

CHARTER CONTRACT

TERMS AND CONDITIONS FOR CHARTER FLIGHTS OF ZENITH AVIATION LIMITED

1. DEFINITIONS

1.1 In these conditions, the following definitions apply:-

“Agreement”	means the Charter Confirmation and these Terms and Conditions or another carrier’s conditions of carriage;
“Aircraft”	means the aircraft described in the Charter Confirmation or any alternative aircraft substituted under Condition 6.2;
“Business Days”	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
“Baggage”	is the luggage which a Passenger wishes to carry on the Aircraft;
“Captain”	means the commander or pilot of the Aircraft designated to operate the Flight;
“Carrier”	means Zenith Aviation Limited having its registered office at 45 Westerham Road, Bessels Green, Sevenoaks, Kent TN13 2QB;
“Charter Confirmation”	means the Charter Confirmation issued by Zenith Aviation Limited containing detailed information on the Flight and Flight Schedule;
“Charter Price”	means the amount to be paid by the Charterer to Zenith Aviation Limited for the services supplied by the Carrier as set out in the Charter Confirmation;
“Charterer”	means the person, firm or body corporate as defined in the Charter Confirmation;
“Flight”	means the flight, or as the case may be, each of the flights set out in the Charter Confirmation;
“Force Majeure”	means an event beyond the control of the Carrier, including but not limited to acts of God, explosions, revolutions, acts of terrorism, hijacking, insurrection, riot, civil commotion, war, national or local emergency, acts of government, lockout, strikes, industrial dispute, crew, handling or air traffic personnel issues, fire, lightening, flooding, adverse weather conditions, embargos, quarantine, requisition of aircraft or baggage, acts or omissions of third parties, lack of serviceability of the Aircraft, of any engine or operation of the Aircraft resulting from other unforeseen events such as supply chain issues or financial market issues, service bulletins, airworthiness directives or accident to the Aircraft or any part of it or the act of any authority;
“Passenger”	means any person, except members of the crew, to be carried in the Aircraft with the Carrier’s consent;
“STA”	means the scheduled time of arrival of the Flight set out in the Charter Confirmation;
“STD”	means the scheduled time of departure of the Flight set out in the Charter Confirmation;

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“the Convention” means the Convention for the Unification of Certain Rules relating to International Carriage by Air signed in Warsaw on 12 October 1929 or that convention as amended by the Hague Protocol of 1955 or the Montreal Protocols of 1975, which may be applicable, including the Guadalajara Supplementary Convention of 1961, the Convention for the Unification of Certain Rules relating to the International Carriage by Air signed in Montreal on 28 May 1999.

2. BASIS OF CONTRACT

2.1 These Terms and Conditions shall be applicable to all Flights to the exclusion of any other terms that the Charterer seeks to impose or incorporate, or which are implied by trade, custom, practise or cause of dealing.

2.2 All Flights are subject to the Convention.

2.3 The Flight may be carried out by the Carrier or any of its partners.

3. CHARTERER'S RESPONSIBILITIES

3.1 The Charterer shall comply and shall ensure that all Passengers and their Baggage shall comply with:

3.1.1 all relevant laws and regulations in the United Kingdom and/or any other state of departure, transport or arrival; and

3.1.2 any requirements of the Carrier, including any law or regulation of any country which are applicable to the Carrier's operation of the Aircraft;

3.1.3 the conditions of all permits, licences and authorities granted for the Flight(s) and will procure such compliance on the part of all the Passengers.

3.2 The Charterer must provide the minimum Passenger information required by the destination country and it remains the responsibility of the Charterer to ensure that such information is correct and fully complies with the minimum Passenger information required at the destination country.

3.3 The Charterer shall be solely responsible for ensuring that all Passengers and their Baggage arrive at the specified check-in point at the departure airport in sufficient time to be carried on the Flight.

3.4 The Charterer shall ensure that all Passengers possess all necessary passports, identity documents, visas and other documents required by the states of departure, transit and arrival. In the event that any Passenger fails to comply with the aforementioned, the Carrier shall be under no liability whatsoever to the Charterer nor to such Passenger.

3.5 The Carrier shall be under no obligation to make alternative arrangements for any such Passenger.

3.6 In the event that any Passenger is refused entry at any destination airport, the Charterer shall indemnify the Carrier, its officers, employees, agents and suppliers against any and all costs or expenses whatsoever incurred by the Carrier (including but not limited to charges, fees, penalties, imposts or other expenses levied upon the Carrier by an immigration authority) or for any arrangements made by the Carrier to return such Passengers to the country from which such Passengers were originally carried.

