

CARGO CHARTER

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. In these Cargo Charter Terms and Conditions capitalised words and expressions have the meanings set out for them below:

Cargo Charter Summary means a 'Cargo Charter Summary' for the charter of an Aircraft incorporating these Cargo Charter Terms and Conditions;

Aircraft means the aircraft of the type specified in the applicable Cargo Charter Summary (or any equivalent substitute permitted by Charterer as set out in the same) as shall be operated by the Carrier in connection with any Flight;

Aviation Conventions means the Warsaw Convention for the Unification of certain Rules relating to International Carriage by Air signed on October 12 1929 (as modified by the Hague Protocol 1955, the Guadalajara Convention 1961 and Montreal Protocols 1, 2, 3 and 4); the Montreal Convention for the Unification of certain Rules relating to International Carriage by Air signed on 28 May 1999; and any additional or successive protocols thereto.

Commencement Date means the date upon which these Cargo Charter Terms and Conditions shall become effective, being the date of execution of each Cargo Charter Summary;

Carrier means the air carrier named in the applicable Cargo Charter Summary;

Carrier Agreement means the air charter agreement to be entered into between Charterer and Carrier for the performance of a Flight or series of Flight(s).

Charterer means the Charterer named in the applicable Cargo Charter Summary;

Flight means the flight and routing set out in a Cargo Charter Summary

Flight Charges means the price payable to Hunt & Palmer for the Flight as specified in a Cargo Charter Summary;

Flight Crew means from time to time the personnel of Carrier who shall be engaged in flying/ operating the Aircraft in performance of the Services;

Force Majeure means an occurrence beyond the reasonable control of the party affected including, but not limited to, riots, strikes or lockouts (but not strikes or lockouts of the defaulting party's own employees, agents or sub-contractors, technical and mechanical breakdowns and failures of aircraft and equipment), civil commotion, existence or apprehension or imminence of war between any nations, civil wars, blockade, hijacking, embargo, acts of governmental authorities, acts of God, fire, flood, fog, frost, ice, volcanic eruption, epidemics, quarantine, requisition of Aircraft, accident, confiscation, detention or total loss of Aircraft or any similar cause beyond the control of the party affected and which by exercise of reasonable diligence said party is unable to prevent;

Hunt & Palmer means Hunt & Palmer Cargo Charters Limited;

Person means any individual person, any form of corporate or business association, trust, government entity, or organisation or association;

Regulations means any laws statutes, enactments, ordinances, regulations (including any internal corporate regulation), official directive or recommendation, mandatory requirement, operating authority, maintenance standards and specifications, rules and certificates or contractual undertakings;

- 1.2. **Services** means the services provided or procured by Hunt & Palmer hereunder in connection with a Flight or in relation to the Aircraft or ancillary thereto; In a Cargo Charter Summary, unless otherwise stated, a reference to:
- (a) "Charterer", "Hunt & Palmer", or any other "Person" includes, subject to the terms hereof, any of their respective permitted successors, transferees and/or assignees;
 - (b) plural concepts shall include the singular and vice versa;
 - (c) any document, excluding the General Terms and Conditions, shall include any changes to that document and any replacement for it;
 - (d) any Regulation shall include any changes to that Regulation and any replacement for it;
 - (e) an obligation of a Person refers to any obligation that Person has under or in relation to a Cargo Charter Summary; and
 - (f) "includes" "including," "include" or similar terms shall not be construed as limiting and shall mean "including, without limitation."
- 1.3. Headings to Clauses are not intended to affect their meaning.

