

## 1. RECITALS

- a. JAS is the operator of aircraft charter services within Australia.
- b. THE CHARTERER requires JAS to operate the Aircraft to provide flights for THE CHARTERER between two or more points for the purpose of delivering Freight and/or Passengers.
- c. This document sets out the terms and conditions which apply to the Service provided.

## 2. DEFINITIONS

**“Actual Weight/s”** is the weight of each item of Freight and/or Passenger measured in kilograms.

**“Additional Fuel”** is fuel that is required to be carried on a Service in addition to the normal flight fuel requirements due to weather or operational requirements that will allow the aircraft to travel to an alternate airfield if a safe landing at the scheduled Airport is not possible.

**“Agreed Price”** is the price quoted to THE CHARTERER in writing or verbally to perform the Service and confirmed as acceptable by THE CHARTERER by issuing a written or verbal instruction to complete the Service.

**“Aircraft”** means any Aircraft operated by JAS to perform a Service.

**“Airport”** means any place used as a landing place for an Aircraft.

**“Baggage”** means any items belonging to a Passenger that is not accessible to the Passenger and/or crew during a Service.

**“Cancellation Fees”** are fees payable to JAS if THE CHARTERER cancels the Service within the specified times of Clause 4.2.

**“Dangerous Goods”** are articles or substances which are capable of posing a risk to health, safety, property or the environment and which are shown and/or classified in the IATA Dangerous Goods Regulations (current edition).

**“Dimensions”** means the length, width and height as measured in centimetres of each item of Freight to be carried.

**“Freight”** means any item other than a Passenger required by THE CHARTERER to be carried on a Service in accordance with these Terms and Conditions.

**“Ground Handling Charges”** mean any charges incurred by JAS in performing the Service at Airports other than Darwin Airport and unless specifically notified as included in the quotation will be charged in addition to the Agreed Price (Ground Handling Charges include but are not limited to after hours fees incurred by JAS such as Flight Crew meals, accommodation and transport, refueller call out fees and overtime rates charged by suppliers).

**“Passenger”** means any person required by THE CHARTERER to travel on any Service.

**“Parties”** means JAS and THE CHARTERER.

**“Payload”** means the total loading available to be carried by an Aircraft and includes Passengers, their Baggage and Freight.

**“Pilot/s”** means the person/s engaged by JAS to operate the Aircraft for the Service and is the person who has absolute control of the Aircraft and the Service.

**“Quotation”** means the document or verbal advice providing THE CHARTERER with the Wet Charter Cost.

**“Service”** means the operation of an Aircraft as required by THE CHARTERER for the purpose of delivering Freight and/or Passengers between two or more Airports.

**“Wet Charter Cost”** means the price charged is inclusive of all aeronautical fees associated with the operation of the Aircraft and includes fuel, air navigation charges, landing fees, maintenance costs, insurance, parking fees, flight crew and the loading or unloading of the Freight at Darwin Airport and any other fees incurred by JAS in order for JAS to carry out its obligations pursuant to these Terms and Conditions but excludes Ground Handling Charges unless specified as included.

**“Weather”** means any variation in climate or temperature that may impact on the Service.

**“Weight”** means the relative mass or the quantity of matter contained by it, giving rise to a downward force and measured in kilograms.

### 3. SERVICE

- 3.1 JAS agrees to provide the Service to THE CHARTERER in accordance with these Terms and Conditions.
- 3.2 JAS shall operate the Service via the most efficient route as determined by the Pilot of the Aircraft, inclusive of technical stops.
- 3.3 THE CHARTERER agrees to pay JAS the Agreed Price and any applicable Ground Handling Charges incurred providing the Service.

### 4. CHARGES AND INVOICES

#### 4.1 Invoicing

- a. For Services provided with a cost less than the THE CHARTERER's Credit Limit, JAS shall issue a tax invoice to THE CHARTERER upon acceptance of the Quotation for the Wet Charter Cost at the Agreed Price for the Service.
- b. For Services provided with a cost in excess of THE CHARTERER's Credit Limit, JAS shall issue a tax invoice to THE CHARTERER upon acceptance of the Quotation for the Wet Charter Cost at the Agreed Price for the Service. Full receipt of payment will be required 24 hours prior to departure.
- c. JAS shall issue a tax invoice to THE CHARTERER upon receipt of any Ground Handling Charges associated with providing the Service.

- 4.2 If THE CHARTERER cancels the Service, THE CHARTERER must pay to JAS cancellation penalty fees as follows:
- a. in the event that THE CHARTERER cancels the Service within twenty-four (24) hours of the scheduled departure time for the Service - the applicable penalty fee shall be 50% of the Agreed Price; or
  - b. in the event that THE CHARTERER cancels the Service within four (4) hours of the scheduled departure time for the Service, or any time after the Aircraft has departed the Aircraft Base to perform the Service - the applicable penalty fee shall be 100% of the Agreed Price.
  - c. Any fees incurred by JAS in the transfer of funds shall be paid for by THE CHARTERER.

