

# Erhvervsflyvningens Sammenslutning – Danish Aviation Association

General Terms and Conditions

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## **1 Scope of the general terms and conditions**

- 1.1 These general terms and conditions govern the relationship between a Charterer and a member of the Danish Aviation Association (the “**Operator**”) in respect of all flights performed by the Operator for the Charterer, including flights booked through electronic booking.
- 1.2 A list of the members of the Danish Aviation Association can at any time be found on the association’s website [www.es-daa.dk](http://www.es-daa.dk).
- 1.3 These general terms and conditions may be amended from time to time.
- 1.4 Any agreement between the Charterer and the Operator that amends these general terms and conditions shall be in writing and signed by both the Charterer and the Operator. In case of any discrepancies between such agreement and these general terms and conditions, the provisions in the agreement between the Charterer and the Operator shall prevail.

## **2 Definitions**

- 2.1 For the purposes of these general terms and conditions, the expressions below shall have the following meanings unless the context otherwise requires:

“**Charterer**” means the legal person/persons or entity/entities that enters/enter into a Charter Agreement with the Operator.

“**Charter Agreement**” means the agreement entered into between the Charterer and the Operator regarding one or more flights to be performed by the Operator for the Charterer.

“**EU Regulation 261/2004**” means the European Parliament and Council Regulation No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.

“**Operator**” has the meaning ascribed to it in clause 1.1.

## **3 The aircraft**

- 3.1 The Operator shall provide an aircraft with a valid certificate of airworthiness, properly manned, equipped, fuelled and insured in accordance with the requirements of the relevant aviation authorities and for the performance of the flight(s) under the Charter Agreement, subject to the terms and conditions of the Charter Agreement and these general terms and conditions.
- 3.2 The Operator may, without any change to the charter price, provide a substitute operator (whether member of the Danish Aviation Association or not) and/or aircraft for the performance of the contracted flight(s). Such operator and/or aircraft shall, to the extent possible, be of a similar standard and the Operator shall notify the Charterer of such substitution.

## **4 Price and payment**

4.1 Unless otherwise agreed in the Charter Agreement and/or the related invoice, the charter price includes all costs in connection with the flight(s) to be performed under the Charter Agreement and is to be paid in accordance with the payment terms stated in the Charter Agreement and/or the related invoice issued by the Operator.

4.2 The charter price does not include costs arising as a result of passengers or goods being delayed prior to the commencement of a flight, or from a restraint on transportation as a result of e.g. public or medical orders, restraints, investigations or the like, and the Charterer shall reimburse the Operator for any disbursements that the Operator may have in connection thereto.

4.3 The Charterer shall reimburse the Operator for any disbursements that the Operator may have where the flight(s) to be performed under the Charter Agreement cannot be performed as scheduled due to an airport not being able to supply fuel, catering, handling, cleaning, water or any other service required for the performance of the subject flight.

4.4 Any costs that may accrue in relation to a flight under the Charter Agreement after arrival at the destination of the flight shall be paid by the Charterer.

## **5 Traffic rights**

5.1 Operations under the Charter Agreement are subject to (i) all necessary and advisable authorisations, including permission to start, overfly and land, being granted by the appropriate public and governmental authorities and (ii) any required slots allocations.

## **6 Obligations of the Operator**

6.1 The obligations of the Operator to operate in accordance with the Charter Agreement shall apply only upon receipt by the Operator of payment of the charter price.

## **7 Utilisation**

7.1 The Operator is entitled to utilise any available capacity that the aircraft may have on a flight operated under the Charter Agreement, including any flight, which is carried out as an empty leg. Such utilisation shall not entitle the Charterer to any refund.

## **8 Cancellation, delay and diversion**

8.1 The Operator may, at the discretion of the captain of the aircraft and the Operator's operational supervisors, divert or reasonably delay a flight under the Charter Agreement without imposing any obligation or liability towards the Charterer.

8.2 If the Operator is unable to perform or complete a flight for any reason, the Operator shall be under no obligation or liability to the Charterer except to refund the charter price. Before refunding the charter price the Operator shall, however, always be allowed a reasonable time to carry out or complete the flight. If it is not possible to carry out or complete the flight with the original aircraft the Operator shall use its reasonable endeavours to find alternative or equivalent transportation for the flight, or the remainder of the flight. The Charterer shall be responsible for all costs incurred in respect of the replacement aircraft.