2. CHARTER TERMS AND CONDITIONS

- 2.1 These Cargo Charter Terms and Conditions set out the terms and conditions for the supply of Cargo Charter services by Hunt & Palmer to Charterer (the "**Cargo Charter Terms and Conditions**").
- 2.2 The Cargo Charter Terms and Conditions shall be supplemented by one or more Cargo Charter Summaries setting out the sectors, routes, aircraft type or individual aircraft, as applicable, the flight schedules, applicable rates and cost distributions, together with any amendments to these Cargo Charter Terms and Conditions.
- 2.3 Hunt & Palmer is not an air carrier nor is it an operator of aircraft and accordingly all Flights shall be performed by the applicable Carrier in accordance with the Carrier Agreement.
- 2.4 The provisions of these Cargo Charter Terms and Conditions will be incorporated into each Cargo Charter Summary in their entirety and to the absolute exclusion of any terms and conditions, terms of business or other terms provided by Charterer at any time, unless otherwise stated in such Cargo Charter Summary.
- 2.5 Each Cargo Charter Summary incorporating these Cargo Charter Terms and Conditions shall form a separate agreement, and each reference to "Cargo Charter Summary" in these Cargo Charter Terms and Conditions shall refer to each such separate Cargo Charter Summary.

3. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

Charterer makes the representations and warranties to Hunt & Palmer as set out below. Charterer understands that these statements must be true upon the Commencement Date and/or at all relevant times and Charterer undertakes that:

- (a) Charterer, not being a natural person, has been duly and properly formed and has since been maintained according to all Regulations applicable to Charterer;
- (b) in entering into the Cargo Charter Terms and Conditions and a Cargo Charter Summary and carrying out its obligations, Charterer does not contravene or breach any Regulation applicable to it;
- (c) Charterer has the power to execute and the authorisations it needs to enter into the Cargo Charter Terms and Conditions and Cargo Charter Summary and to carry out its obligations under the same.
- (d) no litigation, arbitration, administrative proceeding or claim before any court, arbitrator, governmental, regulatory or administrative agency or authority which might by itself or together with any other proceedings or claim materially and adversely affect its ability to observe or perform its obligations under this Agreement, is in progress or pending, or to the best of its knowledge, information and belief threatened, against it, or any of its assets.
- (e) no liquidator, provisional liquidator, official manager, administrator, examiner, custodian, trustee, receiver or receiver and manager or similar officer has been appointed in respect of all or any part of the assets of the Charterer nor

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has any application been made to a court which is still pending or an order for, or any act, matter or thing being done which with the giving of notice, lapse of time or satisfaction of some other condition (or any combination thereof) will lead to, the appointment of any such officers or the winding up, re-organisation or liquidation of it or the entry of any order of relief under any insolvency, examination, creditors rights or re-organisation or similar laws with respect to it.

(f) Charterer confirms that it shall not, seek to transport dangerous goods, livestock, weapons or ammunition without the knowledge and express consent of the Carrier and Hunt & Palmer.

(g) Charterer shall not, in any circumstance, seek to transport any article prohibited for carriage by air.

4. SERVICES

- 4.1 Commencing on the Commencement Date, Hunt & Palmer hereby agrees to procure that the Carrier provide the Services required subject to and in accordance with the terms of the applicable Cargo Charter Summary, in consideration for which Charterer agrees to pay to Hunt & Palmer the Flight Charges.
- 4.2 Charterer shall be solely responsible for and pay all costs associated with the Aircraft, any Flights and the Services hereunder except those specifically excluded in the applicable Cargo Charter Summary.
- 4.3 Carrier will at all times retain possession and full operational control over the Aircraft. Charterer will procure that Charterer's operations shall be conducted in accordance with the reasonable instructions of the Carrier or its authorised agents and agrees that carriage of its cargo (and any persons accompanying such cargo) shall be governed by the Carrier Contract and the Carrier's terms in relation to liability for passenger, baggage and cargo loss and the applicable Aviation Conventions. Charterer shall procure that its applicable employees and agents follow the reasonable instructions of the Carrier provided that the captain of the Aircraft shall retain absolute discretion over all matters related to the operation (including, without limitation, all matters of safety) of the Aircraft.
- 4.4 Hunt & Palmer reserves the right, without penalty or liability, to cancel any Flight, sector, rotation or portion thereof due to issues beyond its control, including Force Majeure or any failure of the Carrier to perform the Flights. Hunt & Palmer shall use reasonable endeavours to provide notice of such cancellation as soon as possible prior to the scheduled time of departure of the relevant Flight(s).

