

## 1. INTRODUCTION

1.1. The Carrier is the entity identified in the Charter Quotation (the **Carrier**).

1.2. These Terms and Conditions shall apply to all charter flights operated or to be operated by the Carrier, and to all offers, proposals and quotations of the Carrier for operating such charter flights, regardless of whether the Charterer qualifies as consumer or business. These Terms and Conditions shall also apply to charter flights operated by a sub-carrier retained by the Carrier for the Charterer, and to all offers, proposals and quotations of the Carrier relating to such sub-carrier charter flights. The terms and conditions of such sub-carrier shall apply in addition.

1.3. In case of discrepancies between these Terms and Conditions and the Charter Quotation, the terms of the Charter Quotation shall prevail.

1.4. Any terms and conditions of the Charterer, whether or not contradictory to these Terms and Conditions, shall not apply to the provision of services by the Carrier, unless such terms and conditions have been agreed in writing by authorised signatories of the Carrier.

1.5. Any amendment to these Terms and Conditions must be in writing and signed by authorised signatories of the Carrier.

## 2. DEFINITIONS

Aircraft	the aircraft referred to in the Charter Quotation, or any substitute aircraft with which the Charter is performed.
Charter	the flight(s) described in the Flight Schedule.
Charter Agreement	the Charter Quotation duly signed by or on behalf of the Charterer together with these Terms and Conditions and the terms and conditions of the sub-carrier, if any.
Charter Price	the charter price specified in the Charter Quotation.
Charter Quotation	the charter proposal or quotation provided to the Charterer by the Carrier detailing, among other things, the Flight Schedule and the Charter Price.
Charterer	the person, firm, company or legal entity on whose behalf the Charter Quotation is signed.
Flight Schedule	the schedule for the flight or flights, indicating the place of departure, the place of destination and any stopping points, the estimated departure and arrival times and the number of passengers; as amended from time to time by mutual agreement, or for other reasons set forth herein.
Convention	means any international convention that is applicable to the carriage of passengers on any flight performed or to be performed under the Charter Agreement.

## 3. CHARTER AGREEMENT

3.1. After the Charterer has returned the duly signed Charter Quotation to the Carrier, the Carrier (or a sub-carrier, as the case may be) will perform the Charter for the Charterer with the Aircraft manned and equipped for the performance of the Charter, subject to the following conditions:

- receipt of the Charter Price by the Carrier at least 48 hours prior to the scheduled departure time (unless late payment has been pre-approved by the Carrier in accordance with clause 4.2.3);
- Aircraft serviceability, availability and/or owner's approval (if required);
- all required permits and airport slots being obtained; and
- any additional conditions stated in the sub-carrier terms, if any, being fulfilled.

3.2. If the Aircraft stated in the Charter Quotation becomes unserviceable or otherwise unavailable to carry out the Charter or any individual flight listed in the Flight Schedule, the Carrier shall be entitled (but for the avoidance of doubt, not obligated) to substitute it for any equivalent aircraft operated either by the Carrier or by a properly licensed substitute carrier subject to the Charterer's prior approval (which shall not be unreasonably withheld). In the event that any flight is to be operated by a sub-carrier, any additional conditions of that sub-carrier shall apply.

3.3. If the Aircraft shall for any reason (whether before or after commencement of the Charter) become unavailable or incapable of undertaking or continuing all or part of the Charter, and the Carrier for any reason does not substitute the Aircraft, the remaining part of the Charter shall be cancelled. The Carrier shall reimburse the amount paid by the Charterer in respect of the cancelled flight or flights listed in the Flight Schedule but shall not otherwise be under any liability to the Charterer.

3.4. The Carrier shall be entitled at any time to change the Flight Schedule or cancel the Charter due to safety (including any health protocol), operational or technical reasons or due to weather conditions, or reason not under the control of the Carrier, without the Carrier being under any liability to the Charterer.

3.5. The Carrier is not and does not undertake any carriage as a common carrier (that would offer scheduled air service to the general public) nor does the Carrier accept the obligations of a common carrier and no such obligations shall be implied.