3.7 The Charterer shall ensure that travel insurance is in place in respect of each Passenger. Each Passenger must travel with adequate insurance cover. Such insurance should ensure that the Passengers are covered against unforeseen cancellation charges, medical costs incurred whilst away from home, personal liability of claims, loss of money, etc. The Charterer will:

3.7.1 make the Carrier aware of any pre-existing medical conditions of all Passengers as soon as possible; and

3.7.2 ensure that each Passenger is aware of any health requirements for their travel destinations, to arrange for required vaccinations and to ensure that such persons carry all necessary vaccination documents.

3.8 The Charterer must ensure that the Data Protection Act 1998 is complied with as regards the collection and disclosure of any personal data of Passengers (including sensitive personal data as defined under the Data Protection Act 1998). This includes ensuring the correct spelling of names, title, age, passport and visa information as well as any health or dietary information.

3.9 The Charterer acknowledges that in order to ensure the safety of the Aircraft, Passengers and crew, the Captain shall have absolute discretion to take decisions concerning the operation of the Aircraft. The Charterer agrees that any and all decisions of the Captain shall be binding upon the Charterer and all Passengers.

3.10 The Charterer shall be responsible for any failure by the Passengers to comply with any decision of the Captain.

3.11 In the event that is necessary in the Captain's sole discretion for any Flight to be diverted in order to remove any Passenger whose conduct or mental or physical condition is such so as to cause discomfort or nuisance to other passengers or involve any hazard or risk to the Passenger or passengers or to property, the Charterer shall indemnify the Carrier in full against any costs, claims, demands, liabilities, actions and proceedings of any kind whatsoever incurred by the Carrier as a result of such diversion and removal.

3.12 The Charterer shall hold harmless and indemnify the Carrier 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 in complying with the provisions of these terms and conditions. The Carrier is a smoke free carrier and the Charterer will ensure that none of its Passengers will smoke during the Flight.

3.13 Charterer recognizes that the Carrier will receive personal data for the purposes of the Carrier providing services, facilitating immigration and entry procedures, and making available such data to government agencies, in connection with the flight. For these purposes, Charterer authorises the Carrier to retain and use such data and to transmit it to the Carrier's offices, authorised agents, government agencies or other carriers.

4. CHARTER PRICE AND PAYMENT

4.1 The Charterer shall pay to the Carrier the Charter Price in the currency, in the amounts and to the address specified in the invoice by the date specified in the invoice and, in any event, prior to the Flight. Without deduction

4.2 The Charter Price includes the cost during the period of the Charter of flight operation, maintenance, landing, hangarage, parking, ground handling and the remuneration and expenses of the air crew but excludes de-icing charges (including those incurred on any positioning, de-positioning of a ferry), special catering requests (such as caviar, sushi, Dom Perignon, satellite communications), hangarage and use of VIP lounges. All special requests will be charges at the cost + 5% disbursement fees unless otherwise agreed.

4.3 The Charter Price further includes the aviation fuel costs calculated at the date of the Charter Confirmation. If for any reason whatsoever there shall be any increase in the cost of aviation fuel between the date of the Charter Confirmation 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 amounts as shall fully compensate the Carrier for such increase.

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- 4.4 All costs relating to Passenger transportation to and from any departure or arrival airport and ground accommodation shall be exclusively for the account of the Charterer.
- 4.5 The Charter Price is subject to any applicable taxes or currency variations where applicable.
- 4.6 The Charter Price and all other charges are exclusive of value added or sales tax (if applicable), which shall be paid in addition by the Charterer at the rate ruling at the tax point.
- 4.7 The Charterer shall pay all amounts to the Carrier on the date specified in the Charter Confirmation without setoff or counterclaim, deduction or withholding.
- 4.8 If payment is not received by the date specified in the Charter Confirmation but in any event prior to the date and time of the Flight, the Carrier shall notify the Charterer of the failure to make payment and without prejudice to any other rights or remedy it may have, the Carrier may suspend the Flight and any further Flights until the Charterer has made full payment and the Carrier will be entitled to the cancellation charges set out in the Charter Confirmation.

