

Annex 2



Operator's Terms / Operator's Conditions of Carriage

Article 1: Subject of the Agreement

1.1 This Agreement sets out rights and liabilities of the Parties in connection with providing the carriage of persons and their baggage by air by the Carrier on behalf of the Charterer and related services.

1.2 Charter services shall be provided according to this Agreement and the actual conditions of carriage as made available on the Carrier's Web site (www.smartwings.com) (hereinafter the "Conditions of Carriage"). This Agreement shall prevail over the Conditions of Carriage.

Article 2: Definitions

2.1 Besides the terms defined in other parts of this Agreement, the terms mentioned below have, for the purposes of this Agreement, the following meanings:

- (a) "Aircraft" shall mean the aircraft set forth in Annex II, including any alternate aircraft with the same or similar equipment, seating capacity, flying range, performance and safety standards, which is suitable for the carriage provided for in Annex II and which the Carrier is entitled to substitute at its discretion and without prior notice;
- (b) "Carrier's Account" shall mean the bank account in the corresponding currency set forth in Annex I of this Agreement or set forth in the relevant invoice or other request for payment, which is decisive if the accounts in such documents differ;
- (c) "Charter Price" shall mean the price set forth in Annex II, which includes all operational expenses of the Flight excluding Fuel Surcharge, Extra Costs and Passenger Taxes;
- (d) "Passenger's Compensation" shall mean the amount corresponding to the potential amount of compensation in regard to the Flight or part thereof, which is calculated according to Regulation 261/2004 of the European Parliament and of the European Council in relation to the duration of the Flight;
- (e) "EFA" shall mean the system available on www.smartwings.net/efa; the Charterer shall be given the web access codes upon concluding the first Charter Contract;
- (f) "Extra Costs" shall mean the extra costs agreed in the Charter Contract or on the basis thereof, which serve for the reimbursement of extra care or other services provided to the passengers in relation to the carriage (e.g. special catering, access to airport lounge, extraordinary insurance etc.);
- (g) "Flight" shall mean the flight according to the actual flight schedule in Annex II, whereby it is considered, based on the reservation made, as (i) one-way flight (OW), or (ii) return flight (RT);
- (h) "Flight Permit" shall mean any permit required by any airport or governmental authorities to perform the relevant Flight, mainly with regard to transportation rights and airport parking and slots;
- (i) "Force Majeure" shall mean and include any event or circumstance which occurred beyond the control of the Party whose performance under this Agreement is affected and, because of such event or circumstance, it became impossible for the Party to comply with the relevant obligation if it is not reasonable to predict that such Party can avoid or overcome this difficulty or its consequences, and that such Party anticipates such difficulty at the time of signing this Agreement, including but not limited to an epidemic, flood, explosion, fire, riot, lightening, earthquake, civil disturbance, war, strike, bird strike, government or acts of public authority;
- (j) "Passenger Taxes" shall mean any taxes, charges or other fees charged in relation to every single passenger or his airline ticket in accordance with the *IATA List of Ticket and Airport Taxes and Fees* and also the environmental charge for the protection of the air from the pollution.

2.2 Any reference to gender or the singular includes every other gender and the plural and vice versa.

2.3 The title given to the headings of the Articles herein are inserted for easier orientation only and shall not be taken into consideration when interpreting this Agreement.

2.4 In the event of any conflict between the values referred to by number and word, the word value shall prevail.

Article 3: Charter Services

3.1 The Carrier shall provide the Charterer with the air transportation services set forth in Annex II (hereinafter the "Charter Services"). The Charter Services shall include the carriage of passengers and their baggage by air from the airport of the place of departure to the airport of the place of arrival. The Charter Services shall not include ground transportation outside the airport or the fulfilment of any permission or formalities which are required by the official bodies in the designated place in order to permit the entry of every single passenger or his baggage.