## 4. CHARTER PRICE AND ADDITIONAL COSTS

### 4.1. Charter Price

4.1.1. The Charter Price includes aircraft operating costs including crew, fuel and maintenance, air navigation, en route and approach charges, airport and handling fees, crew allowances, standard inflight catering (unless specified otherwise in the Charter Quotation) and refreshments, newspapers and magazines, passenger and cargo insurances and passenger taxes, crew accommodation and transport.

4.1.2. Any and all other costs are not included in the Charter Price and shall be paid by the Charterer to the Carrier in addition, unless otherwise stated in the Charter Quotation. In particular, but without limitation, the Charter Price excludes the following: any costs relating to trip extensions and modifications not covered by the Charter Quotation and delays, whether such changes to the Flight Schedule are based on Charterer and/or passenger requests, or due to safety (including any health protocol), operational or technical reasons or weather conditions (excluding the costs of repairing the Aircraft, but including the costs of arranging for a replacement aircraft); costs arising from Charterer and/or passenger requests; increase in fuel price and other cost increases occurring after the date of the Charter Quotation; fuel and insurance surcharges; de-icing charges, weather related or other hangarage costs; airfield fire category upgrades; catering beyond standard; extraordinary cleaning costs; passenger transportation landside; access to VIP lounges and terminals; out of normal hours airport charges; communication charges using satcom or other means of communication.

4.1.3. In addition, the Charterer shall where notified pay to the Carrier a 15% disbursement fee on all third-party services (except crew accommodation and transportation, and de-icing charges) not included in the Charter Quotation.

### 4.2. Payment

4.2.1. The Charterer shall pay the Charter Price (plus VAT or GST if applicable), any additional costs and fees in relation to the Charter that are not included in the Charter Price and any applicable cancellation fee and damages pursuant to clause 5 below.

4.2.2. All payments shall be made in the currency specified therein and without deduction, withholding, set off or counterclaim, by wire transfer to the bank account mentioned in the Charter Quotation.

4.2.3. The Charter Price must arrive in the Carrier's account in full at least 48 hours prior to the scheduled departure time. Late or non-payment will constitute a repudiation by the Charterer of the Charter Agreement and will be treated as a cancellation, entitling the Carrier to receive a cancellation fee in accordance with clause 5.6 below; unless late payment is approved by the Carrier in writing, in which case the Carrier will be entitled to charge interest for late payment at the rate of 2% per month starting from the due date through to the date on which payment of the relevant amount has been made in full.

Any costs that cannot be paid in advance of the scheduled departure time shall be paid within the time period instructed by the Carrier and in any case, no later than within 10 days of the date of the Carrier's invoice.

4.2.4. Notwithstanding any other right of the Carrier stated herein, if the Charterer fails to pay an invoice by the due date, the Carrier may charge default interest of 2% per month on the full invoice amount without further notice starting from the due date through to the date on which payment of the invoiced amount has been made in full.

## 5. CANCELLATION

5.1. Except as otherwise agreed in the Charter Quotation, in the event of cancellation of the Charter or any part of it by the Charterer before the Charter is scheduled to start, or in case of cancellation of the Charter in accordance with clause 10.8 of these Terms and Conditions, the Charterer shall pay and the

Carrier shall be entitled to receive, the following share in the Charter Price, or the proportion of the Charter Price attributable to the cancelled flight(s), as the case may be:

- 100% if the flight is cancelled 6 hours prior to departure. If the passengers have not arrived in time for the scheduled departure without prior approval of the Carrier (no-show)
- 90% if the flight is cancelled 24 hours prior to departure
- 70% if the flight is cancelled 3 days prior to departure
- 30% if the flight is cancelled 7 days prior to departure
- 25% from signature of the Charter Agreement.

5.2. If one or more individual flights listed in the Flight Schedule are cancelled after the Charter has begun, the cancellation fee shall always be 100% of the Charter Price.

5.3. If and to the extent a sub-carrier is involved in the Charter, the cancellation fees of the sub-carrier shall apply if higher.

