



GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

In this Agreement unless the context otherwise requires:-

"Agent"	means Big Air UK Ltd.
"Agreement"	means this Passenger Aircraft Charter Agreement including the Schedule and any appendices or attachments thereto.
"Aircraft"	means any aircraft for the time being operated in connection with any Flight.
"Base Date"	means the base date stated in the Schedule.
"the Carrier"	means the operator of the Aircraft as specified in the Schedule.
"Charter Price"	means the amount set out in the Schedule.
"Flight"	means a flight described in the Schedule.
"Schedule"	means the schedule to this Agreement.

2. CHARTER PRICE AND PAYMENT

- 2.1 The Charterer shall pay to the Agent 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 specified in the Schedule is based on aviation fuel costs calculated on the Base Date. If for any reason whatsoever there shall be a significant (i.e. > 10%) increase in the cost of aviation fuel between the Base Date and the date of operation of any Flight, then the Charterer shall pay to the Agent 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 to the Agent 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 Agent 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 Agent shall receive from the Charterer the full amount of such payment.

3. AIRCRAFT AND CREW

- 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 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 authorised 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.

4. TRAFFIC DOCUMENTS

The Carrier shall supply or procure the supply of all necessary documents relating to the carriage undertaken pursuant to this Agreement and the Charterer shall give to the Agent 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

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- 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 Agent and/or the Carrier shall be under no liability whatsoever to the Charterer nor to such passenger. The Agent and/or 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 Agent such additional sum that the Agent may specify for each such passenger to cover applicable passenger taxes and the administrative costs of the Carrier and the Agent 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 Carrier shall be reimbursed by the Charterer to the Agent 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 Carrier and the Agent, their respective officers, employees, servants and agents against any and all cost or expense whatsoever incurred by the Carrier or the Agent in respect thereof (including but not limited to charges, fee, penalties, imposts or other expenses levied upon the Carrier or the Agent by any immigration authority) or of any arrangements made by the Carrier and/or the Agent to return such passengers to the country from which such passenger was originally carried.

6. CARRIER DEFAULT

- 6.1 In the event that:

- 6.1.1 any Aircraft required for the operation of any Flight 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
- 6.1.2 if the Carrier has an administrator, receiver, administrative receiver, trustee or other like person appointed over a part or all of its assets or business and as a result the Carrier is unable to perform the Flights at the same cost to the Carrier; or
- 6.1.3 if the Carrier becomes insolvent, enters into voluntary liquidation or is compulsorily wound up

then the Agent shall use its reasonable endeavours 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.

- 6.2 In the event that the Agent is unable so to do, the Agent shall (subject to the provisions of Clause 11 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 to the Agent as relates to the Affected Flight(s) provided always that the Agent has not previously forwarded such amounts to the Carrier. In the event that the Agent is able to arrange an alternative carrier to operate the Affected Flight(s), but only at an additional cost, the Agent 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 Agent such additional costs upon demand. If the Charterer does not so elect, the Agent shall, (subject to the provisions of Clause 11 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 to the Agent as relates to the Affected Flights (provided always that the Agent has not previously forwarded such amounts to the Carrier) and the Agent shall thereupon be under no further obligation to the Charterer in relation to the Affected Flights.

7.0 OBLIGATIONS OF THE CHARTERER

- 7.1 The Charterer shall comply with all the requirements of the Agent in relation to the performance of all of the Charterer's obligations as set out in this Agreement.
- 7.2 The Charterer shall hold harmless and indemnify the Carrier and the Agent 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.
- 7.3 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.



- 7.4 The Charterer shall be responsible for the issue and delivery of all necessary passenger tickets, baggage checks and other necessary documents to all passengers.
- 7.5 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.
- 7.6 The indemnities contained in this Clause 7 shall survive the termination of this Agreement.