5. PAYMENT

- 5.1 Hunt & Palmer shall invoice Charterer for the sums due hereunder in the amounts and at the times set out in the relevant Cargo Charter Summary. Unless stated otherwise in the relevant Cargo Charter Summary, invoices raised pursuant to these Cargo Charter Terms and Conditions are payable on receipt.
- 5.2 Failure to make payment in accordance with these Cargo Charter Terms and Conditions and/or the Cargo Charter Summary is likely to jeopardise the performance of the Flight and Charterer agrees that Hunt & Palmer may suspend or cancel any Flight where Charterer has not made payment in accordance with these Cargo Charter Terms and Conditions and/or the Cargo Charter Summary.
- 5.3 In the event that a Flight is cancelled by Charterer, Charterer agrees that the charges for such cancellation set out in the Cargo Charter Summary are the charges that Hunt & Palmer will incur with the Carrier as a result of the cancellation. Accordingly, Charterer agrees that such charges are genuine pre-estimate of the loss that Hunt & Palmer will incur and that such charges do not, as between Charterer and Hunt & Palmer, constitute a penalty.
- 5.4 Payments shall be made to Hunt & Palmer to the account specified in the Cargo Charter Summary, in immediately available funds, in the currency specified and without set-off, withholding, deduction or counterclaim.

6. INDEMNITY AND DISCLAIMER

- 6.1 Charterer shall defend, indemnify and hold Hunt & Palmer harmless from and against any and all liability, claims, suits, demands, action, losses and costs suffered by Hunt & Palmer and arising out of the Aircraft, Flights, Services, the Cargo Charter Terms and Conditions and Cargo Charter Summary:
 - (a) resulting from death of or injury to persons and for loss, delay or destruction of or damage to any cargo, baggage, mail or property of the Charterer caused by, resulting from or arising out of the acts or omissions of Charterer, their agents or employees, except for injury or damage caused by the gross negligence or wilful misconduct of such Indemnatee; or

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(b) resulting from theft, embezzlement or fraud on the part of Charterer or any of their employees or agents; or

(c) resulting from the failure of Charterer to comply strictly at all times with all applicable Regulations of each country, state (or other sub-division) and municipality in which Charterer operates.

- 6.2. Charterer further indemnifies Hunt & Palmer against all claims, demands, costs, expenses, and liability arising from the issue, completion or acceptance of any air waybill or ticket or from the carriage effected in pursuance thereof and for any claims made by the Carrier against Hunt & Palmer as a result of the Charterer's breach of these Cargo Charter Terms and Conditions and/or any Cargo Charter Summary made pursuant hereto;.
- 6.3. The foregoing obligations of the Charterer to defend and indemnify Hunt & Palmer shall survive any termination of these Cargo Charter Terms and Conditions with respect to any event for which such defence and indemnity is required and which occurs prior to or results in the termination of these Cargo Charter Terms and Conditions.
- 6.4. CHARTERER UNCONDITIONALLY ACKNOWLEDGES THAT HUNT & PALMER, HAS NOT MADE AND SHALL NOT BE DEEMED TO HAVE MADE ANY PROMISE, GUARANTEE, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE AIRWORTHINESS, SERVICEABILITY, VALUE, CONDITION, DESIGN, COMPLIANCE WITH SPECIFICATIONS, AGE, OPERATION, PERFORMANCE, MERCHANTABILITY, FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE OF THE AIRCRAFT OR ANY PART THEREOF.

CHARTERER ACKNOWLEDGES THAT HUNT & PALMER IS NOT AN AIR CARRIER NOR IS IT THE OPERATOR OF THE AIRCRAFT AND, SAVE AS EXPRESSLY SET OUT IN THESE CARGO CHARTER TERMS AND CONDITIONS OR ANY CARGO CHARTER SUMMARY, HAS NOT MADE ANY REPRESENTATION, WARRANTY OR PROMISE AND HAS NOT ASSUMED ANY LEGAL RESPONSIBILITY AS TO THE AIRCRAFT AND ITS OPERATION.

