



## **GENERAL CHARTER CONDITIONS**

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1. **DEFINITIONS:**

Definitions of several words and terms as may be used in the Agreement:

- **Agreement:** Agreement between the Carrier and the Charterer to carry out one or more Charter Flight(s) for the Charter Price.
- **Aircraft:** the Aircraft identified and described in an annex to the Agreement.
- **Aircraft Crew:** all crew in the Aircraft, meaning Flight Crew and cabin crew.
- **Aircraft documents:** all records, logs, technical data and manuals relating to the maintenance and operations, registrations and certification of the Aircraft.
- **Airframe:** the Aircraft, excluding the engines and Aircraft documents.
- **Airport of Departure:** the Airport from which the Charter Flight with the Aircraft will depart.
- **Airport of Destination:** the Airport to which the Charter Flight with the Aircraft will be operated.
- **AOG:** Aircraft On Ground due to a technical malfunction as a result of which the Aircraft is unavailable for operating any (commercial) flight until the Aircraft has been declared serviceable again.
- **Authorities:** The (governmental) authorities, including Airport authorities and the European Commission, the approval of which Carrier requires in order to be allowed to operate the Charter Flight to be flown under the Agreement.
- **Cargo:** All goods, freight and/or mail, carried in the Aircraft for transportation purposes.
- **Carrier or Denim Air:** Denim Air ACMI B.V., Vermogenweg 3, 3641 SR Mijdrecht, The Netherlands.
- **Carrier's bank account:** The bank account of the Carrier at the ABN-AMRO bank in Mijdrecht, The Netherlands, account number 46.19.00.505, BIC (SWIFT) code: ABNA NL 2A, IBAN code: NL21ABNA0461900505.
- **Charterer:** the company or individual requesting the performance of the Charter Flight, and on behalf of which the Carrier will operate the Charter Flight.
- **Charter Flight:** the agreed flight from the Airport of departure to the Airport of destination, as specified in the Agreement including the services (e.g. cabin crew, catering, travel and cargo documents, additional insurances) as may be specified in the Agreement. Also refer to 'Flight'.
- **Charter Period:** time to elapse between the Charter Start Date and the agreed termination date of the Agreement.
- **Charter Price:** The Price for the agreed Charter Flight(s), as specified in the Agreement.
- **Charter Start Date:** Date on which the (first) Charter Flight will be performed.
- **Deposit:** the sum in US \$ or EURO which has to be paid by the Charterer to the Carrier as a guarantee for the fulfilment of its obligations, which is, unless otherwise agreed in writing, the Charter Price, with as maximum the Charter Price accounted for a period of 3 calendar months. In case of last minute and/or individual Charter Flight no deposit is applicable. In case of regular Charter Flight based on a mid- or long-term Agreement a deposit is applicable.
- **Euribor rate:** Interest rate as from time to time published by the European Central Bank at Frankfurt, Germany.
- **EURO:** the lawful currency of the members of the European Monetary Union.
- **Flight:** the agreed flight from the Airport of departure to the Airport of destination, as specified in the Agreement. Also referred to as 'Charter Flight'.
- **Flight Crew:** the flight officers with required capabilities to operate the Aircraft, this to the sole judgement of the Carrier, and required for the agreed flights schedule,, based on a twenty four (24) hour stand by basis and related to work time, rest time, applicable regulations and normal flight standards, as specified in the Carriers Flight Operations Manual.

- Fuel Price: The price the Carrier has to pay for fuel at a specific airport.
- Home Base: Amsterdam Schiphol Airport.
- IVW: the Dutch Civil Aviation Authority (Inspectorate of Transport and Waterworks, Division Civil Aviation of the Dutch Ministry of Transport, Public Works and Water Management, in Dutch: Inspectie Verkeer en Waterstaat, Divisie Luchtvaart, Ministerie van Verkeer en Waterstaat).
- Maintenance Program: IVW-approved maintenance program for the Aircraft encompassing scheduled maintenance, condition monitored maintenance and on condition maintenance of airframe, engines and parts, including but not limited to the servicing, testing, preventive maintenance, repairs, structural inspections, system checks, overhauls, approved modifications, service bulletins, engineering orders, airworthiness directives, corrosion control inspections and treatments.
- Owners of cargo: owners or suppliers of cargo that is being transported on the Aircraft under the Charter Agreement;
- Taxes: any and all present and future use, personal property, customs, ad valorem, value added, turnover, stamp, interest equalisation, income, gross receipts, or other taxes, fees, withholdings, imposts, duties, deductions, levies, or other charges of any nature, including any Airport fees, paid for the Aircraft and/or passengers and/or cargo, together with any penalties, fines or interest thereon, imposed, levied, or assessed by, or otherwise payable to, any government entity including but not limited to airport authorities, departments, provinces, whether or not in connection with the payment of Rent, the insurance required hereunder, delivery or registration of the Agreement or any other document or in connection with the performance by the parties of their obligations under the Agreement.
- Traffic documents: all airway bills and any other document related to the passengers, and / or cargo, to be carried on the Aircraft as required under any applicable law and/or the IVW or any other civil aviation authority, f.e. in the state of registration of the Aircraft, if not the Netherlands, any state of incorporation of the Charterer and any state to, from, or over which the Aircraft shall be flown.
- US Dollars/USD/US \$: the lawful currency of the U.S.A.;