8. EXCLUSION OF LIABILITY/INDEMNITY

- 8.1 The Agent 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 Agent that in any such event the Charterer shall only have recourse against the Carrier.
- 8.2 The Agent 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, labour disputes, strikes or lock-outs or any other cause beyond the control of the Agent 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.
- 8.3 The Charterer shall indemnify the Carrier and the Agent 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 Agent 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 Agent shall (subject to the provisions of Clause 11 hereof and provided always that the Charterer shall have duly fulfilled its obligations under this Agreement), repay such refund to the Charterer.
- 8.4 The Charterer shall indemnify the Carrier and the Agent against any loss, damage, liabilities, costs or expenses of whatsoever nature caused to be suffered or incurred by the Carrier or by the Agent and their respective 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.
- 8.5 The Carrier shall not be deemed to undertake any carriage to which this Agreement relates as a common carrier.
- 8.6 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.
- 8.7 The Charterer hereby acknowledges to the Agent that it recognises that the Agent acts only as agent for the Carrier and that the Agent is not in any way responsible for the acts, omissions or defaults of the Carrier or the failure of the Carrier to perform its obligations contemplated hereunder and the Charterer hereby agrees to indemnify the Agent against any and all liabilities, claims, demands, suits, judgments, damages and losses, including reasonable expenses, costs and legal fees in connection therewith or incidental thereto arising directly or indirectly out of any failure by the Carrier to comply with its obligations contemplated hereunder.
- 8.8 The indemnities contained in this Clause 8 shall survive the termination of this Agreement.

9. TERMINATION

This Agreement may be terminated immediately upon notice from the Agent to the Charterer upon the occurrence of any of the events specified below:-

- 9.1 the Charterer defaults in the payment of any amount payable hereunder on due date; or
- 9.2 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 Agent requiring remedy of such breach; or
- 9.3 the Charterer admits in writing its inability to pay or becomes unable to pay its debts; or
- 9.4 a petition is presented for an administration order to be made up in relation to the Charterer; or
- 9.5 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 1986 (England); or

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- 9.6 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
- 9.7 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
- 9.8 a distress or other execution is levied or enforced upon or against any part of the Charterer's property; or
- 9.9 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 any thing analogous to the events referred to in 9.3 to 9.8 above occurs in any jurisdiction in which the Charterer conducts its business; or
- 9.10 in the opinion of the Agent a material adverse change occurs in the business, assets, condition, operations or prospects of the Charterer; or
- 9.11 any of the events specified in this Clause 9 occur in relation to any guarantor of the Charterer's obligations hereunder.

10. EFFECT OF DEFAULT

- 10.1 If this Agreement is terminated under Clause 9, then the Charterer shall (without prejudice to any other rights and remedies which the Agent may have) pay forthwith to the Agent 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 Agent indemnified against all loss, damage, costs, expense, claim or liability incurred or sustained by the Agent as a result of such termination and the Agent shall be entitled to retain any initial deposit paid by the Charterer pursuant to any provisions therefor set out in the Schedule.
- 10.2 The Charterer shall indemnify the Carrier and the Agent against any claims by any passenger of the Charterer arising out of the termination of the Agreement.
- 10.3 The indemnities contained in the Clause 10 shall survive the termination of this Agreement.

11. SET-OFF AND APPLICATION OF MONEYS

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

12.0 GENERAL

- 12.1 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.
- 12.2 Time shall be the essence of this Agreement
- 12.3 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.
- 12.4 No party has relied on any warranty or representation of any other party except as expressly stated or referred to in this Agreement.
- 12.4 No claims shall be made against the Agent 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.
- 12.5 No variation of this Agreement shall be effective unless made in writing and signed by both parties.
- 12.6 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.

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- 12.7 No failure by the Agent to exercise and no delay by the Agent 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.
- 12.8 The Charterer shall not be entitled to assign the benefit of this Agreement.
- 13. CHOICE OF LAW, SUBMISSION TO JURISDICTION, MEDIATION**
- 13.1 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 Court.
- 13.2 The Baltic Air Charter Association provides a mediation service to which parties are able to obtain resolution of any dispute relating to this Agreement or any other aviation related Agreement

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