

## **WIN AIR GENERAL CONDITIONS**

### **1. DEFINITIONS**

In this Agreement unless the context otherwise requires:-

<b>"Agreement"</b>	means this Passenger Aircraft Charter Agreement including the Schedule and any appendices or attachments thereto;
<b>"Aircraft"</b>	means any aircraft for the time being operated in connection with any Flight;
<b>"Base Date"</b>	means the base date stated in the Schedule;
<b>"Charter Price"</b>	means the amount set out in the Schedule;
<b>"Flight"</b>	means a flight described in the Schedule;
<b>"Schedule"</b>	means the schedule to this Agreement; and
<b>"STD"</b>	means the scheduled departure time of any Flight.

### **2. CHARTER PRICE AND PAYMENT**

- 2.1 The Charterer shall pay to the Carrier 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 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, if so required by the Carrier, pay to the Carrier 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 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 Carrier 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 Carrier shall receive from the Charterer the full amount of such payment.

### **3 OBLIGATIONS OF THE CARRIER**

- 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 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. In the event that any Flight is delayed through the fault of the Charterer or any passenger, the Charterer shall pay to the Charterer demurrage at the rate set out in the Schedule.

- 3.3 All ground and operating personnel including cabin staff shall only take instructions from the Carrier unless specific prior written agreement shall have been made between the Carrier and the Charterer whereby certain defined instructions may be accepted by such personnel from the Charterer.
- 3.4 The Carrier may in any event without any liability to the Charterer or to any passenger: refuse to carry or remove en route, if appropriate, any passenger or his baggage where, in the exercise of its reasonable discretion, the Carrier decides that:
- (a) such action is necessary for reasons of safety; or
  - (b) such action is necessary in order to comply with any applicable laws, regulations or orders of any state or country to be flown from, into or over; or
  - (c) the conduct, status, age or mental or physical condition of the passenger is such as to:
    - (i) require special assistance of the Carrier; or
    - (ii) cause discomfort or make himself objectionable to other passengers, or
    - (iii) involve any hazard or risk to himself or other persons or to property; or
  - (d) such action is necessary because the passenger has failed to observe the instructions of the Carrier; or
  - (e) the passenger has failed to submit to or pass any required security check; or
  - (f) the passenger's baggage has not been cleared by all appropriate baggage screening checks; or
  - (g) the passenger does not appear to be properly documented; or
  - (h) the person presenting the ticket cannot prove that he is the person named on the ticket or the ticket otherwise appears to have been acquired unlawfully or otherwise than from the Carrier or Charterer; or
  - (i) the passenger is not in possession of a valid ticket or any part of the passenger's ticket has been mutilated, altered by anyone other than the Carrier or Charterer (if authorised so to do) or is presented without the passenger coupon and all unused flight coupons.
- 3.5 In the event that it is necessary in the flight crew's reasonable opinion for the aircraft to be diverted in flight for the purpose of removing any passenger in accordance with the provisions of Clause 3.4 above (whether by reason of the passenger's conduct or physical or mental condition or for any other reason), the Charterer shall indemnify the Carrier against any losses, costs, expenses, claims or liabilities which the Carrier may incur as a consequence.

#### **4. TRAFFIC DOCUMENTS**

The Carrier shall supply or procure the supply of passenger tickets, baggage checks, air waybills and all other necessary documents relating to the carriage undertaken pursuant to this Agreement and the Charterer shall give to the Carrier 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 passengers.

#### **5. FLIGHT TIMES AND EMBARKATION**

- 5.1 The Charterer shall be solely responsible for ensuring that passengers and their baggage arrive at the specified check-in point at the departure airport in sufficient time to be carried on any Flight. In the event that any passenger of the Charterer fails to arrive in sufficient time to be carried on the Flight the Carrier shall be under no liability whatsoever to the Charterer nor to such passenger. The Carrier shall be under no obligation hereunder to make any alternative arrangements for any such passenger. If the Carrier, in its absolute discretion, arranges for any such passenger to be carried on a later flight, the Charterer shall pay on demand to the Carrier such additional sum that the Carrier may specify for each such passenger to cover applicable passenger taxes and the additional costs of the Carrier thereby incurred.
- 5.2 In the event of any delay, deviation or diversion of any flight, the Charterer shall be solely responsible for any and all accommodation, refreshments, meals, transportation or any other additional costs, expenses, losses, damages or liabilities of whatsoever nature incurred in

respect of the Charterer's passengers wherever and howsoever the same shall arise. All such costs, expenses, losses, damages or liabilities incurred by the Carrier shall be reimbursed by the Charterer to the Carrier on demand.