4.3 **Overdue Invoices**

- a. Any outstanding amount not paid by the due date as detailed on the JAS Invoice will incur interest charges at the rate of 10.5% per annum
- b. Interest on outstanding invoices will accrue daily.
- c. Outstanding invoices include any invoice for Services, Ground Handling Charges and cancellation penalty charges.

**5. ABORTED SERVICE**

5.1 If:

- a. Service is diverted or returns to Darwin Airport due to inclement Weather; or
- b. the destination Airport is closed due to any reason and the Service must be diverted to another Airport,

Then in the event that the actual flying time is longer than the normal flying time for the Service as originally scheduled, THE CHARTERER shall be liable to pay JAS:

- c. for the Agreed Price; and
- d. for any additional flying time, THE CHARTERER shall pay JAS for the Service based on the charges generated by the JAS quotation system, such charges under this clause including air navigation charges, landing fees, Aircraft costs and any other cost incurred by JAS by providing the Service to THE CHARTERER.

- 5.2 Where a flight is unable to be completed due to mechanical failure, a replacement aircraft shall be provided by JAS to complete the flight at no additional cost to THE CHARTERER.

- 5.3 Where a replacement aircraft is not available, JAS shall provide a substitute aircraft of the same standard as the Aircraft. If an aircraft of the same standard is not available, JAS shall use its best endeavors to provide a suitable aircraft, provided that the use of any aircraft other than the Aircraft shall be subject to agreement by THE CHARTERER. Any additional cost involved for a substitute aircraft shall be borne by JAS.

- 5.4 The Parties acknowledge that Weather conditions may require that the Aircraft carry Additional Fuel for extended flying time. In that event, the Payload available in the Aircraft may be reduced and JAS shall not be responsible for being unable to provide the complete Service.
- 5.5 If JAS determines, in its sole discretion, that by reason of Weather conditions it is necessary to carry Additional Fuel on the Aircraft and the Additional Fuel will impact on the available Payload requirements, then JAS shall give notice in writing to THE CHARTERER who in turn will advise JAS in writing whether they wish to delay the Service or reduce the Payload to accommodate the Additional Fuel.
- 5.6 Nothing in this clause affects the charge payable by THE CHARTERER for the Service.

## **6. PASSENGERS AND FREIGHT**

- 6.1 Prior to JAS accepting any Freight or Passengers to be carried on any Service, THE CHARTERER will supply to JAS:
- a. When Passengers are to be carried:
    - i. the name of each Passenger;
    - ii. mobile number for each passenger, or a primary point of contact; and
    - iii. the Actual Weight of each Passenger.
  - b. When Freight is to be carried:
    - i. the actual weight of each item of Freight;
    - ii. the Dimensions of each item of Freight; and
    - iii. a detailed description of each item of Freight;
- 6.2 Prior to agreeing to provide a Service, JAS will determine whether the Freight and/or Passengers can be loaded and carried on the Aircraft.
- 6.3 THE CHARTERER shall ensure that all Freight will be clearly labelled and will have affixed an airways bill certifying the contents and it's suitability for carriage by air.
- 6.4 JAS may reject any passengers or freight that do not comply with the Civil Aviation Act or JAS Policies and Procedures.

## **7. OBLIGATIONS OF JAS**

- 7.1 All Pilots engaged by JAS to operate the Aircraft shall have an Airline Transport Pilot's License or Commercial Pilot's License, and minimum flying times in accordance with JAS aviation policies.
- 7.2 JAS shall operate the Aircraft in accordance with all relevant laws and regulations.
- 7.3 JAS shall ensure that each item of Freight is restrained in accordance with the Aircraft Flight Manual and Aviation Regulations using only aviation approved restraint equipment.

- 7.4 JAS shall maintain the following insurances:
- a. Workers' Compensation Insurance Cover which shall comply with the law of the Northern Territory
  - b. Insurance which is compulsory under the laws where work is carried out and the Commonwealth of Australia governing the use of motorvehicles and aircraft and shall not be less than:
    - i. Aircraft Combined Single Limit Liability Insurance of not less than \$20,000,000 for each separate occurrence;
    - ii. Passenger Liability Insurance in accordance with the Civil Aviation Act; and
    - iii. Hull Insurance on all aircraft used by JAS in the performance of these Terms and Conditions with a minimum cover equal to or greater than the fair market value of each aircraft.
- 7.5 JAS shall, upon request, provide to THE CHARTERER copies of renewed insurance policies in the form of certificates of currency containing policy numbers, names of insurers, insured parties and the expiration dates of the policies to enable THE CHARTERER to determine whether those policies meet the requirements of clause 7.4 of these Terms and Conditions.