3.2 The flight schedule set forth in Annex II is subject to the coordination of slots. If the Carrier does not notify the Charterer about another flight schedule at least three (3) days before the departure of the Flight, the flight schedule set forth in Annex II is applicable. The departure and arrival times serve only for guidance and are subject to operational changes. The Charter Services are provided irrespective of other means of transport and the Carrier does not guarantee any connection to other means of transport.

3.3 The Carrier shall ensure that the Charter Services are provided by airworthy Aircraft that are suitable for the required purpose and properly equipped and maintained and that the Charter Services are provided by a flight crew and other personnel who are fully licensed for the duties required under this Agreement.

Article 4: Price and Payments

4.1. The Charterer is obliged to pay the Charter Price, Fuel Surcharge, Extra Costs and Passenger Taxes to the Carrier for the Charter Services (hereinafter the “**Contract Price**”).

4.2. If the price of air fuel (JET A-1) set down as the monthly base-price determined by Platts “Barges FOB Rotterdam High,” published in “Platts Marketscan” available at www.platts.com (hereinafter the “**World Market Price**”), exceeds the reference price set forth in Annex II (hereinafter the “**Reference Price**”), the Carrier is entitled to charge to the Flight the fuel surcharge set forth in Annex II (hereinafter the “**Fuel Surcharge**”) as follows: 1 x for each one-way Flight (a live operation with one live sector starting at one airport and ending at a different airport regardless of whether one intermediate landing, excluding a ferry flight, at the most, is provided); for this purpose, any return Flight which is interrupted by a ferry flight shall be treated as two one-way Flights; 1 x for each “V” (return) Flight (a live operation with two live sectors starting and ending at the same airport regardless of whether one intermediate landing, at the most, is provided); 1x for each V from “W” Flight (a live operation with one or more “V” Flight operated in the middle of the original “V” Flight); 1x per each ton of the agreed fuel consumption, provided that it is explicitly agreed in Annex II in respect of the particular Flight.

4.3. The Carrier shall send the Charterer the request for payment of the advance of the Contract Price in the amount of the Charter Price, Fuel Surcharge and Passenger Taxes (hereinafter the “**Advance**”) at least twenty (20) days prior to the relevant Flight’s scheduled departure or without unreasonable delay after the conclusion of this Agreement if the scheduled departure of the relevant Flight is planned earlier. On the date of the request for payment the Carrier shall specify: (a) the amount of the Fuel Surcharge according to the change of the World Market Price with regard to the Reference Price on the relevant day; and (b) the Passenger Taxes according to the reserved capacity of the relevant Flight set forth in Annex II.

4.4. The Charterer is obliged to send the payment for the Advance to the Carrier’s Account by the payment day set forth in Annex II. The Advance shall be considered paid properly and on time only if it is credited to the Carrier’s Account in the total amount and if it is noticeably specified by the variable symbol set forth in the request for payment, this Agreement’s number, scheduled departure of the Flight and the number of the Flight. Unless agreed otherwise in writing, the Advance may not be set-off against any claim by the Charterer. Each Party shall be responsible for its own bank costs.

4.5. The payment of the Advance does not relieve the Charterer from the obligation to pay the Contract Price in the relevant amount by the actual day of the Flight’s departure. The Carrier shall state the account for the Advance with regard to the actual amount of the Contract Price within one (1) month after the execution of the Flight as follows: (a) the Fuel Surcharge shall be based on the World Market Price on the day of the departure of the Flight; (b) the Passenger Taxes, excluding those which are designated in Annex II as nonrefundable, shall be based on the actual number of passengers on the relevant Flight; and (c) the Extra Costs are based on the actual amount agreed in the Charter Contract or on the basis thereof.

The Carrier shall pay back the eventual overpayment of the Advance to the Charterer within fifteen (15) days from receiving the account statement. The Charterer shall pay the eventual arrears of the Contract Price within fifteen (15) days from receiving the final account statement and the relevant invoice. The Carrier shall be entitled to set-off his claims set forth in this Article against any of the Charterer’s claims. The Charterer shall not be allowed to set-off his claims set forth in this article without the prior written consent of the Carrier.

