided by law.
- 11.8 The Charterer shall not be entitled to assign the benefit of this Agreement.

12. CHOICE OF LAW, SUBMISSION TO JURISDICTION

- 12.1 This Agreement shall be governed by and interpreted in accordance with English law and the parties hereto hereby submit to the exclusive jurisdiction of the English Court.