

# Terms & Conditions

## GENERAL CONDITIONS

### 1. DEFINITIONS

In this Agreement unless the context otherwise requires:

**Agreement:** this Passenger Aircraft Charter Agreement including the Schedule and any appendices or attachments thereto;

**Aircraft:** any aircraft for the time being operated in connection with any Flight;

**Base Date:** the base date stated in the Schedule;

**The Carrier:** the operator of the Aircraft;

**Charter Price:** the amount set out in the Schedule;

**Flight:** a flight described in the Schedule;

**Schedule:** the schedule to this Agreement;

**Charterer:** any person, firm or body corporate chartering, or offering to charter, any aircraft from the Carrier;

**Supplier:** the charter company; and

**Demurrage/Standing Charge:** a charge payable to the Carrier in respect of failure to load or discharge the Aircraft within the time agreed.

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

2.1 The Charterer shall pay to the Supplier 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 In the unlikely event of a substantial increase in fuel costs, between the Base Date of the agreement and the date of Flight operation, the Charterer may be required to pay to the Supplier such amount as shall fully compensate the Supplier 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 to the Supplier under or by reason of this Agreement. If the Charterer is required to withhold any part of any payment payable by it to the Supplier 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 Supplier shall receive from the Charterer the full amount of such payment.

2.5 Demurrage / Standing Charges may be levied in exceptional circumstances, at the equivalent hourly flying rate to the Charter Price for the Aircraft.

2.6 When deicing is required this will be charged back to the Charterer at cost after the flight is completed.

2.7 If payment is not received prior to departure then the credit/debit card you have provided will be debited.

## **3. AIRCRAFT AND CREW**

3.1 The Supplier shall procure the Carrier to provide the Aircraft at the commencement of the Flight properly manned and equipped, fueled, 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). In the event that any Flight is delayed through no fault of the Supplier or the Carrier, the Charterer shall pay to the Supplier Demurrage/Standing Charge at the rate set out in the Schedule.

3.2 The times shown 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.

3.3 All ground and operating personnel including cabin staff are authorized to take orders only from the Carrier unless specific written agreement shall first have been obtained from the Carrier whereby certain defined instructions may be accepted by such personnel from the Charterer.

3.4 The Supplier may at its discretion and without prior notice substitute the Aircraft and/or the Carrier, for the same or similar class of aircraft and carrier where possible; and such substitute aircraft and substitute carrier shall, for the purposes of this Agreement, be the Aircraft and the Carrier hereunder. To the extent that such substitution involves additional costs, such additional costs shall be charged to Charterer.

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

The Supplier shall procure that 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 Supplier 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, LOADING 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 Supplier shall be under no liability whatsoever to the Charterer nor to such passenger. The Supplier 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 Supplier such additional sum that the Supplier may specify for each such passenger to cover applicable passenger taxes and the administrative costs of the Carrier, and the Supplier thereby incurred.

5.2 In the event of any delay (other than any delay for technical reasons the responsibility for which shall lie with the Carrier) 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 Supplier shall be reimbursed by the Charterer to the Supplier on demand.

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

5.4 In the event that:

any agreement between the Carrier and the Supplier in respect of the Aircraft is terminated for whatever reason; or

the Aircraft is detained (whether lawfully or not) by any third party (including but not limited to detention by any aviation or airport authority, overflight authority or by way of lien or requisition for hire or otherwise); or

the Carrier has an administrator, receiver, administrative receiver, trustee or other like person appointed over a part or all of its assets or business (or any event analogous thereto occurs in any jurisdiction in which the Carrier conducts its business) and as a result the Carrier is unable to perform the Flights at the same cost to the Carrier; or

if the Carrier becomes insolvent, enters into voluntary liquidation or is compulsorily wound up (or any event analogous thereto occurs in any jurisdiction in which the Carrier conducts its business); or

the Carrier, for whatever reason, fails to hold or maintain an Air Operator's Certificate then the Supplier shall use its reasonable endeavors to find an alternative carrier to operate such flights as may be affected by the occurrence of any of the above events ("the Affected Flights"), at the same cost to the Charterer.