4.6. In the event that the insurance requirements of the Carrier’s insurance company change in the period between the conclusion of the Agreement and the Flight due to a change in the security situation in the territories through which the Flight passes, the Carrier is entitled to Cancel the flight for this reason or to include the cost of extraordinary insurance in the price of the flight as Extra Costs. This rule shall also apply to related flights.

4.7. Unless Annex II sets forth otherwise, all invoices or other payment receipts shall be sent to the Charterer electronically in the form of a PDF file to the e-mail address set forth in Annex II.

4.8. All prices in accordance with this Agreement are without VAT, which shall be charged only if imposed by law.

4.9. The Advance and the Contract Price are charged in the currency set forth in Annex II for the Charter Price. Currency conversions shall be made according to the base-exchange rate set forth by the Czech National Bank for the calendar month preceding the day of the statement of the relevant invoice or other request for payment and, if the relevant days are not known, the last-known published monthly base-exchange rate will be decisive.

4.10. If the due term of any of the payments according to this Agreement is not met, the Charterer is obliged to pay a contractual penalty of 0.1% accruing daily on the amount due.

Article 5: Security Deposit

5.1 The Charterer shall, no later than on the day set forth in Annex II, pay to the Carrier a Security Deposit equal to the amount set forth in Annex II (the “**Security Deposit**”).

5.2 The Carrier shall be entitled to use the Security Deposit as a reimbursement for any of the Charterer’s obligations resulting from this Agreement.

5.3 The actual balance of the Security Deposit will be accounted to the Advance for the last Flight specified in Annex II and the Carrier shall pay back the eventual balance to the Charterer within thirty (30) days from the performance of the last Flight in accordance with the this Agreement.

Article 6: Cancellation

6.1 The Charterer may cancel the Flight or part thereof only if the Charterer notifies the Carrier of the cancellation in writing and if, within three (3) days from the delivery of the announcement of the cancellation to the Carrier, the Charterer :

(a) pays the cancellation fee with regard to Article 6.2 or if the Charterer agrees that such fee will be paid by the Advance or Security Deposit and both are sufficient; and (b) sends to the Carrier the list of the passengers affected by the cancellation in writing, including the relevant contact details, or notifies the Carrier that there are no reservations on the relevant Flight.

The Flight, part thereof or the reserved capacity shall be considered cancelled on the day when the later condition referred to above is fulfilled. The cancellation according to this Article is possible only with regard to the complete Flight, a complete part thereof (e.g. the whole flight back) or the complete reserved capacity.

6.2 In the event the Flight or part thereof is cancelled, the cancellation fee shall equal:

(a) (10%) Ten percent of the corresponding Charter Price if the cancellation has been made in between the day of signing this Agreement and the 46th day prior to the scheduled departure of the Flight.

(b) (25%) Twenty-five percent of the corresponding Charter Price if the cancellation has been made in between the 45th day and the 21st day prior to the scheduled departure of the Flight.

(c) (50%) Fifty percent of the corresponding Charter Price if the cancellation has been made in between the 20th day and the 15th day prior to the scheduled departure of the Flight.

(d) (75%) Seventy-five percent of the corresponding Charter Price and the multiple of the Passenger's Compensation and the number of passengers set forth in Article 6.1 (b) if the cancellation has been made in between the 14th day and 48 hours prior to the scheduled departure of the Flight.

(e) (100%) One hundred percent of the corresponding Charter Price and the multiple of the Passenger's Compensation and the number of passengers set forth in Article 6.1(b) if the cancellation has been made less than 48 hours prior to the scheduled departure of the Flight.

6.3 The Carrier may cancel the Flight or part thereof only if the Charterer breached his obligations by the following manner:

(a) the Charterer does not pay to the Carrier the Advance for the Flight properly and on time; and/or

(b) the Security Deposit was not properly given or completed; and/or

(c) the Charterer notifies the Carrier that it wishes to cancel the Flight according to Article 6.1 without taking, within three (3) days, the steps under Article 6.1 (a) and (b). The Carrier is deemed to have withdrawn from this Agreement in the proportion related to the relevant Flight on the day on which the Charterer receives the notification of the cancellation.

