

OPEN AERO LTD - STANDARD TERMS & CONDITIONS FOR THE CHARTER OF AIRCRAFT

These conditions apply to all chartering of aircraft from Open Aero International Limited, to the exclusion of all other terms, conditions, warranties, and representations, except any specifically agreed between the parties in writing.

1 DEFINITIONS

In these Conditions the following expressions shall have the following meanings:-

Open Aero – Open Aero International Limited

The Charterer - any person, firm or body corporate chartering, or offering to charter, any aircraft from the Carrier.

The Aircraft - any aircraft which is the subject of a charter agreement between Open Aero and the Charterer.

The Flight Schedule - the place of departure, place of destination and any stopping points, together with any indications of departure and arrival times, agreed between Open Aero and the Charterer.

The Agreement - any agreement between Open Aero and the Charterer for the charter of aircraft from Open Aero.

2 AIRCRAFT AND CREW

Open Aero shall provide for the Charterer's use of the Aircraft, manned and equipped for the performance of the Flight Schedule. Open Aero shall provide no services during flight unless agreed in writing.

3 CARRIER'S DISCRETION

If the Aircraft shall for any reason (whether before or after the commencement of the Flight Schedule) become incapable of undertaking or continuing all or part of the Flight Schedule Open Aero may at its discretion substitute therefore one or more aircraft of the same or another type and the provisions of the Agreement shall apply mutatis to the substituted aircraft. If Open Aero does not substitute another aircraft it shall not be under any liability to the Charterer and the Charterer shall remain liable to pay for that part of the Flight Schedule (if any) that has been performed at the time the Aircraft becomes so incapable.

4 CAPTAIN'S DISCRETION

The Captain of the Aircraft shall have absolute discretion:

- (a) to refuse any passenger(s), baggage, cargo or any part thereof
- (b) to decide what load may be carried on the Aircraft and how it shall be distributed
- (c) to decide whether and when a flight may be safely undertaken and where and when the Aircraft should be landed.

5 LOADING AND PACKING

(a) Subject as otherwise provided in these Conditions loading and unloading of the Aircraft shall be at the expense of Open Aero

(b) The Charterer shall ensure that any goods to be transported are sufficiently and properly packed for carriage and shall supply adequate dunnage and tie-down material taking into account all reasonable demands of Open Aero and the Captain and where necessary complying with IATA Restricted Articles Regulations, a copy of which is available for inspection at the offices of Open Aero

(c) Charges for ground transportation warehouse handling warehousing and customs clearance shall be at the expense of the Charterer.

6 UNUSED CAPACITY

Open Aero shall be entitled at its own discretion and without compensation to the Charterer to use any part of the carrying capacity of the Aircraft unused by the Charterer, except by means of the carriage of additional passengers, and to use any part of the Flight Schedule unused by the Charterer.

7 CHARTER PRICE

The Charterer shall pay to Open Aero the charter price immediately on receipt of the invoice without any set off or deduction whatsoever unless a different credit period has been agreed in writing by Open Aero. For the purposes of this clause time shall be of the essence of this Agreement and non-payment shall entitle Open Aero to suspend or cancel the Flight Schedule without liability and without prejudice to Open Aero's right to claim from the Charterer the monies remaining unpaid.

8 INTEREST ON DELAYED PAYMENT

If the Charterer shall delay in making any payment to Open Aero when due, interest on the amount overdue will be payable at 2% per month or part of a month, compounded monthly.

9 CARRIER'S PROTECTION AGAINST INCREASED COST

In the event of there being any increase beyond the control of Open Aero in the cost of Open Aero's performing any of its obligations under the Agreement between the date of the Agreement and the completion of the Flight Schedule Open Aero may give written notice thereof to the Charterer and the amount payable by the Charterer shall be increased by the amount directly attributable to such increase incurred more than 7 days after receipt of such notice by the Charterer unless the Charterer has

terminated the Agreement pursuant to clause 15 (c) hereof.

10 TAXES AND CHARGES

Unless expressly included the charter price does not include any taxes levies or charges assessed or imposed by any taxing or airport authority directly upon the execution or performance of this Agreement or the carriage embarkation or disembarkation of passengers or the loading or unloading of baggage and/or goods all of which shall be paid by the Charterer on demand.

11 NON-PERFORMANCE OR DELAYS

(a) If the performance of the flight is prevented or delayed by the Charterer or anyone acting on its behalf including (but not limited to) any passenger arriving later than 20 minutes before scheduled departure time Open Aero may at its discretion and without liability depart as scheduled or alternatively elect that demurrage shall run against the Charterer at a daily rate equivalent to TWO hours flying at the current charter rate for the Aircraft.

(b) In the event of non-performance or delay caused by actions of third parties, labour difficulties, force majeure (including but not limited to inclement weather) or technical breakdown or accident to the Aircraft or any part thereof or any machinery to be used in relation to the Aircraft Open Aero shall use all reasonable endeavours to perform or continue the Flight Schedule but otherwise shall have no liability to the Charterer.