5.4. The Carrier reserves the right to claim additional damages. Any balance remaining of any amounts already paid by the Charterer in accordance with the terms of clause 4 above shall be reimbursed to the Charterer by the Carrier.

5.5. The time of receipt by the Carrier of the written cancellation notice shall be relevant to determine the applicable cancellation rate.

5.6. In case of cancellation of the Charter in accordance with clause 4.2.3 of these Terms and Conditions, 70% of the Charter Price will become payable.

## 6. PROVISIONS RELATING TO THE CARRYING OUT OF THE CHARTER

6.1. The Charterer shall give to the Carrier all information and documentation reasonably requested by the Carrier, in particular relating to the intended flight schedule (departure and arrival times, places of departure and destination), number of passengers and their full names and addresses and copies of their passport or ID card.

6.2. The Charterer undertakes to distribute to all passengers (i) the Notice in Annex I hereto (for flights to/from the EU), and (ii) any passenger travel documentation furnished to it as charterer by the Carrier for delivery to passengers; and to indemnify the Carrier for any damages and losses the Carrier may suffer as a result of any failure on the Charterer's part to deliver such Notice (for flights to/from the EU) and travel documentation.

6.3. The Charterer shall be responsible for ensuring that each passenger is in possession of all necessary passports, visas, health certificates and other similar documents and for ensuring that passengers observe and comply with all laws, rules and regulations in relation to their carriage by air. The Carrier shall have no obligation to arrange for and ensure compliance by the Charterer and the passengers with any applicable entry, exit, tax, visa, customs, immigration, health or other formalities.

6.4. The Charterer and/or the charter broker agrees, declares and certifies that neither the Charterer (including any entity of person that owns or control the Charterer) nor any passenger are subject to any sanctions imposed upon them by any recognised international or applicable local authority including but not limited to the European Union, the United Nations, the United Kingdom, the Canada, the United States Department of the Treasury's Office of Foreign Assets Control (OFAC), the Bureau of Industry and Security (BIS) of the United States Department of Commerce as well as any jurisdiction within which the Luxaviation Group operates, or to which the Aircraft is designated to fly in accordance with the Flight Schedule. The Carrier shall be entitled to refuse passengers who are subject to any such sanctions.

6.5. The Charterer and/or the charter broker shall indemnify and hold the Carrier harmless against all costs, expenses (including legal expenses), damages, loss (including loss of business or loss of profits), liabilities, demands, claims, actions or proceedings, which the Carrier may incur arising out of or relating to any breach by the Charterer and/or the Broker of this clause 6.4.

6.6. Departure and arrival times indicated in the Flight Schedule are not guaranteed and form no part of the Charter Agreement. The Carrier shall use all reasonable endeavours to carry out the Charter in accordance with the Flight Schedule but shall be entitled to depart from the Flight Schedule in accordance with clause 3.4 hereof. The Carrier shall not be required to compensate the Charterer and the passengers for damages and losses the Charterer and/or the

passengers may suffer as a result of delay or cancellations due to such change in the Flight Schedule.

6.7. The Charterer shall be solely responsible for ensuring that all passengers and their baggage arrive at the check-in point not later than at the time indicated by the Carrier. Unless otherwise stated in the Charter Quotation, and depending on aircraft type and number of passengers, passenger baggage is limited to 20 kg per passenger (mixture of larger and smaller bags) and to baggage that may easily be loaded into the Aircraft. The Carrier and the pilot in command of the Aircraft have the right to refuse baggage that may be deemed to be a hazard to flight safety. Excess baggage will, at the Carrier's discretion, be left behind or sent onwards at the Charterer's sole risk and cost.

6.8. It is the Charterer's responsibility to ensure that dangerous goods are declared as per dangerous goods regulations and that goods are packaged and marked correctly according to the requirements of the competent authorities. Copies of the relevant regulations are available from the Carrier on request.

6.9. The pilot in command of the Aircraft shall have absolute discretion to refuse to carry any passenger, baggage and / or cargo, to decide what load may be carried on the Aircraft and how it shall be distributed within the Aircraft, to decide whether, when and how a flight may safely and legally be undertaken and where and when the Aircraft should be landed, generally as to all matters relating to the operation of the Aircraft. Any additional costs associated with such decisions of the pilot in command are to be borne by the Charterer.