- 5.3 In the event that any passenger is refused entry at any destination airport, the Charterer shall indemnify and keep indemnified the Carrier, its officers, employees, servants and agents against any and all cost or expense whatsoever incurred by the Carrier in respect thereof (including but not limited to charges, fee, penalties, imposts or other expenses levied upon the Carrier by any immigration authority) or of any arrangements made by the Carrier to return such passengers to the country from which such passenger was originally carried.

## **6. OBLIGATIONS OF THE CHARTERER**

- 6.1 The Charterer shall hold harmless and indemnify the Carrier 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 or any passenger of the Charterer in complying with any of the provisions of this Agreement.
- 6.2 The Charterer shall comply in all respects with the conditions of all permits, licences and authorities granted for the Flights and will procure such compliance on the part of all its passengers.
- 6.3 The Charterer shall be responsible for the issue and delivery of all necessary passenger tickets, baggage checks and other necessary documents to all passengers.
- 6.4 The Charterer shall comply and shall procure that all its passengers shall comply with all applicable customs, police, public health, immigration and other lawful regulation of any state to/from or over which the Aircraft is or may be flown.
- 6.5 The indemnities contained in this Clause 6 shall survive the termination of this Agreement.

## **7. EXCLUSION OF LIABILITY/INDEMNITY**

- 7.1 The Carrier shall be under no liability to the Charterer or to any passenger 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 Carrier 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 Charterer shall indemnify the Carrier against any loss, damage, liabilities, costs or expenses of whatsoever nature caused to be suffered or incurred by the Carrier 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.
- 7.3 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.
- 7.4 The Carrier shall not be deemed to undertake any carriage to which this Agreement relates as a common carrier.
- 7.5 The carriage of the passengers 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 28<sup>th</sup> 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.

- 7.6 The summary of the main provisions governing liability for passengers and their baggage, including deadlines for filing an action for compensation and the possibility of making a special declaration for baggage pursuant to Article 6 of Regulation (EC) No 889/2002 of the European Parliament and of the Council is attached hereto as Annex 1.

*[Note: Clause 7.6 only applies if the Carrier is a Community Air Carrier]*

## **8. TERMINATION**

This Agreement may be terminated immediately upon notice from the Carrier 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 1986; 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
- 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
- 8.10 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
- 8.11 if anything analogous to the events referred to in Clauses 8.3 to 8.10 above occurs in any jurisdiction in which the Charterer conducts its business.
- 8.12 provided that a booked flight is cancelled no later than 28 days before departure, no cancellation charges will be incurred. Otherwise the following charges will be made: between 28 and 7 days before departure: 25% of confirmed total sum, this cancellation charge shall in no event amount to less than 2,500 €. Between 6 days and 48 hours before departure: 50% of confirmed total sum, this cancellation charge shall in no event amount to less than 4,000 €. Less than 48 hours / no shows: 100% of confirmed total sum.

## **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 Carrier may have) pay forthwith to the Carrier all amounts then due and unpaid to the Carrier hereunder, together with interest thereon (if any) at the rate specified in the Schedule and the Charterer shall indemnify and keep the Carrier indemnified against all loss, damage, costs, expense, claim or liability incurred or sustained by the Carrier as a result of such termination and the Carrier 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 Charterer shall indemnify the Carrier against any claims by any passenger of the Charterer arising out of the termination of the Agreement.

## **10. SET-OFF AND APPLICATION OF MONEYS**

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

## **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 Time shall be of the essence of this Agreement
- 11.3 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, statements, negotiations and undertakings whether made orally or in writing in relation thereto.
- 11.4 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 Carrier 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 Carrier to exercise and no delay by the Carrier 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.

11.9 The Carrier shall not in any event be liable for any consequential or special damage or loss including loss of profit or anticipated profit arising from the performance or non-performance of any Flight or any of its obligations hereunder.

## **12. CHOICE OF LAW, SUBMISSION TO JURISDICTION, MEDIATION**

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

### **ANNEX 1**

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

This information notice summarises the liability rules applied by 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 (approximate amount in local currency) the air carrier cannot contest claims for compensation. Above that amount, the 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 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 (approximate amount in local currency).

#### **Passenger delays**

In case of passenger delay, the Carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for passenger delay is limited to 4'694 SDRs (approximate amount in local currency).

#### **Baggage delays**

In case of baggage delay, the Carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for baggage delay is limited to 1'131 SDRs (approximate amount in local currency).

#### **Destruction, loss or damage to baggage**

The Carrier is liable for destruction, loss or damage to baggage up to 1'131 SDRs (approximate amount in local currency). 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, delayed, lost or destroyed, the passenger must write and complain to the Carrier as soon as possible. In the case of damage to checked baggage, the passenger must write and complain within seven days and in the case of delay within 21 days, in both cases from the date on which the baggage was placed at the passenger's disposal.

#### **Liability of contracting and actual carriers**

If the Carrier actually performing the flight is not the same as the contracting 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."

*[Note: Annex 1 only applies if the Carrier is a Community Air Carrier]*