6.4 If the Charterer breaches his obligations according to Article 6.3, the Carrier shall be entitled to charge the Charterer a contractual penalty in the amount of the Charter Price, Fuel Surcharge, Extra Costs and non-refundable Passenger Taxes for the relevant Flight increased by the multiple of the Passenger's Compensation and the number of seats reserved by the Charterer according Annex II.

Article 7: Force Majeure

7.1. If a Party cannot fulfil its obligations under this Agreement properly and on time because of Force Majeure, that Party shall not be held liable as long as Force Majeure continues.

7.2. If Force Majeure prevents the Carrier from performing the Flight or part thereof, or if such a situation is threatening, the Carrier shall immediately inform the Charterer. The Parties shall use their best efforts to mitigate the effects caused by the Force Majeure.

Article 8: Flight Permits

8.1 Unless the Parties agree otherwise, the Carrier shall be responsible for obtaining all Flight Permits. If the cooperation of the Charterer is required for obtaining such permits, the Charterer shall be obliged to provide such cooperation.

8.2 If the Carrier is unable to operate the Flight, owing to late issuance, non-issuance or revocation of the required Flight Permits, the Carrier may withdraw from this Agreement on the grounds that the Carrier will reimburse the Charterer for any payments made by the Charterer to the Carrier in respect of the relevant Flight, less any reasonable costs incurred by the Carrier in the course of obtaining the Flight Permits and less the Passenger Compensation calculated according to the maximum capacity of the Aircraft for the intended destination, if the withdrawal is effected less than fifteen (15) days before the planned departure of the Flight.

8.3 If, for any of the reasons set forth in Article 8.2 of this Agreement, the Carrier is able to operate the Flight only partially, the relevant Charter Price shall be reduced appropriately in a proportion adequate to the flight hours of the originally scheduled Flight and the actually performed part of the Flight.

Article 9: Passenger Information and Transportation Documentation

9.1 The Charterer shall in respect of all passengers of the relevant Flight either (i) enter the complete information required by the EFA system about the relevant passengers in the EFA system, or (ii) complete with all information about the relevant passengers and deliver to the Carrier a table, a pattern of which is supplied by the Carrier (the "Passenger Information") within seventy-two (72) hours before the scheduled departure of the relevant Flight. Any passenger who is not entered into the EFA system and appears for the check-in shall be recorded in the EFA system by the Carrier and the Carrier shall in such case charge an administration fee equal to EUR 5 per each passenger. Each passenger who is not entered into the EFA system at least one (1) hour before the scheduled departure of the Flight may not be allowed to board the Aircraft.

9.2 The INF passenger status (INF = infant up to 2 years of legal age as per date of return) and CHD passenger status (CHD = child in between 2 and 12 years of legal age as per date of return) must be clearly marked together with the respective date of birth. Should the Charterer fail to include this information, the passenger shall be considered an adult passenger.

9.3 Unless Annex II sets forth otherwise, the relevant transportation documents shall not be used and passengers shall be checked in on the basis of the Passenger Information.

9.4 Airline tickets may be issued by the Charterer only from the EFA system or by using an airline ticket form provided by the Carrier, only in accordance with the instructions given by the Carrier and only in relation to the Flights provided for in Annex II. If the Advance for the relevant Flight is not paid in full, the Charterer may not issue the airline tickets for the relevant flight.

9.5 The Charterer shall authorize all airline tickets by means of its official stamp (or eventually by means of the printed name of the Charterer). Without such authorization, the airline ticket shall be considered invalid. The Carrier shall accept for carriage only those passengers who hold a valid airline ticket and whose names appear in the EFA system.