## 2. **COMPONENTS OF THE CHARTER PRICE**

### 2.1 In the Charter Price are included:

- a. The Aircraft;
- b. Aircraft Crew;
- c. Maintenance according to the Maintenance Program of the Carrier;
- d. Insurance costs, as specified in article 11 below;
- e. Fuel, provided the Fuel Price is not more than 5% more expensive on the date of the relevant Charter Flight than on the date of signing the Agreement by the Carrier;
- f. (Ground)handling, including handling of passengers, cargo (with loading and unloading of the Aircraft), interior cleaning of the Aircraft, servicing of the Aircraft toilets, marshalling, chocks, ground power (GPU), engine starting assistance (ASU), fire fighting, (pre)heating and (pre)cooling, parking and security, qualified ground personnel to assist with aircraft movement including pushback, pushback tugs and qualified personnel for taxi-in and push-out-procedures, crew steps, water replenishment and ground to cockpit communication;
- g. Landing and parking fees;
- h. All air traffic and navigation charges, enroute, airport and local;
- i. Stamp, documentary, registration, filing, or other like duties or taxes required for operation of the Aircraft pursuant to the Agreement;
- j. Standard catering for Aircraft Crew and passengers;
- k. Transportation to and from airports of all Aircraft Crew;
- l. Transportation of 25 kilogram of luggage/baggage maximum per adult passenger. Carrier can at all times refuse to take luggage/baggage on board, without being liable for compensation whatsoever, if operational/performance limitations so dictate, to be decided at full discretion of the Carrier and/or the Aircraft Crew;
- m. Passenger (security) taxes, service charges and all other (individual) passenger related charges charged by (airport) authorities.

### 2.2 In the Charter Price are excluded:

- a. Hotel accommodation for Aircraft Crew, to normal civil aviation standards in case the (last) Charter Flight (of the day) is not to Home Base, whether or not this is due to delay or cancellation of a Charter Flight.
- b. Special catering for passengers;
- c. De- and anti-icing costs;

- d. In case the Fuel Price is more expensive on the date of the relevant Charter Flight than on the date of signing the Agreement by the Carrier, the difference between the price of Fuel on the date of the relevant Charter Flight and the price for Fuel payable at Home Base on the date of signing the Agreement by the Carrier, times the amount of Fuel used during the Charter Flight(s) and the flights between Home Base and the Airport of Departure before the first Charter Flight and after the last Charter Flight between the Airport of Destination and Home Base.
- 2.3 The Carrier is entitled, but not obliged, to pay any of the costs and expenses referred to Article 2.2 wholly or in part on behalf of the Charterer. The Charterer shall reimburse in full any costs and expenses paid by the Carrier on behalf of the Charterer within 14 days of being notified of such charges by Carrier.
- 2.4 The Charterer has the right at its costs to request the Carrier to change the Charter Flight schedule. However, all changes are subject to the approval of the Carrier, such approval not to be unreasonably withheld. All associated costs are for account of Charterer.
- 2.5 Charterer is never entitled to, and Carrier will never give, any refund, rebate or reduction of the Charter Price (nor any refund of passenger Taxes) if the actual number of passengers on the Charter Flight(s) is less than indicated when the quotation was given or the Agreement was reached.

### 3. **CONDITIONS PRECEDENT**

- 3.1 Without prejudice to other articles of the Agreement, the Carriers obligations to charter the Aircraft on the Charter Start Date and thereafter to the Charterer, shall be subject to the satisfaction of the receipt by the Carrier before the Charter Start Date of the full Charter Price, the Deposit (if applicable), and/or any other amounts and/or obligations agreed.

### 4. **WARRANTIES OF THE CARRIER**

- 4.1 The Carrier represents and warrants that:
- a. the Carrier:
    - is an organization and existing in good standing, in accordance with the laws of The Netherlands;
    - has the corporate power and authority to carry on its business as presently conducted and to perform her obligations under the Agreement;
    - complies with the EU-OPS 1 and EU-OPS 145 regulations;
  - b. the Agreement has been duly authorized by all necessary corporate action on the part of the Carrier and the execution of the Agreement and compliance by the Carrier with any terms and/or provision of the Agreement will not contravene or result in any breach of or constitute any default under the law of the state of the Netherlands;
  - c. the Agreement has been duly entered into by the Carrier and constitute the valid, legal and binding obligation of the Carrier enforceable in accordance with its terms of the laws of the state of the Netherlands;
  - d. there are no suits or legal proceedings (including any administrative proceeding) pending, threatened or reasonably expected, or claims, not directly complete unjustified, against the Carrier, which, if adversely determined, would have a material adverse effect upon her ability to perform her obligations out of the Agreement;
  - e. no event of default, which would have a material adverse effect upon the Carriers ability to perform her obligations out of the Agreement has occurred and is continuing.
  - f. information furnished by the Carrier in connection with the Agreement does not, at the time made, contain any untrue statement or omit to state facts, the omission of which makes the statement therein, in the light of the circumstances under which they are made, misleading, nor omits to disclose any material matter to the Charterer and all expressions of expectation, impression, believe and opinion contains therein were honestly made on reasonable grounds after due and careful enquiry by the Carrier;
  - g. any authorisations which are in normal flight situations the responsibilities of the Flight Crew of the Aircraft, necessary for the performance of any flight, will be applied for by the Carrier;