6.10. Restrictive security measures are applied in certain airports. Airport officials may search baggage and confiscate items for security reasons. The Carrier cannot be held responsible for any items confiscated by any airport officials.

6.11. The Charterer shall ensure that all passengers comply with any health and safety protocol, applicable from time to time in any destinations contained in the Flight Schedule.

6.12. Unless mentioned otherwise in the Charter Quotation, smoking is not permitted on board the Aircraft.

## 7. LIABILITY

7.1. The Carrier's liability for the death of or bodily injury to passengers and damage to their baggage may be governed by the provisions of a Convention or other applicable mandatory laws.

7.2. Unless otherwise provided by applicable mandatory law, and subject to the limitations set out in this clause 7, the Carrier shall be liable only in the case of gross negligence or wilful misconduct of the Carrier or its employees.

7.3. In no event shall the Carrier be liable to the Charterer and / or the passengers, whether in tort/delict (including negligence and breach of statutory duty), contract, misrepresentation or otherwise for any indirect or consequential damages and losses, special damage, punitive damages or economic loss, including but not limited to loss of profit, loss of use, loss of business and/or increased costs.

7.4. Without prejudice to the liability of the Carrier in respect of the carriage by air of passengers and cargo, the Carrier shall not have any liability to the Charterer for the death of or injury to any passenger occurring in connection with the Charter.

7.5. The Carrier accepts no liability for third-party service providers (whether retained by the Carrier or the Charterer) and their services nor for goods obtained from a third-party and the Charterer hereby waives any rights it may have to hold the Carrier liable for such service providers, services and goods.

7.6. The Carrier shall not be liable for any failure to perform, or delay in performing the Charter if such failure or delay is caused by or arising from force majeure or any other cause beyond its reasonable control, including but not limited to, compliance with the requirements of international law or national legislation or subordinate legislation, unserviceability of the Aircraft; safety of the aircraft; safety of the Aircraft's crew; and/or safety of the Charterer and/or passengers, embargo, sanctions, war or state of war, closure of the airspace because of suspected danger to the aviation, weather conditions and pandemic.

7.7. The limitations of the Carrier's liability set forth in this clause 7 shall apply also for the benefit of the Carrier's employees, officers, directors and crew.

7.8. The Charterer acknowledges and agrees that the passenger and baggage delay compensation provisions set forth in the Convention or any other applicable law, do not apply to the Charter.

7.9. Claims for lost or damaged baggage shall be notified to the Carrier in writing within 7 days of the end of the flight, failing which no action shall lie against the Carrier.

7.10. The right to damages shall be extinguished if an action is not brought to court by the Charterer or the passengers within 2 years from the date of arrival of the Aircraft, or from the date on which the Aircraft was scheduled to arrive, or from the date on which the carriage stopped.

7.11. Nothing in these Terms and Conditions shall be read as a waiver of any exclusion or limitation of the Carrier's liability under the Convention or under applicable laws.

## **8. LIABILITY AND INDEMNITY BY THE CHARTERER; CHARTER BROKER**

8.1. The Charterer shall indemnify and keep indemnified the Carrier against any loss, damage and claims as well as costs and expenses which the Carrier may incur in relation to the Charter, in particular in respect of damage inflicted by the passengers upon the Aircraft, as a result of any passenger not being in possession of an identity document, visa, health certificate or other document required during the Charter, or as a result of a breach by the Charterer of the Charter Agreement, to the extent such loss, damage and claims, costs and expenses have not been caused by the Carrier's or the Carrier's employees', officers' and directors' own gross negligence or wilful misconduct.

8.2. Where a charter broker or agent signs the Charter Quotation for its principal, the principal will be the Charterer under the Charter Agreement, and the charter broker or agent shall be jointly and severally liable with its principal for the principal's obligations and indemnities provided in the Charter Agreement.

## **9. ASSIGNMENT**

9.1. The Charterer shall not be entitled to assign the benefit of the Charter Agreement to any other person without the consent in writing of the Carrier.