- 8.3 In the event that the Operator has diverted, delayed or cancelled a flight or cancelled part of a flight due to riots, strikes, lock-outs, civil commotion, apprehension or imminence of war, blockade, embargo, acts of God, acts or omissions of public authorities, fire, flood, meteorological conditions, epidemics, quarantine, hijacking, terrorist actions, requisition of aircraft, confiscation, detention, technical reasons, breakdown or accident to the aircraft, closed airports, air traffic control authorities or any other cause beyond the reasonable control of the Operator or if safety of the passengers, cargo, aircraft or crew is reasonably deemed to be in jeopardy by the captain or by the Operator's operational supervisors, the Operator shall be under no obligation or liability to the Charterer except, in case of cancellations, to refund the charter price and any prepaid amounts to the Charterer, or, in case of cancellations of part of a flight, to refund such part of the charter price and any prepaid amounts relating to the cancelled part of the flight.
- 8.4 In case of cancellations due to reasons mentioned in clause 8.3 above, the Operator shall keep the Charterer updated on the situation and informed about possibilities for and costs involved in chartering other aircraft. If the Operator has refunded the charter price, the Charterer shall be responsible for all costs relating to chartering another aircraft.
- 8.5 In the event that a flight cannot be performed or completed by the Operator, or in the event of delay or diversion due to an act or omission on the part of the Charterer, passenger(s), shipper(s) or any other person acting for or in relation to the Charterer, the Operator shall be under no obligation or liability to the Charterer.
- 8.6 Furthermore, the Charterer shall pay compensation to the Operator for any waiting time caused by delay or diversion on part of the Charterer as described in clause 8.5 above and in the event that such waiting time exceeds 3 hours the Operator shall be entitled to cancel the subject flight and any following flights under the Charter Agreement (if applicable) without being liable to the Charterer for any loss or extra costs that the Charterer may incur as a consequence thereof.
- 8.7 Notwithstanding any agreed fixed departure time in respect of a flight under the Charter Agreement, the Operator may in its sole discretion and on the Charterer's request postpone a flight leg or a flight rotation.
- 8.8 If a flight leg or flight rotation is postponed in accordance with clause 8.7 above and such postponement causes a delay of the Operator's subsequent operations and/or results in the occurrence of extra costs, the Charterer shall be liable for, indemnify and hold harmless the Operator, its officers, directors, employees and agents against any claims, expenses and costs related to such delay and/or the postponement of the subject flight leg or flight rotation.
- 8.9 Any passengers who are not present at the relevant departure airport in due time for boarding and departure shall be the sole responsibility of the Charterer and the Charterer shall be liable for, indemnify and hold harmless the Operator, its officers, directors, employees and agents against any claims, expenses and costs related thereto, including costs related to alternative transport arrangements for the subject passengers.

- 8.10 Unless otherwise agreed in the Charter Agreement, in the event that the Charterer cancels a flight already ordered less than 48 hours before the commencement of the flight, the Charterer shall pay compensation to the Operator amounting to 25 percent of the agreed charter price or a compensation amount as set out in the Charter Agreement or the order confirmation issued by the Operator as well as any costs already accumulated in relation to aircraft positioning flights, catering orders and/or other non-refundable charges paid in advance by the Operator.
- 8.11 If the Charterer cancels more than one flight in a series of flights to be performed under the Charter Agreement, the Operator is entitled to cancel the remaining flights in this series without being liable to pay any cancellation fee or compensation whatsoever, provided that the Operator makes use of this right of cancellation within 8 days after receipt of the Charterer's notice of cancellation of any second or more flights.
- 9 Claims**
- 9.1 The Operator's liability towards passengers and third parties, including damage to passengers and goods following cancellation and/or delay, shall be limited in accordance with applicable law and regulation.
- 9.2 The Operator shall be liable for, indemnify and hold harmless the Charterer for any claims from passengers, including claims based on EU Regulation 261/2004, which arise from cancellation, postponements or delays caused by the technical condition of the aircraft or other reasons within the Operator's control. To the extent that the Operator has refunded the charter price (fully or partly) the Operator's liability and obligation to indemnify and hold harmless the Charterer under this clause shall only apply to such amount which is in excess of the refunded charter price.
- 9.3 The Charterer shall be liable for, indemnify and hold harmless the Operator for any claims from passengers, including claims based on EU Regulation 261/2004, which arise from cancellation, postponements or delays and which fall outside the Operator's liability under clause 9.2 above.
- 9.4 The Charterer shall be liable for, indemnify and hold harmless the Operator, its officers, directors, employees and agents against all claims, expenses and costs, including legal costs, in respect of any liability to passengers and third parties for any damage or loss whatsoever and/or any claim from any passenger, third party, shipper or other person or entity relating to a flight performed under the Charter Agreement unless such claim is covered by insurance taken out by the Operator or caused by the Operator's gross negligence or wilful misconduct.
- 10 Right to refuse or interrupt carriage**
- 10.1 The captain of the aircraft may, in the captain's sole discretion, refuse embarkation of passengers and/or goods if required for safety reasons or other reasonable reason.
- 10.2 Unless otherwise agreed in the Charter Agreement, carriage of dangerous goods on flights is not permitted. Dangerous goods include, but are not limited to, compressed gasses (inflammable, non-flammable and poisonous), corrosive materials, wet batteries, explosive

materials, weapons, ammunition, fireworks, inflammable liquids, paint, lighter gas, matches, bleaching agents, magnetic materials, oxidising liquids and radioactive materials.

- 10.3 The Charterer shall be liable for and shall indemnify and hold harmless the Operator for any costs arising through passengers interrupting or rejecting carriage, including, but not limited to, interruption or rejection due to intervention of immigration authorities and for medical reasons, and the Operator shall not be responsible for the transportation of such passengers for the remainder of the journey.

## **11 Operational Control**

- 11.1 The Operator's personnel are under the sole instruction of the Operator.

- 11.2 All orders, directions and instructions from the captain of the aircraft, any crew member or other member of the Operator's personnel shall be strictly complied with by the Charterer and all passengers.

## **12 Public authorisations**

- 12.1 The Charterer shall adhere to all regulations laid down by the appropriate public authorities and shall indemnify the Operator for all claims, fines, expenses, costs etc. in case of violations on the part of the Charterer, passengers or shippers and/or any steps taken by the Operator to prevent violation on behalf of the Charterer, passengers or shippers of such regulations.

## **13 Assignment**

- 13.1 The Charterer shall not be entitled to assign its rights, sublet or sub-charter under the Charter Agreement, partly or in full, without the express written consent of the Operator.

## **14 Law and jurisdiction**

- 14.1 These general terms and conditions shall be governed by and construed in accordance with the laws of Denmark.
- 14.2 The courts of Denmark shall have jurisdiction with respect to any dispute arising out of or in connection with these general terms and conditions (including disputes regarding the existence and validity of these general terms and conditions), and any legal action or proceeding arising out of or in connection with these general terms and conditions may be brought before the said courts, with the district court relating to the Operator's registered office as the court of first instance.

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