CHARTERER HEREBY WAIVES, RELEASES AND AGREES NOT TO SEEK TO ESTABLISH OR ENFORCE ANY RIGHTS, REMEDIES OR CLAIMS (WHETHER STATUTORY OR OTHERWISE) AGAINST HUNT & PALMER IN RESPECT OF ANY OF THE MATTERS SET FORTH HEREIN. WITHOUT LIMITING THE FOREGOING, CHARTERER WAIVES ANY CLAIM, LIABILITY, RESPONSIBILITY, WARRANTY, REPRESENTATION, GUARANTEE, LIABILITY AND OBLIGATION OF ANY KIND (WHETHER KNOWN OR UNKNOWN) THAT CHARTERER OR ANY OTHER PERSON CLAIMING UNDER OR THROUGH CHARTERER MAY NOW OR HEREAFTER HAVE OR CLAIM AGAINST HUNT & PALMER S, WITH RESPECT TO: (i) ANY COST, LOSS OR DAMAGE (CONSEQUENTIAL OR OTHERWISE), LOSS OF PROFIT OR REVENUE, OR ANY OTHER CLAIM WHATSOEVER ARISING FROM THE AIRCRAFT OR ANY PART THEREOF; AND (ii) ANY OBLIGATION OR LIABILITY OF HUNT & PALMER WITH RESPECT TO ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE, ANY IMPLIED WARRANTY OF FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE, AND ANY OBLIGATION OR FOR ANY LIABILITY OF CHARTERER TO ANY THIRD PARTY AND FOR ANY OTHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, WHETHER OR NOT ARISING FROM THE NEGLIGENCE (ACTUAL OR IMPUTED) OF HUNT & PALMER OR ANY OF HUNT & PALMER'S OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AFFILIATES, PARENTS, MEMBERS, AGENTS, ATTORNEYS OR REPRESENTATIVES, AND ANY RISKS WITH RESPECT THERETO ARE HEREBY ASSUMED BY CHARTERER.

- 6.5. CHARTERER AGREES THAT HUNT & PALMER SHALL NOT BE RESPONSIBLE FOR ANY DELAY OR CANCELLATION AS A RESULT OF THE CARRIER'S ACTIONS OR INACTIONS.
- 6.6. THE FOREGOING DISCLAIMER AND WAIVERS SHALL NOT BE CONSTRUED TO BE A WAIVER BY CHARTERER OF CLAIMS AGAINST HUNT & PALMER ARISING FROM HUNT & PALMER'S BREACH OF THE TERMS, COVENANTS OR REPRESENTATIONS SET FORTH IN THIS AGREEMENT MADE BY, APPLICABLE TO, OR TO BE PERFORMED BY HUNT & PALMER OR FOR DEATH OR PERSONAL INJURY OF THE CHARTERER RESULTING FROM THE NEGLIGENCE OF HUNT & PALMER
- 6.7. Charterer confirms that it understands Clauses 6.4, 6.5 and 6.6 and has taken such advice as it considers necessary in connection therewith.

7. FORCE MAJEURE & NON-PERFORMANCE

- 7.1. Except as specifically set out in the applicable Cargo Charter Summary, a delay in or failure of performance of Hunt & Palmer or Charterer shall not constitute default hereunder nor give right to any claim for damage if and to the extent that such delay or failure is caused by Force Majeure or as a result of any action which Hunt & Palmer (in its sole discretion) is required to take, or is prohibited to take, by virtue of the provisions of applicable laws (including without limitation, the Bribery Act 2010).

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- 7.2. The party so affected shall give to the other prompt notice of any such event of Force Majeure and shall use its best efforts to minimize the extent and effect of any such event which cannot be overcome by due diligence.
- 7.3. Subject to the terms of the Carrier Agreement, if for any reason beyond the Carrier's control the Aircraft is diverted from the destination set out in the Cargo Charter Summary to another destination, the flight shall be deemed to be complete when the Aircraft has landed at that alternative destination. Any additional costs associated with the diversion incurred by the Carrier shall be payable by the Charterer.
- 7.4. Notwithstanding any other provision of these Cargo Charter Terms and Conditions, Hunt & Palmer may suspend or terminate these Cargo Charter Terms and Conditions and any affected Cargo Charter Summary in respect of any Flight if Charterer is unable to procure the performance of its obligations hereunder with respect to such Flight for a period of seven (7) days or more or by reason of any event constituting Force Majeure.