## 8. GENERAL INDEMNITY

- 8.1 JAS is liable to THE CHARTERER for, and must indemnify and keep indemnified THE CHARTERER against any claim, loss or expense which is brought, paid, suffered or incurred by THE CHARTERER or any of THE CHARTERER'S personnel as a result of any negligent, unlawful or deliberately wrongful act or omission by JAS or its staff in providing the Service.
- 8.2 THE CHARTERER is liable to JAS for, and must indemnify (and keep indemnified) JAS against, any claim, loss or expense which is brought, paid, suffered or incurred by JAS or any of JAS personnel as a result of:
- a. any negligent, unlawful or deliberately wrongful act or omission by THE CHARTERER or
  - b. any member of THE CHARTERER's personnel; or
  - c. a breach of THE CHARTERER's obligations under these Terms and Conditions.

## 9. RELEASE

Save for the obligations contained in clause 4 of these Terms and Conditions, the Parties release and discharge each other from any claim, action, damage, loss, liability, cost, charge or expense that it suffers or may have against the other in the event of a delay in the performance of the Parties' respective obligations under these Terms and Conditions if such a delay is not a result of the actions or inactions of the respective Party.

## 10. FORCE MAJEURE

Neither Party shall be liable for any failure of or delay in the performance of any of its obligations under these Terms and Conditions to the extent that such failure is due to causes beyond its reasonable control, including but not limited to, acts of God, war, strikes or labour disputes, embargoes, government orders, pandemics or any other force majeure event.

## **11. DISPUTE RESOLUTION**

- 11.1 If any dispute arises between THE CHARTERER and JAS, then the complainant must provide written notice within 14 days to the other Party setting out:
- a. the nature of the dispute that has arisen; and
  - b. a proposed course of action to resolve the dispute.
- 11.2 A dispute being notified after 14 days will not be considered.
- 11.3 Within 14 days of the date of the notification the Parties must meet to negotiate, in good faith, a resolution of the dispute.
- 11.4 If the Parties are unable to resolve the dispute in accordance with clause 11.1(b) of these Terms and Conditions the Parties must attend a mediation with a mediator to be agreed or if not agreed to be nominated by the President of the Law Society Northern Territory with the mediation to be administered in accordance with the current mediation rules of the Law Society Northern Territory.
- 11.5 The Parties must not commence legal proceedings in relation to these Terms and Conditions without having first acted in accordance with clauses 11.1 to 11.3 of these Terms and Conditions.

## **12. TERMINATION**

THE CHARTERER may terminate these Terms and Conditions at any time however the Cancellation Fees detailed in clause 4.2 of these Terms and Conditions remain in force notwithstanding such termination.

## **13. TAXES AND COSTS**

- 13.1 JAS shall be solely responsible and liable for all taxes, costs, charges or imposts levied against JAS which are levied or charged in any manner whatsoever due to JAS carrying out the Service and any other operations or activities carried out pursuant to the terms of these Terms and Conditions.
- 13.2 Goods and Services Tax (GST) will be added to each invoiced charge at the current legislated rate and in accordance with applicable taxation laws.

## **14. CONFIDENTIALITY**

- 14.1 These Terms and Conditions are confidential.
- 14.2 The contents of all undertakings, activities and operations under or contemplated by these Terms and Conditions shall, except as otherwise required by an applicable law, be treated as confidential and each Party shall take or cause to be taken all reasonable precautions necessary to prevent the disclosure of the contents to any person other than the Party and their respective legal and financial advisers and such other persons approved by the Party to receive such confidential information.

## **15. ASSIGNMENT**

- 15.1 Neither Party shall, without the prior written consent of the other Party, assign, mortgage or charge any or all of its rights or obligations under or pursuant to these Terms and Conditions.

15.2 Notwithstanding clause 15.1, THE CHARTERER may assign its interest in these Terms and Conditions to any related corporation or any subsidiary or affiliated corporation of THE CHARTERER without the necessity for obtaining the prior written consent of JAS.

## **16. ENTIRE AGREEMENT**

These Terms and Conditions constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, proposals, undertakings and agreements, whether written or oral, relating to the subject matter of these Terms and Conditions.

## **17. MODIFICATIONS AND WAIVER**

17.1 A purported modification, variation or amendment of these Terms and Conditions or any waiver of any rights of any Party shall not have any force or effect unless and until the same is in writing, executed by the Parties or, in the case of a waiver, is executed by the Party whose rights are thereby waived.

17.2 No waiver by any Party of any breach or default under these Terms and Conditions by any other Party nor any delay in the exercise of any power or remedy which may become exercisable as a result of such breach or default shall operate or be construed as a waiver of any other preceding or succeeding breach or default by such other Party whether of a like or different character.

## **18. GOVERNING LAW**

These Terms and Conditions shall be governed by and construed in accordance with the laws for the time being in force in the Northern Territory.