(c) The Charterer shall be liable to pay such portion of the charter price as shall be proportionate to that part of the Flight Schedule which has been performed together with all passengers' expenses and any additional charges and expenses payable by the Charterer pursuant hereto.

12 ADDITIONAL FLIGHTS

If at the request of the Charterer the Aircraft is used by the Charterer otherwise than in accordance with the Flight Schedule the Charterer shall pay to Open Aero in respect of such use a sum calculated at the basic hourly rate applying to the Flight Schedule which sum shall be notified by a duly authorised officer or employee of Open Aero and shall thereupon become due and payable together with all fees and charges imposed by law in respect of each flight including without prejudice to the generality of the foregoing landing fees, hangarage fees, parking fees, air navigation fees, ground service and handling fees, customs fees, airport surcharges, accommodation, meals and refreshment charges and all pilot and crew expenses thereby incurred.

13 DEPARTURE FROM FLIGHT SCHEDULE

Open Aero shall use all reasonable endeavours to complete the Flight Schedule but shall be entitled without liability to depart from the Flight Schedule if necessary in its opinion and any additional expenses (including the fees and charges referred to in clause 12 hereof) shall be borne by the Charterer.

14 DIVERSIONS

If for any reason the Aircraft is diverted from any airfield or destination shown in the Flight Schedule to another airfield the journey to the said airfield of destination shall be deemed to be complete when the Aircraft arrives at the other airfield.

15 TERMINATION BY EITHER PARTY

Subject to the provisions of clauses 16 and 17 hereof either party may terminate the Agreement by giving written notice to the other

- (a) at any time before the time specified for the commencement of the first journey set out in the Flight Schedule or
- (b) at any time if the other party commits an act of bankruptcy or becomes insolvent or enters into any arrangement or composition with its creditors or being any individual dies or being a partnership is dissolved or being a corporation passes a resolution for or has a petition presented for winding up (otherwise than for the purpose of merger or re-construction only) or
- (c) in the case of the Charterer only by giving to Open Aero written notice of termination within 7 days of receipt by it of notice of increase from Open Aero as referred to in clause 9 hereof.

16 TERMINATION BY CARRIER

If the agreement is terminated by Open Aero (a) pursuant to clause 15(a) hereof then the Charterer shall not be liable to pay the charter price and Open Aero shall be under no further liability to the Charterer by reason of such termination or (b) pursuant to clause 15(b) hereof then the Charterer shall be liable to pay the appropriate cancellation charges referred to in clause 18 together with such portion of the charter price as shall be proportionate to that part of the Flight Schedule which has been performed and additional charges and expenses payable by the Charterer pursuant

hereto and Open Aero shall be under no further or other liability to the Charterer by reason of such terminating.

17 TERMINATION BY CHARTERER

If the Agreement is terminated by the Charterer-

- (a) pursuant to clause 15(a) hereof then the Charterer shall be liable to pay to Open Aero the appropriate cancellation charge referred to in clause 18 and
- (b) pursuant to clauses 15(a) and 15(b) hereof then the Charterer shall be liable to pay such portion of the charter price as shall be proportionate to that part of the Flight Schedule which has been performed together with any additional charges and expenses payable by the Charterer pursuant hereto
- (c) pursuant to clause 15(c) hereof then the Charterer shall be liable to pay such portion of the charter price and charges and expenses as aforesaid.

18 THE CANCELLATION CHARGE

- (a) If notice of cancellation received more than seven days before scheduled departure time ten percent of the total charter price
- (b) If notice of cancellation received less than seven days but more than 48 hours before scheduled departure time twenty-five percent of the total charter price
- (c) If notice of cancellation received less than 48 hours before scheduled departure time fifty percent of the total charter price
- (d) If notice of cancellation received at or after scheduled departure time eighty percent of the total charter price or such portion thereof as is proportionate to that part of the Flight Schedule already performed (whichever is the greater) together in either case with any additional amounts payable by the Charterer hereunder.

19 CARRIER'S LIABILITY FOR DEATH AND BODILY INJURY

With regard to the liability of Open Aero for damage sustained as a result of death, wounding or bodily injury in an accident taking place on board the aircraft (or in the course of any of the operations of embarking or disembarking) on a flight operated by Open Aero:

- (a) Open Aero's liability will not be subject to any financial limit, be it defined by law, convention or contract
- (b) for any damages up to the sum of 100,000 Special Drawing Rights, Open Aero shall not exclude or limit its liability by proving that it and its agents have taken all necessary measures to avoid the damage or that it was impossible for it or them to take such measures:
- (c) Open Aero shall without delay, and in any event not later than 15 days after the identity of the natural person entitled to compensation has been established, make such advance payments to such person as may be required to meet immediate economic needs on a basis proportional to the hardship suffered (such amount to be not less than the equivalent of 15,000 Special Drawing Rights per passenger in the event of death). Any such advance payment shall not constitute recognition of liability and may be off-set against any subsequent sums paid by Open Aero, but is only returnable if the damage was caused by, or contributed to by, the negligence of the passenger or of the person who received the payment, or if the person to whom the payment was made was not the person entitled to compensation:

Provided that Open Aero reserves all other defences available to it (whether under the Convention or otherwise) and all rights of recourse against any other person, including (without limitation) rights of contribution and indemnity.