### 5. **WARRANTIES OF THE CHARTERER:**

- 5.1 The Charterer represents and warrants that:
- a. the Charterer:
    - is an organization and existing in good standing, in accordance with the laws of the State of Incorporation of the Charterer;
    - has the corporate power and authority to carry on her business as presently conducted and to perform her

- obligations under the Agreement;
  - has been fully approved by and is the holder of the necessary licenses ensured by all government authorities having jurisdiction to authorize or permit the Charterer to engage in transportation of passengers and goods;
  - performs and complies with her obligations under the Agreement during the Charter Period;
- b. the Agreement has been duly authorized by all necessary corporate action on the part of the Charterer and neither the execution of the Agreement or compliance by the Charterer with any terms and/or provision of the Agreement will contravene or result in any breach of, or constitute any default under any law applicable to the Charterer or result in the creation of any security interest and/or lien or whatsoever up on any property of the Carrier, in particular the Aircraft;
  - c. the Charterer has received any necessary consent, approval, order or authorization of, and has completed registration with, or has given prior notice to, any governmental authorities having jurisdiction with respect to the execution to the Agreement or the validity and enforceability hereof or the satisfaction of all monetary and other obligations thereunder;
  - d. the Agreement has been duly entered into by the Charterer and constitutes the valid, legal and binding obligations of the Charterer, enforceable in accordance with its terms under the laws of the state of the incorporation and the state of the habitual basis of the Charterer;
  - e. it is not necessary under the laws of the state of incorporation and/or of the habitual basis of the Charterer in order to ensure the validity, effectiveness and enforceability of the Agreement or ancillary Agreements, to protect the property rights in the Aircraft of the owner of the Aircraft or any part thereof.
  - f. there are no suits or legal proceedings (including any administrative proceeding) pending, threatened or reasonably expected, or claims, not directly complete unjustified, against the Charterer, which, if adversely determined, would have a material adverse effect upon her financial conditions or business or her ability to perform her obligations hereunder, including but not limited to any taxes;
  - g. no event of default has occurred and is continuing;
  - h. information furnished by the Charterer in connection with the Agreement does not, at the time made, contain any untrue statement or omit to state facts, the omission of which makes the statement therein, in the light of the circumstances under which they are made, misleading, nor omits to disclose any material matter to the Carrier and all expressions of expectation, impression, believe and opinion contains therein were honestly made on reasonable grounds after due and careful enquiry by the Charterer;
  - i. the Charterer is aware of the air operators certificate (AOC) of the Carrier under which the service(s) of the Carrier under the Agreement will be operated, and is fully known and aware of the conditions included and/or attached and she will be bound fully by such conditions and will not act likely to prejudice the Carriers position under the air operators certificate, among others its conditions.

## **6. CANCELLATION, TERMINATION / SUBSTITUTION**

- 6.1 The termination conditions in the Agreement do not in any way intervene with the competence of either party to terminate the Agreement directly in case of default by the other party and/or to terminate the Agreement after a force majeure occurred and exceed the agreed Charter Period.
- 6.2 The Carrier is entitled, without giving any reason, to substitute at all times another Aircraft for the Aircraft. Notwithstanding Article 9.2, in case the Aircraft becomes unserviceable or unavailable, the Carrier is entitled but in no case obliged to substitute an alternative Aircraft and/or transfer its rights and obligations under the Agreement to another carrier, who can supply another aircraft.
- 6.3 The Charterer undertakes and accepts all the terms and conditions concerning its substitution and/or transferring, including but not limited to additional costs above the Charter Price, without having any claim to the Carrier and/or her successors, based upon deviation, delays, cancellation, operation of control or whatsoever. If the additional costs for the Charterer to be paid to the Carrier, solely caused by the substitution, exceed 25% of the Charter Price, the substitution will, at written request of the Charterer, be considered as a force majeure on behalf of the Charterer.
- 6.4 If Charterer cancels any Charter Flight, Charterer shall pay the following percentage of the full Charter Flight for the such relevant Charter Flight: 25 percent cancellation fee if cancellation is effected more than 28 days before the agreed date of departure of such Charter Flight, 40 percent cancellation fee if cancellation is effected between 28 days and 14 days before the agreed date of departure of such Charter Flight; 60 percent cancellation fee if cancellation is effected between 14 days and 8 days before the agreed date of departure of such Charter Flight; 75 percent cancellation fee if cancellation is effected between 8 days and 4 days before the agreed date of departure of such Charter Flight; 100

percent cancellation fee if cancellation is effected less than 4 days before the agreed date of departure of such Charter Flight. Any notice of cancellation shall be made in writing.