9.6 In the event of unauthorized issuance or misuse of airline tickets by the Charterer, the Charterer shall pay to the Carrier a contractual penalty in the amount of double the Passenger's Compensation for each unauthorized issued/misused airline ticket. The misuse of airline tickets shall mean, but shall not be limited to, the issuance of an airline ticket in relation to a flight which is not considered a Flight within the meaning of Annex II or in relation to a Flight for which the Advance was not paid properly and on time or in relation to a cancelled Flight.

Article 10: Charterer's Obligations in Respect of Passengers

10.1 The Charterer is obliged to familiarize the passengers with the Conditions of Carriage. The Charterer is also obliged to familiarize the passengers with the fact that the departure and arrival times are only an estimate and they are not guaranteed, nor are guaranteed any connections to other connecting means of transport.

10.2 The Charterer shall ensure that all passengers arrive at the designated place of departure at least two (2) hours before the scheduled time of departure as indicated in Annex II. The Carrier may refuse to check-in any passengers who fail to appear on time.

10.3 The Charterer shall ensure that all passengers have the return journey arranged. Only those passengers whose return to the airport for the Flight departure has already been arranged by another Flight will be accepted to depart from the airport for the Flight departure.

10.4 The Charterer shall ensure that all passengers meet all entry requirements of the destination country, are allowed to enter and possess all the necessary documentation to be admitted at the place of arrival of the Flight indicated in Annex II, including customs information, passports, visa, vaccination certificate or health test. The Charterer is obliged to compensate the Carrier for all damages resulted from the absence of the relevant documentation, from passengers not meeting the legal requirements to enter the destination country, from the deficiency, incorrectness or other insufficiency in respect of any of the passengers, as well as any sanctions imposed by the destination country, at the request of the Carrier and without undue delay.

Article 11: Aircraft Capacity

11.1 The maximum passengers and luggage load factor for the agreed Flight shall be specified in Annex II, whereas any excess of the weight limit may result in the fee according to Annex II. Only infants (INF), as defined in Article 9.2, may be carried onboard without a proper seating assignment.

11.2 The Carrier shall be entitled to use any empty seats reserved by the Charterer on the relevant Flight for non-commercial and internal purposes.

Article 12: Liability

12.1 The Charterer shall compensate the Carrier for any damages which arise as a consequence of a breach of the Charterer's obligations resulting from this Agreement.

12.2 If the laws impose the Carrier to compensate for and/or provide assistance to the passengers and provided that the event triggering the compensation/assistance was caused by the Charterer or by his passenger, including, but not limited to:

(a) cancellation of the Flight, part thereof or the reserved capacity, as it is set forth in Article 6 of this Agreement, less than 17 days prior to the scheduled departure of the Flight;

(b) delay of the Flight or part thereof caused by the Charterer or by his passengers;

(c) denied boarding due to over-booking or due to unauthorized/ invalid issuance of the airline ticket by the Charterer; and/or

(d) termination of this Agreement under Article 13 of this Agreement less than 17 days prior to the scheduled Flight departure; the Charterer shall be responsible for all expenses incurred by the Carrier in providing such compensation and/or assistance and all such expenses must be paid by the Charterer within five (5) days after the delivery of a request for payment, without prejudice to the Carrier's right to claim damages up to its actual amount.

12.3 The Carrier may set-off his claims according to this article against the Advance and or Security Deposit.

Article 13: Duration and Termination

13.1 This Agreement is concluded for a definite period of time, i.e. until the last Flight listed in Annex II is completed and all mutual obligations of the Parties arising out of this Agreement settled. Before this period the Agreement may be terminated only by a written agreement of the Parties or by the manner described below.

13.2 Without prejudice to Article 6 of this Agreement, the Carrier shall have the right to withdraw from the performance of this Agreement without delay in writing: (a) if the Charterer breaches the payment conditions and deadlines set forth in Article 4 of this Agreement; (b) if the Charterer is in insolvency proceedings; (c) if the Charterer cancels the Flight in the period between the signature and termination of the Agreement less than seventeen (17) days before the scheduled Flight's departure unless the Charterer fulfils the conditions set forth in Article 6 ; (d) if the Charterer does not give or refund the Security Deposit properly or on time.