5. FLIGHT

- 5.1 The Carrier shall issue/obtain all documents and permissions necessary for carrying out the Flight as are necessary pursuant to legal and inter-governmental regulations for air transport.
- 5.2 The Carrier shall not be liable for any consequences resulting from any permissions (for example, flight, over flight or landing permissions) not being granted, provided that the Carrier has applied for permissions in time and in the right order after receiving the necessary information and documents from the Charterer in time.
- 5.3 The Captain shall have complete discretion to take decisions concerning the preparation of the Aircraft for Flight, whether or not the Flight shall be undertaken or abandoned, once undertaken, the deviation from the proposed route, where landing shall be made and all other matters relating to the operation of the Aircraft. The Charterer accepts all such decisions as final and binding and in the event that any of the above occurs, any additional costs incurred by the Carrier in doing so shall be payable by the Charterer to the Carrier on demand.
- 5.4 All ground and flight personnel (including cabin staff), are authorised to take orders only from the Carrier unless specific agreement shall first have been obtained from the Carrier whereby certain defined instructions may be accepted by such personnel from the Charterer.

6. AIRCRAFT AND CREW

- 6.1 The Carrier shall make available a properly equipped and fuelled Aircraft with crew according to the regulations at the agreed start of the Flight for the performance of the Flight Schedule.
- 6.2 If the Aircraft shall for any reason (whether before or after the commencement of the Flight Schedule) become incapable of undertaking or continuing all or part of the Flight Schedule the Carrier may at its discretion substitute therefore one or more aircraft of the same or another type and the provisions of the Agreement shall apply mutatis mutandis to the substituted aircraft. If the Carrier does not substitute another aircraft it shall not be under any liability to the Charterer and the Charterer shall remain liable to pay for that part of the Flight Schedule (if any) that has been performed at the time the Aircraft becomes so incapable.

7. BAGGAGE

- 7.1 Passengers must be advised that the hand Baggage liquid ban regulations apply to the Flight and containers larger than 100mls will not be allowed through the airport security point, even if they are only part full.
- 7.2 The Captain shall have complete discretion to set a lower weight limit for Baggage for safety reasons in individual cases.
- 7.3 The following link is to be verified for further information on the Carrier's dangerous goods policy:
<http://www.iata.org/whatwedo/cargo/dgr/Documents/passenger-provisions-table-23A-en.pdf>
- 7.4 The Charterer guarantees that:
 - 7.4.1 all Baggage to be transported does not contain items likely to endanger the Aircraft or persons or that the transport of the Baggage or any items in the Baggage is prohibited by the laws, regulations or other provisions of the states of departure, transit and arrival;
 - 7.4.2 no animals of any kind may be transported unless specific written agreement shall have first been obtained from the Carrier. The Charterer must ensure the necessary documentation is in place as specified by DEFRA including but not limited to health and vaccination certificates, entry permits, transit permits and exit permits.
- 7.5 The Carrier will not be responsible for the loss, sickness, injury or death of any animals unless covered by the Convention.
- 7.6 The Carrier will not be responsible for any loss the Charterer or any Passenger suffers because any animal carried or proposed to be carried on the Aircraft does not have the health and vaccination certificates, entry permits, transit permits, exit permits and other documents needed for the animal.

8. DELAYS AND DIVERSIONS

- 8.1 If the performance of the Aircraft is prevented by the actions of the Charterer or anyone acting on behalf of the Charterer, including (but not limited to) any Passenger arriving later than 2 hours after the scheduled departure time, the Carrier may at its discretion and without liability depart immediately, subject to slots, crew duty and airport opening times, or alternatively elect to charge an hourly rate plus any additional charges to include (and not limited to) parking, overnight and crew costs etc. This will be invoiced separately once the Flight has been completed.
- 8.2 If at the request of the Charterer the Aircraft is used by the Charterer otherwise than in accordance with the Flight Schedule the Charterer shall pay to the Carrier in respect of such use a sum calculated at the basic rate applying to the Flight Schedule. The sum shall become due and payable together with all fees and charges imposed by law in respect of each Flight including without prejudice to the generally of the foregoing landing fees, hangarage fees, parking fees, air navigation fees, ground service and handling fees, customs fees, airport surcharges, accommodation, meals and refreshment charges and all pilot and crew expenses thereby incurred.
- 8.3 If for any reason the Aircraft is diverted from any airfield or destination shown in the Flight Schedule to another airfield the journey to the said airfield of destination shall be deemed to be complete when the Aircraft arrives at the other airfield and if the cause of diverse is independent of the Carrier's will, i.e. delays on the passengers' side, bad weather developments at the airfield of destination or other Force Majeure event, the Charterer will bear all the additional costs related to the diversion and the Carrier shall have no responsibility in respect of diversions or the affect of diversions on the Charterer on its Passengers..