## **7. CHARGES / PAYMENTS**

7.1 Should the Charterer fail to make payment or fail to perform any other obligation required by the Agreement to a third party, the Carrier may, at its election without waiver of its rights, perform such obligation and/or pay such amount and the amount of each payment or expense of such performance by the Carrier shall constitute an additional sum due and payable by the Charterer to the Carrier, and the same shall be paid in full to the Carrier's bank account together with interest at the rate described in Clause 6.4 from and including the date of payment by the Carrier but excluding the date of repayment by the Charterer, such repayment and interest to be received by the Carrier no later than seven days after notice being given to the Charterer of the principal amount thereof.

7.2 Annually, on 1 January of each calendar year, all rates will be increased as a correction for inflation, based on the CPIMU index for the European Union as published by the CBS (*Centraal Bureau voor de Statistiek*), or if the CBS ceases to exist or to publish said index, the most comparable existing index in The Netherlands, with a minimum of 3 percent.

7.3 In case any costs which are part of the Charter Price increase, every time such increase to be judged in relation to the Charter Price as agreed upon signing the Agreement, provided such costs are beyond reasonable control of the Carrier, the Carrier has the right to charge these price-increases to the Charterer and the Charter Price will be so adjusted. If requested, the Carrier shall furnish the Charterer with details of the price-increase.

7.4 The Charterer will pay within 5 days after signing of the Agreement but ultimately before the Charter Start Date. If agreed, the Charterer will pay within 5 days after signing of the Agreement but ultimately before the Charter Start Date the Deposit as security for the full and punctual performance of all of Charterer's obligations to Carrier under the Agreement. Carrier may, but is not obliged to, apply the Deposit in whole or in part for any payment, due by Charterer, including any affiliate company of Charterer, to Carrier, including any affiliate company of Carrier. In any such event Charterer is obliged to restore on demand the Deposit in full. The Deposit shall be held by Carrier, and may be commingled by Carrier with its own general or other funds.

Charterer shall not attempt to subject the Deposit to any lien, security interest, charge or other encumbrance and assignment. Carrier is entitled to assign the Deposit as security to Carrier's bank and/or to transfer the Deposit to a successor. On the advance payments and the Deposit no interest is due to Charterer. Any remaining Deposit shall be returned by Carrier to Charterer within 45 days after termination of the Charter Period, provided that Charterer fulfilled all obligations to Carrier and no dispute is left. In the event there is a Dispute, Carrier is first obliged to return the Deposit after the dispute is settled and no obligations related thereto of Charterer are left.

7.5 Should any payment as provided for in the Agreement not be made on the specified date, then the Charterer shall pay interest thereon to the Carrier for the period from (and including) the date until (but not including) the day of payment (as well after as before any relevant judgement) at a rate that is equal to the Netherlands (statutory) interest rate applicable to trade/business transactions, such amounts of interest being calculated on the basis of the actual number of days elapsed in a 360 day year. In case of late payment the Charterer shall also pay a compensation for the extra-judicial collection fees, calculated as indicated by the Dutch Bar Association with a minimum of EUR 2500.

7.6 The Charterer's obligation to pay all sums due under the Agreement shall be absolute and unconditional irrespective of any contingency whatsoever and the Charterer shall not be entitled to any postponement, abatement, compensation, reduction of, or set-off against rental or any other payment due to the Carrier under the Agreement by reason of any past, present or future claims of the Charterer against the Carrier or any other party, whether under the Agreement or otherwise.

7.7 All Charter Price(s) are based on the Fuel Price payable at the Home Base at the day the Charter Agreement is signed by the Carrier. If the Fuel Price is more expensive at a specific airport than at Home Base, then the Charter Price(s) are increased pro rata for the difference between the price of Fuel on the date of the relevant Charter Flight and the price for Fuel payable at Home Base on the date of signing the Agreement by the Carrier, times the amount of Fuel used during the Charter Flight(s) and the flights between Home Base and the Airport of Departure before the first Charter Flight and after the last Charter Flight between the Airport of Destination and Home Base.

## **8. TAXATION**

8.1 If at any time applicable law, regulation or regulatory requirement or any governmental authority, monetary agency or central bank requires the Charterer to make any deduction or withholding from payments of rental, interest and other sums due to the Carrier under the Agreement then the Charterer shall pay to the Carrier such additional amounts to ensure that, after the making of such deduction or withholding the Carrier receives a net sum equal to the sum amount which it would otherwise have received without such withholding or deduction.

- 8.2 If and to the extent Value Added Tax or any equivalent tax is payable on the rentals and any interest thereon, or any other payments by the Charterer to the Carrier hereunder, then reference to the payment of any such sum hereunder shall be deemed to be reference to payment of that sum together with Value Added Tax or any equivalent tax thereon at the appropriate rate.
- 8.3 The Charterer will be responsible and pay all Taxes, except the Taxes which are part of the Charter Price as explicitly mentioned in the Agreement and also except tax imposed on the overall net income and gains of the Carrier as the case may be by the Tax authorities of The Netherlands.
- 8.4 The Parties shall co-operate with each other in order to lawfully minimise the exposure to Taxes.