## **10. PERSONAL DATA**

10.1. The Carrier will use the personal data of the Charterer and the passengers only for the purposes of carrying out the Charter, including obtaining services associated with the Charter (such as catering, limousine), facilitating immigration formalities and entry into the territory of a State, providing for the security of flights, as well as for marketing purpose.

10.2. Passengers' personal data will be processed by the Carrier, acting as data controller, and only where there is a legal basis to do so. In almost all cases, the legal basis will be:

- the performance of the Charter Agreement,
- the compliance by the Carrier with a legal obligation,
- the protection of the vital interests of the passengers or another person, and
- where specifically mentioned or requested, the passengers' consent to the Carrier to use their personal data for a particular purpose.

10.3. The Carrier may be obliged to disclose the Charterer's and passengers' personal data to Governments, regulatory authorities or law enforcement agencies (such as customs, immigration, tax, etc.) of any country from, to or over which the Aircraft will fly during the Charter.

10.4. The Charterer's and the passengers' personal data may also be disclosed to the Carrier's suppliers and the sub-carrier (if any) only to fulfil the purposes mentioned in clause 10.1.

10.5. Due to the nature of the Carrier's business and depending on the destinations listed in the flight schedule, the recipients of personal data may be based in a country which does not offer an adequate level of protection as determined by the European Commission or any other jurisdiction within which the Luxaviation Group operates, and may have access to all or some of the personal data processed by the Carrier (surname, first name, passport number, copy of id/passport, travel details, etc.), which is transmitted to them by the Carrier solely for the purposes mentioned in Clause 10.1.

10.6. The Charterer hereby represents and warrants to have informed the passengers of such transfer and associated risks for their privacy.

10.7. The Charterer hereby expressly acknowledges and accepts that the provision of certain specific ancillary services (such as arranging for special meals, organisation of medical assistance in emergency situations) may lead the Carrier to process and disclose special categories of personal data. Such personal data is used solely for the purpose of the provision of specific ancillary services. The Charterer hereby represents and warrants to the Carrier that (i) the passengers have consented to the processing of such personal data to the extent necessary to provide the ancillary services, (ii) such consent is valid and documented, and (iii) the Charterer can provide a copy of such consent to the Carrier at any time at the latter's request.

10.8. The Charterer and the passengers have the right to request from the Carrier access to, rectification, erasure, restriction or objection of processing or portability of their personal data. These rights can be exercised by sending an email to [privacy@luxaviation.com](mailto:privacy@luxaviation.com) or a letter to the Carrier's address in clause 1.1. The Charterer undertakes to timely inform the passengers of these rights, and of the potential consequences associated with exercising such rights as described in clause 10.8.

10.9. The processing of certain personal data of the Charterer and the passengers is mandatory for carrying out and invoicing the Charter, as well as to conduct flight operations and as required by local/regional local statutory/regulatory rules and competent administrations or authorities. The exercise by the Charterer and/or the passengers of any of their rights mentioned in clause 10.7 will entail an impossibility for the Carrier to continue processing the personal data required for the above purposes, which may result in a lack of access to certain specific ancillary services (special meals, etc.), boarding denial or even cancellation of the Charter, in which case cancellation fees pursuant to clause 5.1 of these Terms and Conditions will become payable by the Charterer, as well as additional damages of the Carrier, if any. Pursuant to the applicable laws and regulations, a failure to provide certain personal data or the inaccuracy of certain personal data may also result in a decision to deny entry into the territory of a State. The Carrier will not be liable for any damages and losses resulting from or relating to any such consequences of restrictions of processing personal data.

10.10. The Charterer represents and warrants to have informed the passengers of their right to lodge a complaint related to the processing of their personal data by the Carrier with the supervisory authority of their country of residence within the European Union or any jurisdiction within which the Luxaviation Group operates, if applicable.

10.11. The Carrier will retain Charterer's and passengers' personal data for as long as will be needed for the purposes of processing set forth in clause 10.1 hereof, and as long as there is a legal (including for certain data the 10-year standard legal hold retention obligation applicable to the Carrier) or business need for such data to be retained.

