

## 1. Definitions

1.1 As used in these General Conditions of Contract:

- (a) "Document of Carriage" means any document delivered, either individually or collectively to passengers in respect of carriage that gives an indication of the places of departure and destination and of one or more agreed stopping places;
- (b) "Montreal Convention" means the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal, 28th May 1999, which is implemented in the European Community by Council Regulation (EC) No. 2027/97 as amended by European Parliament and Council Regulation (EC) No. 889/2002 and national legislation of the Member States;
- (c) "We", "us", "ours", "carrier" means EXXAERO;
- (d) "You", "your", "passenger", "charterer" means any person, carried or to be carried in an aircraft with our consent.

## 2. Scope

2.1 These General Conditions of Contract shall apply to any and all carriage performed by carrier or performed under a contract of carriage with carrier. Carriage hereunder is subject to the laws of the Netherlands. The rules and limitations relating to liability established by the Montreal Convention shall apply, unless the carriage is not "International Carriage" as defined by this Convention. For carriage which is not international carriage, our liability is governed by the Regulations of Title 16 Book 8 of the Dutch Civil Code, Articles 8:1340 seqq.

2.2 Carriage hereunder is subject to the following:

- (a) The flight(s) is/are in all respects subject to the provisions, obligations and conditions of such Aircraft Charter Agreement between us and such charterer, Aircraft Lease Agreement or any other Agreement relating to the flight(s);
- (b) You are duly qualified and entitled to be carried as a passenger upon the charter flight in question in accordance with all governmental and aviation authority regulations relating thereto and with any applicable provisions of such Aircraft Charter Agreement, Aircraft Lease Agreement or any other Agreement;

## 3. Agreed stopping places

3.1 The agreed stopping places are those set forth in the Document of Carriage, or as shown in our timetable as scheduled stopping places on your route.

## 4. Performance of the carrier

4.1 We undertake to use our best efforts to carry you and your baggage with reasonable dispatch. Advertised times are not guaranteed and form no part of this contract. We may without notice substitute alternate carriers or aircraft, and may alter or omit stopping places shown in the Document of Carriage in case of necessity. Schedules are subject to change without notice. We assume no responsibility for making connections. Variation and cancellation by charterer

4.2 We shall not be obliged to agree to any request by the charterer for the variation of the agreed upon flight program or the details of any flight, and any variation to which we agree shall be conditional upon prior agreement of the charterer to accept the related increase in the total charter price and any other consequential changes arising in relation to the affected flight or flights. Only in case a cancellation charge has been agreed upon, the charterer shall have the right to cancel any flight by giving carrier advance written notice of such cancellation and paying to carrier the Cancellation Charge specified in the Schedule in place of the relevant portion of the total charter price payable in relation to that flight.

## 4.3 Cancellation or variation by the carrier

The completion of the flight is conditional upon obtaining all necessary permits including without limitation take-off clearance, over flying clearance, landing clearance. Carrier reserves the right to postpone, cancel or reroute the flight or parts thereof without any liability of the carrier to the charterer in case the flight cannot be completed as expected due to war, riots and civil commotion and the like, sabotage, strike, blockade, lockout, local industrial conflicts, quarantine, hijacking, acts of terror, requisition, confiscation, retention or other force majeure of any kind, technical reasons, unavailability of crew resources, weather conditions or other circumstances which are outside the reasonable control of carrier, or when the security of the passengers or the crew is deemed in danger.

In case carrier cancels, postpones or reroutes a flight for any other reason, the sole remedy of the charterer shall be the right to claim a refund of at maximum any prepaid amounts regarding the flight in question and the liability of the carrier for any other damages or losses, including but not limited to consequential damages is explicitly excluded. If carrier partly cancels a flight, e.g. a certain distance due to conditions mentioned, carrier shall refund the charterer a pro rata amount. Notwithstanding the above, the cost of the return flight of aircraft and crew to home base shall remain due by charterer at all times. The charterer shall indemnify the carrier for any claims of passengers in connection with the cancellation, postponement or rerouting of a flight.

## Refused entry

4.4 In the event that any passenger is refused entry at any destination airport, the charterer shall indemnify and keep indemnified the

Carrier, their respective employees, servants and agents from and against any and all cost or expense whatsoever incurred by any of them in respect thereof (including but not limited to charges, fees, penalties or other expenses or in respect of any arrangements made by the Carrier to return such passenger to the country from which such passenger was originally carried).