## 9. **MAINTENANCE AND OPERATIONAL CONTROL**

- 9.1 The Carrier will perform maintenance in accordance with her approved maintenance schedules and in accordance with the requirements of the IVW.
- 9.2 In case of any unscheduled maintenance and repairs, especially in an Aircraft-On-Ground (AOG) situation, the Carrier shall to her best efforts provide or have provided the relevant maintenance and repair activities. In the event of non-availability of the Aircraft for the performance of any Charter Flight due to damage or unscheduled maintenance, and only in such cases that the 'out of service'-period lasts longer than forty-eight (48) hours, the Carrier will make all reasonable efforts to replace the Aircraft within seventy-two (72) hours by one of its other aircraft, if available. The decision which aircraft is suitable for the operation intended is to the sole reasonable opinion of the Carrier. The Carrier is not responsible nor liable for any delay or cancellations due to unavailability of Crew due to sickness or otherwise, , weather or any other acts of God, Force Majeure, or repair of the aircraft attributable to acts of God (such as lightning strike), or acts or omissions by the Charterer and / or third parties, e.g. passengers, Owners of Cargo, airport authorities, (ground)handling services, traffic/navigation authorities, governmental authorities (including but not limited to customs and governmental authorities issuing visa), etc., and the Charterer shall fully indemnify and hold harmless the Carrier, its subcontractors, directors, officers, agents, servants and employees, from and against, any and all liabilities, claims, demands, suits, judgements, (consequential) damages and losses, including all costs and expenses and legal fees in connection herewith.
- 9.3 The Carrier is exclusively and explicitly competent to any operational control regarding the Aircraft whether or not on ground or during the Charter Flight. The Carrier covenants and the Charterer accepts that the Aircraft will be operated in a lawful manner according to the procedures established by the Carrier, amongst others as stated in the Aircraft Flight Manual and Operations Manual Part B, and approved by the Dutch Civil Aviation Authorities and by so operating the insurance covering is not invalidated.
- 9.4 The captain of the Aircraft shall have complete discretion regarding operational control of the Aircraft, among others whether or not a flight should be undertaken, interrupted, diverted, delayed, cancelled, etc, which amounts of space in a specific flight to be utilised (for example with regard to weather conditions, conditions of airports and Aircraft) with regard to the maximum payload for transport of passengers and/or Cargo available and acceptable on the Aircraft and the load carried and its distribution, and the Charterer agrees to accept all such decisions of the captain of the Aircraft or similar decisions of the Carrier.
- 9.5 The Carrier's decision as the amount of space available on the Aircraft for utilisation on all or any portion of the Charter flight shall be final.
- 9.6 The Carrier shall make reasonable efforts to meet Charterer's' requests concerning the services provided on board the Aircraft, in particular drinks, special meals, etc. However, the Carrier may not be held liable if for reasons beyond the control of Carrier or due to reasons linked to security or safety do not allow it to provide suitable services, even if such services have been confirmed by Carrier.
- 9.7 The Carrier shall not be liable for, and the Charterer shall fully indemnify and hold harmless the Carrier, its subcontractors, directors, officers, agents, servants and employees, from and against, any and all liabilities, claims, demands, suits, judgements, (consequential) damages and losses, including all costs and expenses and legal fees in connection herewith or incident thereto, arising out of the decisions as referred to in Articles 9.3, 9.4 and 9.6. The Charterer shall bear all costs related to hotel accommodation, meals, refreshments etc as well as compensation to passengers, if applicable, arising out of the decisions as referred to in Articles 9.3, 9.4 and 9.6.
- 9.8 The Carrier is entitled to utilise any unused space and/or payload for the carriage of their own personnel or cargo.

## 10. **RESPONSIBILITIES OF THE CARRIER**

- 10.1 The Carrier hereby covenants with the Charterer that the Aircraft at the Charter Start Date will be in the condition as

described in an annex to the Agreement.

- 10.2 The Carrier shall on request furnish to the Charterer a copy of relevant operational regulations and manuals in respect of the Aircraft and calculations with respect of costs for the account of the Charterer. The Carrier shall on request also furnish to the Charterer a copy of all flight records in respect of the Charter Flights.

## 11. **RESPONSIBILITIES OF THE CHARTERER**

- 11.1 The Charterer hereby covenants with the Carrier that it shall not use the Aircraft for the carriage of:

- a. any animals living or dead;
- b. acids, toxic chemicals, other corrosive materials, explosives, nuclear fuels, wastes or other nuclear assemblies or components, except as permitted for passenger Aircraft under the Dangerous Goods Regulations and/or the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO-TI) issued by IATA from time to time and provided that all the requirements for packaging and otherwise contained therein are fulfilled, such to be proven, if requested, to the flight crew captain;
- c. any other goods, materials, or items of cargo which could reasonably be expected to cause damage to the Aircraft and which would not be adequately covered by the insurances, required by or obtained pursuant to the terms of the Agreement.

- 11.2 It shall:

- a. promptly pay or procure that there are promptly paid the Charter Price(s) and other amounts due to the Carrier and other charges, including taxes, debts, damages, claims and liabilities, for the account of the Charterer;
- b. not create, do or permit anything which may expose the Aircraft, any part thereof and/or the Carrier, its directors, officers, agents, servants and employees, to penalty, lien, seizure, arrest, impounding, detention, confiscation, taking in execution, attachment or appropriation on the Aircraft, any part thereof and/or the Carrier, its directors, officers, agents, servants and employees
- c. compensate Carrier for excess luggage/baggage above 25 kilogram per Adult passenger at EUR 10 per kilogram. Carrier will for its own benefit be entitled to transport extra cargo.