5.5 In the event that the Supplier is unable so to do, the Supplier shall (subject to the provisions of Clause 10 hereof and provided that the Charterer has duly fulfilled its obligations hereunder) refund to the Charterer such part of the Charter Price previously paid by the Charterer as relates to the Affected Flight(s). In the event that the Supplier is able to arrange an alternative carrier to operate the Affected Flight(s), but only at an additional cost, the Supplier shall notify the Charterer forthwith and the Charterer shall have the option to charter the Aircraft operated by the alternative carrier provided that, if it so elects, it shall pay to the Supplier such additional costs upon demand. If the Charterer does not so elect, the Supplier shall, (subject to the provisions of Clause 10 hereof and provided that the Charterer has duly fulfilled its obligations hereunder), refund to the Charterer such part of the Charter Price previously paid by the Charterer as it relates to the Affected Flights and the Supplier shall thereupon be under no further obligation to the Charterer in relation to the Affected Flights.

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

6.1 The Charterer shall comply in all respects with the conditions of all permits, licenses and authorities granted for the Flights and will procure such compliance on the part of all its passengers.

6.2 The Charterer shall hold harmless and indemnify the Supplier 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.

6.3 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.

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

7.1 The Supplier shall be under no liability to the Charterer or to any passenger of the Charterer in respect of any variation to or cancellation of any Flight or the non-availability of any seats which results from the acts or omissions of the Carrier, or for any failure by the Carrier to perform any Flight and the Charterer hereby acknowledges to the Supplier that in any such event the Charterer shall only have recourse against the Carrier.

7.2 The Supplier shall be under no liability to the Charterer for any failure by it or by the Carrier to perform their respective obligations under this Agreement arising from force majeure, labor disputes, strikes or lockouts or any other cause beyond the control of the Supplier or 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.

7.3 The Charterer shall indemnify the Supplier against any claim by any passenger of the Charterer arising out of any such variation, cancellation, non-availability or failure to perform provided always that if the Supplier shall receive any refund from the Carrier in respect of any such varied cancelled or unperformed Flights or unavailable seats which have already been paid for by the Charterer, the Supplier shall (subject to the provisions of Clause 10 hereof and provided always that the Charterer shall have duly fulfilled its obligations under this Agreement), repay such refund to the Charterer.

7.4 The Charterer shall indemnify the Supplier against any loss, damage, liabilities, costs or expenses of whatsoever nature caused to be suffered or incurred by the Supplier and its officers, employees' suppliers or subcontractors arising out of any act or omission of the Charterer or its officers, employees or suppliers whether arising in contract or tort (including negligence) or otherwise.

7.5 Neither the Carrier nor Supplier shall be deemed to undertake any carriage to which this Agreement relates as a common carrier.

7.6 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. This Agreement and the carriage thereunder on international flights is 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 28th 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.

Except as specifically provided by the Warsaw Convention and/or the Montreal Convention, the Supplier shall not be liable for any death, wounding, or personal injury or claim of whatsoever nature whether for death or bodily injury or for delay or loss of or damage to or delay of baggage or cargo whether arising in contract or in tort whether occasioned by the Supplier or the Carrier, or their respective officers, employees or agents and the Charterer hereby waives all rights or claims against the Supplier and discharges the Supplier, its officers, employees and agents from any such claim as aforesaid except to the extent the same is caused by the willful misconduct or gross negligence of the Supplier, its officers, employees or agents.

## **8. TERMINATION**

This Agreement may be terminated immediately upon notice from the Supplier 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;
- 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 Supplier requiring remedy of such breach;
- 8.3 the Charterer admits in writing its inability to pay or becomes unable to pay its debts;
- 8.4 a petition is presented for an administration order to be made up in relation to the Charterer;
- 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 the Charterer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1996 (England);
- 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);
- 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;
- 8.8 a distress or other execution is levied or enforced upon or against any part of the Charterer's property;

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 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 if anything analogous to the events referred to in 8.3 to 8.8 above occurs in any jurisdiction in which the Charterer conducts its business;

8.10 in the opinion of the Supplier a material adverse change occurs in the business, assets, condition, operations, or prospects of the Charterer; or

8.11 any of the events specified in this Clause 8 occur in relation to any guarantor of the Charterer's obligations hereunder.

8.12 CANCELLATION – If the Charterer wishes to cancel any flight or flights, the following cancellation charges shall be paid forthwith by the Charterer to the Supplier as agreed compensation:

- 60% of the Charter Price if cancelled more than 7 days prior to departure.
- 80% of the Charter Price if cancelled less than 7 days but more than 48 hours prior to departure.
- 90% of the Charter Price if cancelled less than 48 hours but more than 24 hours prior to departure.
- 100% of the Charter Price if cancelled within 24 hours of departure.

Note: These are our general cancellation terms which may vary slightly depending on the aircraft contracted. Date of positioning flight is considered as date of departure (this may not always be the day of YOUR departure as it is occasionally necessary to position the previous day, to accommodate early departures, crew duty, etc.)