9. FLIGHT SCHEDULE

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- 9.1 The Flight Schedule shall be set out in the Charter Confirmation and be binding for the Charterer.
- 9.2 The times given in the Flight Schedule shall be approximate times.
- 10. CATERING**
- 10.1 The Carrier shall provide VIP standard cold food and drinks from the open bar.
- 11. CANCELLATION AND TERMINATION**
- 11.1 The Charterer may cancel this Agreement or cancel a Flight by notice in writing to the Carrier, providing such notice is received by the Carrier. Upon such cancellation, the Charterer shall be obliged to make payment in full of the cancellation charges set out below as agreed compensation:
- 11.1.1 100% of the Charter Price if the Flight is cancelled on the day of departure
 - 11.1.2 75% of the Charter Price if the Flight is cancelled 1 day prior to departure
 - 11.1.3 50% of the Charter Price if the Flight is cancelled 2 days prior to departure
 - 11.1.4 30% of the Charter Price if the Flight is cancelled 3 days prior to departure
 - 11.1.5 15% of the Charter Price if the Flight is cancelled 14 days prior to departure
 - 11.1.6 10% of the Charter Price if the Flight is cancelled after signature of the Charter Confirmation
- The Charterer accepts the above cancellation charges to be a reasonable pre-estimate of the losses that the Carrier shall sustain in the event of cancellation of any Flight.
- 11.2 The Carrier may terminate the Agreement immediately by notice in writing if:
- 11.2.1 the Charterer fails to make payment of any amount specified in the Charter invoice on the due date; or
 - 11.2.2 the Charterer commits a breach of the Agreement which is incapable of remedy or which, if capable of remedy, is not remedied within five (5) days of receipt of written notice from the Carrier requiring remedy of such a breach; or
 - 11.2.3 if, in the opinion of the Carrier, the Charterer is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986); or
 - 11.2.4 the Charterer, or any partner in the Charterer (being an actual person) is deemed either unable to pay its debts or is having no reasonable prospect of so do, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - 11.2.5 the Charterer admits in writing an inability to pay or become unable to pay its debts; or
 - 11.2.6 the Charterer ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has receiver, a liquidator, a manager, an administrator, administrative officer or similar officer appointed in respect of the whole or any part of its assets or business (or is the subject of a filing with any court for the appointment of any such officer), makes a composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction.
- 11.3 If the Carrier terminates the Agreement under Condition 11.2, the Charterer shall immediately pay to the Carrier the cancellation charges in accordance with Condition 11.1.
- 12. LIMITATION OF LIABILITY**
- 12.1 In accordance with the Convention any liability of the Carrier to the Charterer or Passengers shall be subject to (and the Charterer agrees that the Carrier shall have the benefit of) the provisions of the Convention.
- 12.2 The Carrier shall under no circumstances whatsoever be liable to the Charterer, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any loss of profit, anticipated profit, goodwill or any indirect or consequential loss arising under or in connection with the Charter.
- 12.3 Where the Carrier is a EU community air carrier (as defined in the EU Council Regulation 889/2002 ("Regulation")), the Regulation shall govern the liability of the Carrier in the event of accidents and the following conditions shall then apply:
- 12.3.1 that the damage was caused by, or contributed to by, the negligence, wrongful act or omission of the injured or deceased Passenger; or
 - 12.3.2 where it is subsequently proved that the person who received the payment was not the person entitled to compensation; or
 - 12.3.3 it is subsequently proved that the person who received the payment caused or contributed to the damage by negligence or other wrongful act or omission.
- 12.4 The Charter Confirmation and the Flight, where it is an international one, is governed by the rules and limitations established by the Convention, which rules and limitations shall, to the extent the Convention is applicable as applied to the Flight.
- 12.5 Except as specifically provided by the Convention, the Carrier shall not be liable for any death, wounding or personal injury or claim of whatsoever nature, whether the death or bodily injury or the delay or loss of or damage to or delay of Baggage, whether arising in contract or in tort, whether occasioned by the Carrier or its respective officers, employees or agents and the Charterer hereby waives all rights and claims against the Carrier from any such claims, except to the extent that the same caused by the wilful misconduct or gross negligence of the Carrier, its officers, employees or agents.
- 12.6 The Carrier's liability for proved damages sustained in the event of death, wounding or any other bodily injury by a Passenger in the event of an accident is not subject to any financial limit.
- 12.7 The Carrier has a strict liability for the first one hundred and thirteen thousand one hundred (113,100) and limited Special Drawing Rights ("SDRs") of any claim.
- 12.8 Notwithstanding Clause 12.7, if the Carrier can prove that the damage was caused by or contributed to by, the negligence or other wrongful act or omission of the injured or deceased Passenger or of the person claiming compensation, the Carrier may be exonerated wholly or partly from its liability in accordance with applicable law.
- 12.9 For claims that may potentially exceed one hundred and thirteen thousand one hundred (113,100) SDRs, they will be reduced if the Carrier can prove that the damage was not due to the negligence or other wrongful act or omission of the Carrier or its agents or the damage was solely due to the negligence or wrongful act or omission of a third party.
- 12.10 The Carrier will, without delay, and in any event not later than fifteen (15) days after the identity of the natural person entitled to compensation has been established, make such advance payment as may be required to meet the immediate economic needs on a basis proportionate to the hardship suffered.