## 4.5 Termination

Carrier may, without prejudice to any other rights including the right to claim damages which carrier may have against charterer, suspend the performance of the flight or terminate the contract with the charterer immediately upon notice to the charterer of any of the following events:

- (a) if the charterer fails to make payment of any amount payable hereunder on the due date;
- (b) if the charterer loses control over a substantial part or all of its assets, is adjudicated bankrupt, suspends its payments, or in general, becomes insolvent.
- (c) if in the reasonable opinion of the carrier a material adverse change occurs in the business, assets, condition or operations of the charterer.

## 4.6 Consequences of Termination

In case carrier terminates the agreement pursuant to clause

4.5 hereabove, the charterer shall, without prejudice to any other right or remedies the carrier may have, pay forthwith to the carrier such part of the total charter price as has not been previously paid by the charterer together with interest in accordance with article 6:119a of the Dutch Civil Code.

## 5. Our liability

5.1 Save as provided by Council Regulation No. 2027/97 as amended by European Parliament and Council Regulation No. 889/2002 carriage by us is subject to the rules and limitations relating to liability established by the Montreal Convention unless such carriage is not international carriage to which the Convention applies. In case the Convention does not apply, our liability is governed by the Regulations of Title 16 Book 8 of the Dutch Civil Code, Articles 8:1340 seqq.5.2 In respect of the carriage of passengers by us

- (a) We shall be liable to the passenger in the event of an accident resulting in the passenger's death or bodily injury whilst on board an aircraft or in the course of any of the operations of embarking or disembarking. Our liability for damages for such death or bodily injury shall not be subject to any financial limit, be it defined by law, convention or contract;
- (b) For any damages up to an equivalent of 100,000 SDR, we shall not exclude or limit our liability by proving that we or our agents have taken all necessary measures to avoid the damage or that it was impossible for us to take such measures. If, however, we prove that damage was caused by, or contributed by, your negligence, we may be exonerated wholly or partly from our liability in accordance with the applicable law;

(c) We shall without delay and in any event not later than 15 days after the identity of the natural person entitled to compensation has been established, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the hardship suffered. In the case of death such advance payment shall be not less than 16,000 SDR per passenger. Such advance payment:

- (i) shall not constitute an admission of liability by us;
- (ii) may be offset against any subsequent sums payable on the basis of our being held liable;
- (iii) is not returnable unless we prove that the damage was caused by, or contributed to by the negligent act or omission of the deceased or injured passenger; or the person who received the advanced payment caused or contributed to the damage by negligence or other wrongful act or omission; or the person who received the advanced payment was not the person to whom the advanced payment should properly have been paid.

## 5.3 In respect of baggage

- (a) For checked baggage, we shall be liable to you for its destruction, loss or damage during the time it was in our charge and to the extent that damage did not result from the inherent defect, quality or vice of the baggage;
- (b) For unchecked baggage, we shall be liable to you only if the damage resulted from our fault or that of our servants or agents;

(c) Our liability to you in respect of baggage shall be limited to 1000 SDR per passenger unless a higher value is declared to us at check-in of the baggage concerned and a supplementary sum paid it required, in which case our liability will be limited to such higher declared value (subject to the limit of the value of passenger's actual interest in delivery at destination);

5.4 In case of passenger delay, we shall be liable for damage unless we took all reasonable measures to avoid the damage or it was impossible to take such measures. Our liability for passenger delay is limited to 4150 SDR.

5.5 In case of baggage delay, we shall be liable for damage unless we took all reasonable measures to avoid the damage or it was impossible to take such measures. Our liability for baggage delay is limited to 1000 SDR.

5.6 Any exclusion or limitation of our liability shall apply to and be for the benefit of our agents, servants and representatives and any person whose aircraft is used by us for carriage and its agents, servants and representatives.

## 6. Documentation

6.1 You are responsible for obtaining all required travel regulations, orders, demands, travel requirements, rules or documents and visas and for complying with all laws, instructions of countries to be flown from, into or through which you transit. We shall not be liable for the consequences resulting from your failure to obtain such documents and visas or to comply with such laws, regulations, orders, demands, travel requirements, rules or instructions. You shall comply with Government travel requirements, present exit, entry and other required documents and arrive at airport by time fixed by carrier or, if no time is fixed, early enough to complete departure procedures. We shall have no liability in respect of any passengers who fail to check-in at the required time.