- 11.3 Carrier will be entitled to terminate this Agreement with immediate effect or cancel individual Charter Flights in case permissions, consents, licences, and/or approvals necessary to operate the Charter Flight(s) under the Agreement have not been obtained from the relevant Authorities 1 week before the Charter Start Date. In this situation Carrier shall not be liable for, and Charterer shall indemnify and hold harmless Carrier, its directors, officers, agents, servants and employees, from and against, any and all liabilities, claims, demands, suits, judgements, damages and losses, including the reasonable costs and expenses and legal fees in connection therewith.

## 12. **INSURANCES**

- 12.1 The Carrier shall procure, and maintain in full force and effect during the Charter Period the following insurance:

- Aircraft Third Party, Passenger, Baggage, Cargo and Mail Legal Liability insurance covering bodily injury and property damage for a combined single limit of not less than US\$ 250,000,000 per occurrence.

- 12.2 The Carrier will arrange for the Charterer to be named as additional insured under the insurance as mentioned in Article 12.1, which will include an exclusion in case of gross negligence and wilful misconduct of the Charterer, its subcontractors, directors, officers, agents, servants or employees.

- 12.3 The insurance shall be underwritten by Aviation Insurers of good financial standing and repute and may be contracted directly or through a reputable broker with experience of aviation insurance. The insurers and (where applicable) broker shall be subject to the approval of the Charterer, such approval not to be unreasonably withheld.

- 12.4 Insurance as mentioned in Article 12.1 shall be of a scope commensurate with the operations of a reputable Airline in the European Union and shall include War and Allied Perils coverage in accordance with AVN 52E up to a limit of US\$ 150,000,000 in the annual aggregate and a personal injury extension in accordance with AVN 60 (subject to a sub limit of US\$ 25,000,000 in the annual aggregate).

- 12.5 Where the operations under the charter involve flights to or from an area subject to a war risk exclusion by the insurers the Charter shall be responsible, in addition to the agreed price of the charter, for any additional premiums charged in respect of Hull War or Liability coverage for the aircraft.

13. **TRAFFIC DOCUMENTS / CUSTOM FORMALITIES**

- 13.1 The Charterer ensures that all information necessary to issue the traffic documents is available so that all traffic documents can be issued by the Carrier in accordance with the requirements, practices and procedures of the Carrier, in accordance with applicable law and requirements of the Authorities or the IVW.
- 13.2 All carriage performed under the Agreement shall be subject to the conditions of carriage contained in and referred to the issued traffic documents and as far as existing to the general conditions of carriage of the Carrier, which are known to the Charterer and annexed to the Agreement.
- 13.3 The Charterer guarantees without any prejudice that passengers and owners of cargo will be bound by the terms and conditions of the issued traffic documents and that all passengers and owners of cargo, observe and comply with all customs, police, public health and other regulations which are applicable in the Netherlands, the states to, from and overflown.
- 13.4 The Charterer shall issue its travel / cargo documents to passengers and owners of cargo and shall ensure that all travel/cargo documents are properly drawn, completed and are delivered to the passengers and owners of cargo in due time.
- 13.5 The Charterer shall at all times be liable to keep the Carrier indemnified against all claims, demands, liabilities, actions, proceedings and costs whatsoever which arise from or in connection with the travel cargo documents, and the traffic Documents, if based on wrong and/or missing information as had to be supplied by the Charterer, according to article 13.1, or passengers with invalid or missing visa or other traffic documents or missing/inadequate travel documents.
- 13.6 The Charterer shall at all times be liable and keep the Carrier indemnified against all fines, liabilities, actions, proceedings and costs whatsoever which arise from or in connection with the situation that a passenger is refused entry into a territory or country. The charterer must pay all the charges or fines imposed on the Carrier by the local authorities, as well as the price of the carriage if the Carrier, due to a government order, is required to return passengers to his/her departure location or elsewhere.