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- 12.11 Without prejudice to Clause 12.10, an advance payment of at least sixteen thousand (16,000) SDRs per Passenger will be made in the event of death.
- 12.12 Making an advance payment shall not constitute recognition of liability and may be offset against any subsequent settlement. The payment shall be non refundable unless the Carrier proves:
- 12.12.1 that the damage was caused by, or contributed to by, the negligence of the injured or deceased Passenger; or
- 12.12.2 where it is subsequently proved that the person who received the advance payment was not the person entitled to compensation; or
- 12.12.3 it is subsequently proved that the person who received the advance payment caused or contributed to the damage by negligence.
- 12.13 With regard to Baggage:
- 12.13.1 the Carrier will not be liable for damage to unchecked Baggage unless the damage was caused by the Carrier's negligence or the negligence of the Carrier's agents;
- 12.13.2 the Carrier's liability for damage to Baggage, including damage caused by delay, is limited by the Convention to one thousand one hundred and thirty one (1,131) SDRs except where the Passenger proves that the damage was caused from an act or omission by the Carrier or its agent carried out either:
- 12.13.2.1 with the intention of causing damage; or
- 12.13.2.2 reckless and with knowledge that damage would probably result and the passenger proves that the Carrier's employees or agents responsible for the act or omission were acting within the scope of their employment;
- 12.13.3 the Carrier is not liable for any damage caused by the Baggage. The Passenger will be responsible for any damage caused by the Passenger's Baggage to other people and property, including the Carrier's property.
- 12.14 Subject to Conditions 12.4 to 12.13, the Carrier's total liability of the Charterer in respect of all losses arising out of or in connection with the Charter Confirmation, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed the Charter Price.
- 13. NO WAIVER**
- 13.1 No failure or delay by either party in exercising any right, remedy, right, power or privilege under the Agreement shall operate as a waiver of the same.
- 14. ENTIRE AGREEMENT**
- 14.1 The Agreement shall constitute the entire extent of the agreement between the parties in relation to the subject matter and shall supersede all prior agreements and arrangements, whether written or verbal, between the parties.
- 14.2 No variation of the Agreement or the Charter Confirmation shall be effective unless made in writing, expressed to be such a variation and signed by and on behalf of the parties by their respective authorised officers.
- 15. AUTHORITY**
- 15.1 The Charterer represents and warrants that the individual signing the Agreement is duly authorised and has legal capacity to execute and deliver the Agreement and that the execution and delivery of the Agreement and the performance of the Charterer's obligations hereunder have been duly authorised and that the Agreement is a valid and legal agreement binding and enforceable in accordance with its terms.
- 16. ASSIGNMENT AND OTHER DEALINGS**
- 16.1 The Agreement is personal to the Charterer and the Charterer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement.
- 16.2 Each party confirms it is acting on its own behalf and not for the benefit of any other persons.
- 17. COUNTERPARTS**
- 17.1 The Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
- 18. THIRD PARTIES**
- 18.1 No-one other than a party to the Agreement shall have the right to enforce any of its terms.
- 19. NOTICES**
- 19.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be:-
- 19.1.1 delivered by hand or prepaid recorded delivery post at the address appearing at the beginning of the Agreement; or
- 19.1.2 sent by email to the email address nominated by both parties to receive notices under this Agreement and when evidenced by a delivery and read receipt for that email, with the notice in writing to follow by registered post in accordance with Clause 19.1.1.
- 19.2 Any notice shall be deemed to have been received:-
- 19.2.1 if delivered by hand, on signature of a delivery receipt;
- 19.2.2 if sent by prepaid first class recorded delivery, on signature of the delivery receipt;
- 19.2.3 if e-mailed, at 10.00am on the next Business Day after transmission and evidenced by a read receipt for that email with the notice in writing to be received in accordance with Clause 19.2.3.
- 20. GOVERNING LAW**
- 20.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 21. JURISDICTION**
- 21.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 21.2 Each party (a) waives objection to the English courts on grounds of inconvenient forum or otherwise as regards proceedings in connection with this Agreement; (b) agrees that a judgment or order of an English court in connection with this Agreement is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.