8. WHOLE AGREEMENT

These Cargo Charter Terms and Conditions and the relevant Cargo Charter Summary represent the entire agreement in relation to the subject matter thereto as between the Charterer and Hunt & Palmer and any additions or amendments to the Cargo Charter Terms and Conditions and a Cargo Charter Summary must be in writing and signed by both parties. In the event of any conflict between the terms of a Cargo Charter Summary and the Cargo Charter Terms and Conditions, the Cargo Charter Summary shall prevail.

9. SEVERABILITY

Should any provision of these Cargo Charter Terms and Conditions or a Cargo Charter Summary be unenforceable or invalid the remaining provisions shall remain in full force and effect and there shall be deemed to have been substituted for the unenforceable or invalid provision, a new provision which from an economic point of view comes closest to the purposes pursued by the unenforceable or invalid provision.

10. GOVERNING LAW AND JURISDICTION

- 10.1 These Cargo Charter Terms and Conditions and any Cargo Charter Summary hereto and all non contractual obligations arising out of or in connection with them shall be governed by and construed in accordance with English law.
- 10.2 The Courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of these Cargo Charter Terms and Conditions and/or any Cargo Charter Summary) (a "**Dispute**").
- 10.3 Charterer agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly the Charterer will not argue to the contrary.
- 10.4 Without prejudice to any other mode of service allowed under any relevant law, the Charterer may in the Cargo Charter Summary, provide an agent for Service in England and Wales as its agent for service of process in relation to any proceedings before the English courts in connection with such Cargo Charter Summary; and agrees that where such a process agent has been nominated, failure by a process agent to notify the Charterer of the process will not invalidate the proceedings concerned.

11. ARBITRATION

- 11.1 Subject to Clause 11.4, Hunt & Palmer may refer any Dispute to arbitration under the Arbitration Rules (the "**Rules**") of the London Court of International Arbitration.
- 11.2 The arbitral tribunal shall consist of one arbitrator. The seat of arbitration shall be London, England and the language of the arbitration shall be English.
- 11.3 Save as provided in Clause 11.4, the Parties exclude the jurisdiction of the courts under Sections 45 and 69 of the Arbitration Act 1996.
- 11.4 Hunt & Palmer may by notice in writing to the Charterer require that all Disputes or a specific Dispute be heard by a court of law. If Hunt & Palmer gives such notice, the Dispute to which that notice refers shall be determined in accordance with Clause 10.

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11.5 This Clause 11 is for the benefit of Hunt & Palmer only. As a result, Hunt & Palmer shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, Hunt & Palmer may take concurrent proceedings in any number of jurisdictions.

12. ASSIGNMENT

Charterer shall not be entitled to assign, transfer, novate, deal, subcontract or part with any of its rights or obligations under these Cargo Charter Terms and Conditions or a Cargo Charter Summary without the prior written consent of Hunt & Palmer.

13. NOTICES

13.1. All communications to be given pursuant to a Cargo Charter Summary will be in writing and given to the address set out in the head of the relevant Cargo Charter Summary.

13.2. All communications to be given pursuant to the Cargo Charter Terms and Conditions or a Cargo Charter Summary will be in English. All documents delivered to Hunt & Palmer pursuant to the Cargo Charter Terms and Conditions or a Cargo Charter will be in English, or if not in English, will be accompanied by a certified English translation. If there is any inconsistency between the English version of the Cargo Charter Terms and Conditions or a Cargo Charter Summary and any version in any other language, the English version will prevail.

14. NO PARTNERSHIP

The relationship of the parties is that of independent contractors and nothing in these Cargo Charter Terms and Conditions or a Cargo Charter Summary or in the conduct of business between them shall be construed to create or constitute a relationship of partnership or joint venture between them.

15. THIRD PARTIES

No third parties, are intended to nor shall they be deemed to have a right to (a) benefit from, or (b) seek to enforce, any of the provisions of these Cargo Charter Terms and Conditions and/or any Cargo Charter Summary.

16. NO WAIVER

No failure to exercise, nor any delay in exercising, on the part of Hunt & Palmer, any right or remedy under the Cargo Charter Terms and Conditions or any Cargo Charter Summary shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

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