14. **INDEMNIFICATION AND LIMITATION OF LIABILITY**

- 14.1 The Carrier shall fully indemnify and hold harmless the Charterer, its subcontractors, directors, officers, agents, servants and employees, from and against any and all liabilities, claims, demands, suits, judgements, damages and losses, costs, reasonable expenses and reasonable legal fees in connection herewith or incident thereto, arising from or in connection with the performance by the Carrier, its subcontractors, directors, officers, agents, servants and/or employees of any obligation under the Agreement, or death or bodily injury of Charterer's directors, officers, employees, agents, passengers or any other third parties, and damage to property, including passengers baggage, cargo and/or mail carried in accordance with the Agreement, except if such death, injury, loss, damage is in whole or in part a result of gross negligence and wilful misconduct of the Charterer, its subcontractors, directors, officers, agents, servants or employees.
- 14.2 Notwithstanding any other provision of this Article, in each and every situation the liability of the Carrier towards the Charterer is limited to the lesser of (1) the amounts, if any, paid by the Charterer to the Carrier pursuant to the Agreement, and (2) the amount, if any, paid by the insurers of the Carrier or as reimbursement under the applicable Insurance. The Carrier will never be liable or responsible for any indirect or consequential loss or damage, including but not limited to loss of profit, that the Charterer may suffer resulting from, arising out of or in consequence of the performance of the services under this Agreement.
- 14.3 The Charterer is liable in full and shall indemnify and hold harmless the Carrier against:
- Any and all claims, demands, liabilities, actions, proceedings and costs (i.e. duties, taxes) whatsoever which arise from or are attributable to any breach on the part of the Charterer in complying with the provisions of the Agreement, or arising from or in connection with any act, commission, delay or omission by the Charterer, its subcontractors, directors, officers, agents, servants or employee of the Charterer;
  - Any and all claims, demands, liabilities, actions, proceedings and costs whatsoever which arise from EU Regulation No. 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding to an aircraft and of cancellation or long delay of flights.
- 14.4 The Charterer shall be liable towards the Carrier for any and all damages or losses, including consequential damages or losses of whatsoever nature, including loss of profit, caused to the Carrier or to any aircraft or equipment belonging to or used by the Carrier arising from or attributable to any act or omission on the part of any passenger or on the part of the Charterer, its subcontractors, directors, officers, agents, servants and employees.

15. **DEFAULT**

15.1 Each of the following shall constitute an Event of Default on the part of the Charterer:

- failure to make payments when due, including for costs to be born by the Charterer;
- failure to observe or perform any other obligation or undertaking, including any delay or omission, and in respect of such failure which is capable of remedy, shall not have been remedied within five days of receipt by the Charterer of notice from the Carrier requiring the same to be remedied;
- a supervisor, receiver, administrator, administrative receiver or other encumbrancer taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being discharged within seven days) upon the whole or any part of the assets of the Charterer;
- a petition being presented, or a meeting being convened for the purpose of considering a resolution, for the making of an administrative order, the winding up, bankruptcy, or dissolution of the Charterer;
- any representation or warranty of the Charterer contained in the Agreement or any document or certificate furnished to the Carrier in connection herewith is untrue or incorrect;
- if any of the Charterer's licenses, necessary for the Charter and/or the employment of activities by the Charterer, are revoked.

15.2 Upon the occurrence of an Event of Default on behalf of the Charterer or at any time thereafter (for so long as such Event of Default is continuing) the Carrier shall be entitled (without prejudice to any of its other rights hereunder) by notice to the Charterer to treat such event as a repudiation by the Charterer of its obligations under the Agreement, and in its sole discretion by the Carrier may at any time thereafter:

- a. terminate the Agreement; and
- b. proceed by appropriate court action or actions to enforce performance of the Agreement or to recover damages in respect of any breach of the Agreement to the extent permitted by applicable law.

No remedy referred to in this clause is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Carrier. Other use of the Aircraft by the Carrier in mitigation of the Carrier's damages, whether or not in compliance with any requirement under applicable law, shall not be considered as a waiver by the Carrier of any default or remedy provided hereunder.

15.3 On or at any time after termination of the Agreement under or pursuant to this Article 15, the Charterer shall pay to the Carrier on demand (by way of agreed compensation for loss of bargain and without prejudice to any right of damages of the Carrier) the amount notified by the Carrier to the Charterer as being the aggregate of (the remainder of) the Charter Price(s) and any other sums (whether in respect of interest, costs, fees, expenses including legal expenses or otherwise) then accrued under the Agreement.

15.4 If goods and/or services or parts thereof are not delivered or performed at the agreed time of delivery, for whatever reason (including force majeure) on the part of the Charterer, the Carrier shall have the right to declare the contract to be dissolved without further notice of Default or judicial intervention, notwithstanding the Carrier's right to damages, costs and interest.

15.5 Each of the following shall constitute an Event of Default on the part of the Carrier:

- failure to return the Deposit when due;
- failure to insure or maintain the insurances for which the Carrier is responsible;
- a supervisor, receiver, administrator, administrative receiver or other encumbrancer taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being discharged within seven days) upon the whole or any part of the assets of the Carrier and this has a substantial effect on the continuation of any Charter Flight;
- a petition being presented, or a meeting being convened for the purpose of considering a resolution, for the making of an administrative order, the winding-up, bankruptcy, or dissolution of the Carrier and this has a substantial effect on the continuation of any Charter Flight;
- any representation or warranty of the Carrier contained in the Agreement or any document or certificate furnished to the Charterer in connection herewith shall be untrue or incorrect.

15.6 Upon the occurrence of an Event of Default on behalf of the Carrier or at any time thereafter (for so long as such Event of Default is continuing) the Charterer shall be entitled (without prejudice to any of its other rights hereunder) by notice to the Carrier to treat such event as a repudiation by the Charterer of its obligations under the Agreement, and in its sole discretion by the Charterer may at any time thereafter:

- a. terminate the Agreement; and
- b. proceed by appropriate court action or actions to enforce performance of the Agreement or to recover damages in respect of any breach of this Agreement to the extent permitted by the Agreement and applicable law, notwithstanding the content of Article 15.

No remedy referred to in this clause is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Charterer.