6.2 If the scheduled departure is delayed by the charterer or any passenger or passengers, the carrier is entitled to demurrage payable by the charterer at a rate of Euro 2000,- per hour or part of hour or, in case the carrier proves the actual costs exceed the aforesaid amount, the actual costs of such delay.

## 7. Refusal of Carriage

7.1 In the reasonable exercise of our discretion, we may refuse to carry you or your baggage if we have notified you in writing. We may also refuse to carry you or your baggage if one or more of the following have occurred or we reasonably believe may occur:

- (a) Such action is necessary in order to comply with any applicable government laws, regulations, or orders;
- (b) The carriage of you or your baggage may endanger or affect the safety, health, or materially affect the comfort of other passengers or crew;
- (c) Your mental or physical state, including your impairment from alcohol or drugs, presents a hazard or risk to yourself, to passengers, to crew, or to property;
- (d) You have committed misconduct on a previous flight, and we have reason to believe that such conduct may be repeated;
- (e) You have refused to submit to a security check;
- (f) You do not appear to have valid travel documents, may seek to enter a country through which you may be in transit, or for which you do not have valid travel documents, destroy your documentation during flight or refuse to surrender your travel documents to the flight crew, against receipt, when so requested;
- (g) You fail to observe our instructions with respect to safety or security;
- (h) You have previously committed one of the acts or omissions referred to above.

## 8. Dangerous goods

8.1 You must not include in your baggage without carrier's consent or prior arrangement with carrier compressed gases (flammable, non-flammable and poisonous), corrosives (such as acids, wet batteries), explosives, munitions, fireworks and articles which are easily ignited; flammable liquids and solids (such as flammable aerosols, lighter or heating fuels, matches), oxidising materials; poisons; radioactive materials; other restricted articles (such as mercury, magnetic material, offensive or irritating materials).

## 9. Electronic equipment

9.1 For safety reasons, we may forbid or limit operation aboard the aircraft of electronic equipment, including, but not limited to, cellular telephones, laptop computers, portable recorders, portable radios, CD players, electronic games or transmitting devices, including radio controlled toys and walkie-talkies. Operation of hearing aids and heart pacemakers is permitted.

## 10. Search

10.1 For reasons of safety and security we may request that you permit a search, x-ray or other type of scan be made of your person and baggage. If you are not available, your baggage may be searched in your absence. If you are unwilling to comply with such request carrier may refuse to carry you and your baggage. In the event an x-ray or other scan causes damages to you or your baggage, we shall not be liable for such damage unless due to its fault or negligence.

## 11. Conduct on board

11.1 If in our opinion you conduct yourself aboard the aircraft so as to endanger the aircraft or any person or property on board, or obstruct the crew in the performance of their duties, or fail to comply with any instructions of the crew including but not limited to those with respect to smoking, alcohol or drug consumption, or behave in a manner which causes discomfort, inconvenience, damage or injury to other passengers or the crew, we may take such measures as it deems reasonably necessary to prevent continuation of such conduct, including restraint. You may be disembarked and refused onward carriage at any point, and may be prosecuted for offences committed on board the aircraft.

## 12. Personal data

12.1 The charterer shall, prior to each flight, provide to the carrier a full list of passengers that are to be carried, together with such other information relating to the passengers as the carrier may reasonably require for the purposes of complying with the relevant regulations. You recognise that we will receive personal data for the purposes of our providing services, facilitating immigration and entry procedures, and making available such data to government agencies, in connection with your travel. For these purposes, you authorise us to retain and use such data and to transmit it to our own offices, authorised agents, government agencies or other carriers.



## 13. Fines/Penalties

13.1 If we are required to pay any fine or penalty or to incur any expenditure by reason of your failure to comply with laws, regulations, orders, demands, travel requirements, rules or instructions of the countries concerned or to produce the required documents, you shall reimburse us on demand, any amount so paid or expenditure so incurred. We may apply towards such payment or expenditure the value of any unused carriage or any of your funds in our possession.