13.3 The Carrier may withdraw from this Agreement if the duration of Force Majeure lasts for at least seven (7) days.

13.4 The notice according to this article comes into force immediately on the day following the day when the notice is delivered to the Charterer.

13.5 Withdrawal by the Carrier from this Agreement shall not affect any possible right of the Carrier to claim any contractual penalty hereunder.

Article 14: Confidentiality

14.1 The Parties consider the provisions of this Agreement confidential and they shall not disclose, without the prior approval of the other Party, the content thereof to third parties, with the exception of relevant public authorities, the Parties' agents, their advisers, owners and their advisers and persons designated by them in respect of whom the approval is considered to have been granted; the Party concerned shall ensure that these persons will hold all the disclosed information confidential.

Article 15: Final Provisions

15.1 This Agreement shall, in all respects, be governed by laws of the Czech Republic, especially by the relevant provision of Act No. 89/2012 Coll., Civil Code (the "**Civil Code**").

15.2 For avoidance of possible doubts the Parties hereto expressly acknowledge and confirm that they are entrepreneurs entering into this Agreement within the scope of their business activities and, therefore, provisions of Section 1793 of the Civil Code (disproportionate reduction) and Section 1796 of the Civil Code (usury) shall not apply hereto.

15.3 The Courts of the Czech Republic shall have exclusive jurisdiction over matters arising from or in connection with this Agreement.

15.4 The exercise of the right of the relevant Party to claim any contractual penalty according to this Agreement shall not affect the right of the respective Party to claim damages or the amount of damages.

15.5 This Agreement may be amended, modified or altered only upon the written consent of the Parties.

15.6 If any of the provisions hereof is or becomes null (void), the effect of such nullity on other provisions of this Agreement shall be assessed under Section 576 of the Civil Code *mutatis mutandis*.

15.7 A response of the Party containing an addition or deviation within the meaning of Section 1740 (3) of the Civil Code shall not constitute an acceptance of the offer to conclude this Agreement even if such response does not substantially change terms and conditions of the offer.

15.8 The Parties do not wish any rights and obligations, beyond the scope of the express provisions contained herein, to be inferred (derived) from existing or future practice established between the Parties or custom (usage) maintained either generally or in the business area related to subject of this Agreement, unless the Agreement expressly sets forth otherwise. In addition to the above, the Parties acknowledge and confirm that they are not aware of any custom or practice established between them yet.

15.9 The Carrier and the Charterer both assume (take over) the risk of a change in circumstances within the meaning of Section 1765 (2) of the Civil Code.

15.10 The Parties further agree that the Carrier shall be liable for any damage caused to the Charterer in relation to a specific Flight up to the one half of the Charter Price for such Flight (as specified in Annex II for the specific Flight). The Carrier shall be liable for any damage incurred by the Charterer in connection herewith (and not directly related to any specific Flight) up to the one half of the Charter Price for the most expensive Flight in accordance with Annex II hereto. The limitation of liability for damage pursuant to the previous sentence of this Article shall be considered as absolute irrespective of whether damages are claimed by the Charterer at once or in several claims. Irrespective of the aforesaid, the Carrier shall in no event be obligated to compensate to the Charterer damages that the Charterer incurred by compensating passengers in excess of the limits set forth by the applicable international treaties and/or European laws.

15.11 In case the Passengers claim from the Charterer any amount as damages or for any other reason arising out of alleged conduct or omission of the Carrier, the Charterer shall contact the Carrier without undue delay and discuss further steps before taking any action in relation to the Passengers (especially payment of any amount to the Passengers). If the Charterer breaches its obligation pursuant to the previous sentence, the Charterer shall not be subsequently entitled to any reimbursement from the Carrier.

15.12 The Parties acknowledge and agree that the Carrier shall not be held liable for any damage incurred by third parties within the meaning of Section 2913 (1) of the Civil Code.