16. **FORCE MAJEURE**

16.1 In case the Carrier is unable to perform or complete any service considered by the Agreement, i.e. delay or non-performance due to or arising out of acts of god or public enemy, weather, civil war, insurrection or riot, fire, flood, explosion, earth quake, accident, epidemic, quarantine restriction, any act of government, governmental priority, allocation, regulation or any materials or facilities, strike or labour dispute causing cessation, slowdown or interruption of work, inability after due and timely diligence to procure equipment, data or materials from suppliers in a timely manner, unscheduled maintenance, technical defaults, unserviceable or unavailable Aircraft - for whatever the reason may be, with exclusion of wilful misconduct or gross negligence -, authorizations who are (partly) refused and timely granted or cancelled, it is deemed to be considered as a force majeure.

16.2 Any Party which becomes aware of any delay or inability to perform for the causes stated in the clause above shall notify the other Party immediately of any delay or potential delay arising due to causes detailed in the clause above.

16.3 In case of force majeure both parties have the right to terminate the Agreement if the period in which the force majeure continues, is expected to exceed the Charter Period. In case of force majeure this Agreement will be considered inoperative and neither party shall be liable for any damages in respect of any failure to fulfil its obligations under the Agreement.

17. **SUB-CONTRACTING**

17.1 The Carrier has the right to sub-contract another carrier and to transfer one or more of Carrier's rights and responsibilities under the Agreement to another carrier, which the Charterer unconditionally accepts.

18. **GENERAL CONDITIONS OF CARRIAGE**

18.1 The liability of the Carrier for Carriage performed under this Charter Agreement is subject to the liability rules laid down by the Montreal Convention of 28 May 1999, and Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents, as regards the carriage of passengers and their baggage.

18.2 Unless otherwise expressly agreed in this Charter Agreement the Carrier, its employees and agents who take part in the execution of this Charter Agreement shall never be subject to any other and/or higher liability than provided for in the above-mentioned Convention and Regulation. The Carrier is liable for the Damage sustained in the event of the death or bodily injury suffered by a Passenger if caused by an accident that occurred on board the aircraft or in the course of any embarking or disembarking operations as defined by the Montreal Convention, with a limit of 113,100 SDR. The Carrier's liability in the event of destruction or loss of or damage to Baggage shall be limited to 1,131 SDR per Passenger.

18.3 The General Conditions of Carriage (issue 110301), as published on the website *www.denimair.com* will be applicable to the Charter Flights operated by the Carrier under the Charter Agreement. These General Conditions of Carriage contain, amongst others, provisions on limitation of liability of the Carrier. Charterer is responsible for informing all passengers about the applicability of the General Conditions of Carriage and the limitation of liability. Charterer shall indemnify the Carrier, its employees and agents with regard to all economical consequences of the Carrier, its employees and agents being charged with any other and/or higher liability than mentioned above.

19. **WAIVER**

19.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any terms or condition of the Agreement shall either be deemed to be a waiver or in any way prejudice any right of that party under the Agreement unless such waiver shall be in writing and signed by a duly authorised representative of the party giving such waiver.

20. **SEVERABILITY**

20.1 To the extent that any of the clauses of the Agreement or of these General Charter Conditions are void or unenforceable the same shall not affect the remaining clauses of the Agreement or of these General Charter Conditions so far as the same are independent of those void or unenforceable terms.

20.2 The clauses of the Agreement and these General Charter Conditions will be considered to be applicable in full on all ancillary Agreements between the Carrier and the Charterer, unless explicitly otherwise agreed in writing.

21. **MISCELLANEOUS**

- 21.1 The Agreement in conjunction with these General Charter Conditions constitute the entire agreement between the parties and no additional items shall have any effect unless made and agreed upon in writing, and is constructed according to and governed by the laws of the Kingdom of the Netherlands (including applicable regulations of the European Union).
- 21.2 Clause headings and the index are inserted for convenience of reference only and shall be ignored in the interpretation of the Agreement.
- 21.3 To the extent that any of the articles of the Agreement or these general Charter Conditions are void or unenforceable the same shall not affect the remaining articles of the Agreement or these general Charter Conditions so far as the same are independent of those void or unenforceable terms.
- 21.4 No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any terms or condition of the Agreement or these General Charter Conditions shall either be deemed to be a waiver or in any way prejudice any right of that Party under the Agreement or these General Charter Conditions unless such waiver shall be in writing and signed by a duly authorised representative of the Party giving such waiver.
- 21.5 In case of discrepancies between the Agreement and these general Charter Conditions, then the provisions of the Agreement will prevail.
- 21.6 Any dispute or difference arising out of the Agreement will first tried to be settled in an amicable manner. If such an attempt fails, then both parties have the right to admit disputes to the competent Dutch court in the district of 's-Hertogenbosch, the Netherlands.
- 21.7 Both parties will send correspondence and notices, not only in case of dispute, by email, mail, facsimile or telephone to the following addresses:
- The Charterer: the address as specified in the Agreement, and (email) addresses known to Carrier.
- The Carrier: DENIM AIR ACMI B.V.  
Vermogenweg 3  
3641 SR Mijdrecht  
The Netherlands  
telephone: 0031 (0)297 230 690  
facsimile: 0031 (0)297 230 699  
email: sales@denimairacmi.nl
- 21.8 Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation, negotiation and execution of the Agreement.