## **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 Supplier may have) pay forthwith to the Supplier all amounts then due and unpaid to the Supplier hereunder, together with interest thereon (if any) at the rate specified in the Schedule and the Charterer shall indemnify and keep the Supplier indemnified against all loss, damage, costs, expense, claim or liability incurred or sustained by the Supplier as a result of such termination and the Supplier 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 and the Supplier 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 Supplier may at any time without notice to the Charterer at its discretion set-off any amounts paid by the Charterer to the Supplier hereunder against any amounts then due to the Supplier under this Agreement or against any amount due at such time from the Charterer to the Supplier.

## **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 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.

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.

11.5 No claims shall be made against the Supplier 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.

11.6 No variation of this Agreement shall be effective unless made in writing and signed by both parties.

11.7 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.

11.8 No failure by the Supplier to exercise and no delay by the Supplier in exercising any right, power or 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.

11.9 The Charterer shall not be entitled to assign the benefit of this Agreement.

11.10 The Supplier 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.

11.11 Private Jet Charter is an air charter broker, not a direct air carrier. All air charter services supplied by Private Jet Charter are operated by fully licensed direct air carriers.

## **12. INDEMNITIES TO SURVIVE TERMINATION**

All indemnities contained within this Agreement shall survive the termination of this Agreement, howsoever occurring.

## **13. CHOICE OF LAW, SUBMISSION TO JURISDICTION**

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

13.1. The parties will attempt to resolve any dispute arising out of or related to this agreement through friendly negotiations amongst the parties. If the matter is not resolved by negotiations, the parties will resolve the dispute using the below Alternative Dispute Resolution (ADR) procedure.

Any controversies or disputes arising out of or related to this Agreement will be submitted to mediation in accordance with any statutory rules of mediation. If mediation is not successful in resolving the entire dispute or is unavailable, any outstanding issues will be submitted to binding arbitration under the rules of the London Court of International Arbitration. The arbitrator's award will be final, and the judgment may be entered upon it by any court having proper jurisdiction. Both parties consent to utilizing online dispute resolution tools, whenever possible.

## **14. EMPTY LEGS**

The operation of any return portion of a booked one-way Flight (the "Empty Leg" or "Empty Sector") is dependent and conditional upon either:

1. The aircraft flying from its outbound airport to its destination airport for the purposes of flying a return or other charter therefrom; or
2. The aircraft flying an inbound charter and then returning from the airport to its home base or elsewhere.

In the event that, in the case of 1. above, the return or other charter is cancelled for whatever reason or, in the case of 2. above, the inbound charter is cancelled for whatever reason then, the Empty Leg cannot be performed, and Private Jet Charter shall have no obligation to the Charterer in respect thereof save for the return of the Charter Price.

### **Contact policy**

You agree to be contacted by Persevere Aviation, LLC. by email or phone and to receive marketing emails.

### **Refund policy**

If a client wishes to cancel any flight or flights, cancellation charges will apply, ranging from 10% to 100% of the cost of the flight. Please refer to the specific contract for exact cancellations and refund terms for each individual booking.

In the event that the Supplier is unable to perform the flight, the Supplier shall (subject to the provisions of Clause 10 of our terms and conditions and provided that the Charterer has duly fulfilled its obligations) refund to the Charterer such part of the Charter Price previously paid by the Charterer as relates to the Affected Flight(s).

In the event that the Supplier is able to arrange an alternative carrier to operate the Affected Flight(s), but only at an additional cost, the Supplier shall notify the Charterer forthwith and the Charterer shall have the option to charter the Aircraft operated by the alternative carrier provided that, if it so elects, it shall pay to the Supplier such additional costs upon demand. If the Charterer does not so elect, the Supplier shall, (subject to the provisions of Clause 10 of our terms and conditions and provided that the Charterer has duly fulfilled its obligations), refund to the Charterer such part of the Charter Price previously paid by the Charterer as it relates to the Affected Flights and the Supplier shall thereupon be under no further obligation to the Charterer in relation to the Affected Flights.

The Charterer shall indemnify the Supplier against any claim by any passenger of the Charterer arising out of any such variation, cancellation, non-availability or failure to perform provided always that if the Supplier shall receive any refund from the Carrier in respect of any such varied cancelled or unperformed Flights or unavailable seats which have already been paid for by the Charterer, the Supplier shall (subject to the provisions of Clause 10 of our terms and conditions, and provided always that the Charterer shall have duly fulfilled its obligations under this Agreement), repay such refund to the Charterer.