20 LIABILITY OF CARRIER

- (a) Open Aero does not undertake any carriage as a common carrier
- (b) except as expressly provided in these Conditions Open Aero shall not be liable to the Charterer in any manner whatsoever (whether arising from the negligence of Open Aero its employees or agents or otherwise) for any loss or damage whatsoever (including without limitation consequential loss) provided that this shall not exclude or restrict Open Aero's liability for death or personal injury resulting from the negligence of Open Aero its employees or agents. Carriage shall be subject to the rules and limitation relating to liability and to all other provisions established by the Warsaw Convention or by that Convention as amended by the Hague Protocol and or by any other Treaty applicable to such carriage insofar as such carriage is "international carriage" as therein defined. Carriage which is not so governed shall be subject to all applicable laws which extend provisions of the Convention to such carriage or which otherwise limit Open Aero's liability
- (c) The Charterer agrees to indemnify Open Aero and keep Open Aero indemnified against all liabilities claims costs and expenses whatsoever incurred to, due to or claimed by any third party as a result of any such reason or circumstance as is mentioned in clause 19 (b), subject to the exception and proviso mentioned in that clause.

21 WRONGFUL ACTS OF CHARTERER

The Charterer shall indemnify Open Aero against all claims and expenses (including legal fees and costs) in respect of any liability of Open Aero to third persons (including but not limited to passengers consignors and consignees) for any loss or damage whatsoever (including costs and expenses on a full indemnity basis) arising out of any wrongful act of omission of the Charterer its servant or agents or any passenger carried by authority of Open Aero.

22 TICKETS

Open Aero shall be responsible for the issue of all necessary passenger tickets baggage checks and air way bills and the Charterer shall give to Open Aero in good time all information and assistance required to complete such documents. Open Aero shall at all times keep the Charterer indemnified against all liabilities claims costs and expenses whatsoever which result from any failure to issue a passenger ticket baggage check or air way bill. Provided however that where passenger tickets and/or baggage checks are delivered to the Charterer or its agent by Open Aero for distribution to passengers the foregoing indemnity shall not apply and the Charterer warrants and undertakes to Open Aero that if will effect delivery of the said tickets to the passengers at a reasonable time prior to the commencement of the Flight Schedule and shall indemnify Open Aero against all liabilities costs and expenses which result from any failure by Open Aero to effect such delivery.

23 LAWS AND TRAFFIC REGULATIONS

The Charterer will comply with and take all reasonable steps to cause all passengers and owners of freight carried to observe and comply with all traffic regulations of Open Aero and all customs police public health and other laws and regulations which are applicable in the countries in which flights are originated landings are made or over which flights are made. The Charterer warrants that all passengers will hold all necessary passports visas health and other certificates necessary to secure transit through any immediate points and entry into the country of destination of the flight and in the event that the appropriate immigration authorities refuse entry to any passenger in circumstances where Open Aero is required to transport such passengers to the point of origin of the flight or to any other point then the cost of so doing shall be repayable by the Charterer to Open Aero upon demand. The Charterer will repay to Open Aero all fines, detention costs and other charges. If Open Aero has to pay any fine, penalty, fees or charges (such as detention costs) because the Charterer, its servants, or agents or any passenger carried with the authority of the Charterer has failed to obey any laws or regulations, or other travel requirements of the country to which the Aircraft has flown or to produce the necessary documentation needed by that country, the Charterer will repay the amount that has been paid by Open Aero as a result.

24 ASSIGNMENT AND VICARIOUS PERFORMANCE

The Charterer shall not be entitled to assign the benefit of this Agreement to any other person without the consent in writing of Open Aero but Open Aero may procure the vicarious performance of its obligations hereunder by some other person or company.

25 NOTICES

Any notice required to be given under this Agreement, shall be given by delivering it at or by sending it by telex, recorded delivery or registered post to the address of the addressee shown in the Agreement. If sent by recorded delivery or registered post it shall be deemed to have been given on the day on which it would have been received in due course of post.

26 CHANGES IN AGREEMENT AND WAIVER

- (a) Alterations and additions to these Conditions or the Agreement will only be binding if made in writing and signed by Open Aero and the Charterer.
- (b) The Charterer cannot rely on any verbal undertaking from or given in the name of Open Aero which is different from or additional to these Conditions or the terms of the Agreement
- (c) The rights of neither party shall be prejudiced or restricted by any indulgence or forbearance granted by it and no waiver if any breach shall operate as a waiver of any other or further breach.

27 HEADINGS

The headings in these Conditions are for convenience only and shall not affect interpretation.

28 APPLICABLE LAW

The Agreement and these Conditions shall be governed by and construed in accordance with English Law.