## 14. Sub-sales

14.1 The charterer shall not be entitled to sell to third parties any part of the flight accommodation without carrier's prior written consent. Where such consent is granted, it is given on condition that:

- (a) if the regulations relating to the sale of such part of the flight accommodation so require, the charterer shall be the holder of such authority as may be necessary under those regulatory provisions; and
- (b) that every such sale shall be subject to the relevant terms of this agreement.

14.2 Breach by the charterer of the provisions of clause 14, if not promptly remedied, shall entitle carrier to cancel the relevant flight and be compensated by the charterer fully for any resulting costs, expenses and loss of profit suffered by the carrier.

## 15. Price and payment

15.1 Carrier agrees to perform the flights in accordance with the terms of the agreement with the charterer, in consideration for which the charterer agrees to pay the total charter price to carrier. The charterer shall make payment of the total charter price to carrier at the time or times and in the amounts specified and in accordance with the provisions of the agreement.

15.2 Carrier may also arrange on behalf of the charterer for the provision in relation to the performance of flights such additional services and at the rates specified in the agreement, payment for which (unless specified otherwise) shall be made by charterer within 7 days of receipt of carrier's invoice.

15.3 The total charter price is based upon costs calculated known on the date the total charter price was offered by the carrier to the charterer. The total charter price may be varied by carrier as a result of any changes occurring after the date of the offer but prior to any relevant flight as follows:

- (a) if the cost of aviation fuel increases between the date of the carrier's offer and the date of any flight, carrier shall be entitled to increase that portion of the total charter price relating to such flight by such amount as is necessary to reimburse carrier the amount of its increased costs resulting from such aviation fuel price increase. Carrier shall advise charterer prior to the flight of any such increase.
- (b) in the event of the introduction of new, or increase of existing Government duties or levies or increase in insurance costs, carrier shall be entitled to pass on to charterer any resulting increase in the cost of providing the affected flight in its entirety.

15.4 Failing payment within the applicable payment term, the charterer shall automatically become due legal interest in accordance with article 6:119a of the Dutch Civil Code.

## 16. Time limits on claims and actions

16.1 If you wish to file a claim or action regarding damage to checked baggage, you must notify us in writing as soon as you discover the damage and, at the latest within 7 days of receipt of the baggage. If you wish to file a claim or action regarding delay of checked baggage you must notify us in writing within 21 days from the date the baggage has been placed at your disposal.

16.2 Any right to damages shall be extinguished if an action is not brought within 2 years of the date of arrival at destination, or the date on which the aircraft was scheduled to arrive, or the date on which carriage stopped. The method of calculating the limitation period shall be determined by the law of the court where the case is heard.

## 17. Applicable Law and Jurisdiction

17.1 These General Conditions of Contract for Carriage of Passengers and Baggage shall be governed by and construed in accordance with Dutch law and the District Court of Rotterdam shall have exclusive jurisdiction to deal with any disputes arising hereunder.

## 18. Special conditions, legislation, etc.

For chartered flights going to or from the United States, the District of Columbia, or territories and possessions of the United States, local immigration legislations requires the charterer agrees that the return portion of each ACA may be used to effect the passenger's removal from the United States based on a finding of inadmissibility, excludability or deportability under 8 CFR 217.4. As mentioned in clauses 6 and 7 we are not liable to cover expenses related to any such inadmissibility, deportation or evocations of visa from US authorities.

## 19. General

19.1 Carriage to be performed hereunder by several successive carriers is regarded as a single operation.

19.2 No agent, servant or representative of ours has authority to alter, modify or waive any provision of this contract.

19.3 Charterer shall not be entitled to suspend payment of any amounts due to carrier for any reason, or to set off any amounts due to carrier against any amounts allegedly due by carrier to agent.

19.4 The headings to the clauses of these General Conditions of Carriage are inserted for convenience only and do not form part of this Agreement and have no effect upon its interpretation.

19.5 If any term or condition of this Agreement shall to any extent be invalid or unenforceable, the remainder of these General Conditions of Carriage shall not be affected thereby and each of the terms and conditions shall be valid and enforceable to the fullest extent permitted by law.

19.6 The charterer shall not be entitled to assign, novate, deal or transfer any of its rights or obligations under the contract with the carrier without the prior written consent of the carrier.

19.7 The total charter price, payment terms and other commercial terms contained in the contract with the carrier are confidential and may not be disclosed to any third party without the prior approval of the carrier or as required by law.

## User:

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