10.12. The Charterer shall ensure that the provisions of this clause 10 are brought to the attention of the passengers. The Charterer shall also ensure that any personal data provided to the Carrier by the Charterer or on behalf of the passengers has been collected lawfully, fairly and in a transparent manner so as to enable such personal data to be processed by the Carrier, its suppliers and the sub-carrier (if any) for the purposes mentioned in paragraph 10.1.

10.13. The Charterer shall indemnify and hold the Carrier harmless against all costs, expenses (including legal expenses), damages, loss (including loss of business or loss of profits), liabilities, demands, claims, actions or proceedings, which the Carrier may incur arising out of or relating to: (i) the Carrier's compliance with any instruction given by the Charterer to the Carrier in relation to the processing of personal data (including personal data of passengers); or (ii) any breach by the Charterer of this clause 10.

## **11. APPLICABLE LAW AND JURISDICTION**

11.1. The Charter Quotation and Agreement and any contractual and non-contractual obligations arising out of or in connection therewith shall be governed by and interpreted in accordance with the laws where the Carrier has its registered office, excluding its conflicts of laws provisions.

11.2. The competent courts of the jurisdiction where the Carrier has its registered office shall have exclusive jurisdiction to adjudicate any dispute which arises out of or in connection with the Charter Quotation and Charter Agreement, and any contractual and non-contractual obligations arising out of or in connection with the Charter Quotation and Charter Agreement.

## 12. PARTIAL NULLITY

*All provisions of the Terms and Conditions that are in conflict with the applicable legislation shall be considered as not written, but without affecting the applicability of the other provisions and/or the validity of these Terms and Conditions and/or the Charter Agreement.*

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## ANNEX I

### Disclaimer

This is a notice required by European Community Regulation (EC) No 889/2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents. This notice cannot be used as a basis for a claim for compensation, nor to interpret the provisions of European Community legislation, the Montreal Convention or applicable law. This notice does not form part of the contract between the Carrier and the Passenger. No representation is made by the Carrier as to the accuracy of the contents of this notice.

### INFORMATION NOTICE BASED ON COUNCIL REGULATION (EC) NO. 2027/97 (AS AMENDED)

#### Air carrier liability for passengers and their baggage

This information notice summarises the liability rules applied by European Community air carriers as required by Community legislation and the Montreal Convention.

#### Compensation in the case of death or injury

There are no financial limits to the liability for passenger injury or death. For damages up to 113,100 SDRs (approximately € 143,640 as at 31 January 2017) the air carrier cannot contest claims for compensation. Above that amount, the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault.

#### Advance payments

If a passenger is killed or injured, the air carrier must make an advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation. In the event of death, this advance payment shall not be less than 16,000 SDRs (approximately € 20,321 as at 31 January 2017).

#### Destruction, loss or damage to baggage

The air carrier is liable for destruction, loss or damage to baggage up to 1,131 SDRs (approximately € 1,436 as at 31 January 2017). In the case of checked baggage, it is liable even if not at fault, unless the baggage was defective. In the case of unchecked baggage, the carrier is liable only if at fault.

#### Higher limits for baggage

A passenger can benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee.

#### Complaints on baggage

If the baggage is damaged, lost or destroyed, the passenger must write and complain to the air carrier as soon as possible. In the case of damage to checked baggage, the passenger must write and complain within seven days from the date on which the baggage was placed at the passenger's disposal.

#### Liability of contracting and actual carriers

If the air carrier actually performing the flight is not the same as the contracting air carrier, the passenger has the right to address a complaint or to make a claim for damages against either. If the name or code of an air carrier is indicated on the ticket, that air carrier is the contracting air carrier.

#### Time limit for action

Any action in court to claim damages must be brought within two years from the date of arrival of the aircraft, or from the date on which the aircraft ought to have arrived.

#### Basis for the information

The basis for the rules described above is the Montreal Convention of 28 May 1999, which is implemented in the Community by Regulation (EC) No 2027/97 (as amended by Regulation (EC) No 889/2002) and national legislation of the Member States.