



TERMS & CONDITIONS

1. DEFINITIONS

In this Charter Agreement unless the context otherwise requires:-

- “Additional Costs”** means any of the costs referred to in Clause 9.
- “Aircraft”** means the aircraft performing a Flight.
- “Base Charter Price”** means the amount set out in Clause (e) above.
- “Charter Agreement”** means this Charter Agreement and any schedules or appendices.
- “Deposit”** means the amount described as such in Clause (f) above.
- “Escrow Account”** means an account held by the Carrier’s accountants as a trust account, which may be used in accordance with Clause 2.8 below.
- “Flight”** means a flight described in Clause (c) above.

2. CHARTER PRICE AND PAYMENT

- 2.1. The Base Charter Price is based on the costs known to the Carrier at the time this Charter Agreement is signed. If there are any genuine unforeseen increases after this date in security costs, aviation insurance premiums, fuel, airport passenger duty, unforeseen black market costs or similar costs relating to the operation of the Aircraft or the performance of this Charter Agreement, the Carrier shall provide evidence of the increase to the Charterer and such increases will be Additional Costs.
- 2.2. The following costs are included in the Base Charter Price for the number of passengers set out in Clause (c) above:
- i. The Aircraft and operating crew, and catering, handling, landing and overflight charges for the Flights; and
 - ii. UK Air Passenger Duty (if applicable) and any other taxes applicable to the Flights, except for VAT.
- 2.3. The Base Charter Price does not include the following, all of which shall be paid by the Charterer on demand:
- i. Any VAT applicable to any payments made under this Charter Agreement; and
 - ii. All airport and handling agent out-of-hours surcharges and de-icing costs, where appropriate.
- 2.4. Time for payment of the Base Charter Price shall be of the essence of this Charter Agreement.

- 2.5. The Aircraft is not reserved for the Charterer until this Charter Agreement has been signed by both parties and the Deposit of 10% has been paid. Until this time, the Carrier may continue to market the Aircraft to other potential customers.
- 2.6. If any payment is not made by the Charterer on the due date, the Carrier may treat the relevant Flights as having been cancelled by the Charterer, in which case Clause 3 will apply. Alternatively, the Carrier may elect to continue with the Flights, but the Charterer shall pay to the Carrier interest on the amount overdue at the rate of 10% per month or part thereof, compounded monthly (both before and after judgment).
- 2.7. No set-off or counterclaim (whether arising in respect of this Charter Agreement or any other carriage) shall entitle the Charterer to withhold payment of any sums whatsoever payable under or by reason of this Charter Agreement.
- 2.8. The Charterer may pay any part of the Base Charter Price into the Escrow Account. Such monies will be held on terms that it will be released to the Carrier upon departure of the first Flight, unless the Charterer becomes entitled to the return of any part of the Base Charter Price pursuant to Clause 3.2 below.

3. CANCELLATION

- 3.1. If the Charterer wishes to cancel any Flight or Flights then, by way of agreed compensation for the losses sustained by the Carrier arising out of the cancellation:
 - i. The part of the Deposit relating to the cancelled Flight, if this has already been paid by the Charterer, will be retained by the Carrier.
 - ii. If the Charterer has not already paid the Deposit, then 10% of the part of the Base Charter Price relating to the cancelled Flight will be paid forthwith by the Charterer.
 - iii. Depending on the date on which the Charterer gives notice in writing to the Carrier of the cancellation of the Flight or Flights, the following additional amounts may be payable by the Charterer and, if so, will be paid forthwith:
 - 50% of the part of the Base Charter Price relating to the cancelled Flight, if cancelled less than 7 days prior to the date of departure;
 - 75% of the part of the Base Charter Price relating to the cancelled Flight, if cancelled less than 3 days prior to the date of departure;
 - 100% of the Base Charter Price relating to the cancelled Flight, if cancelled within 48 hours of the date of departure.
- 3.2. If the Charterer has made payment in full for the part of the Base Charter Price relating to a Flight which is cancelled more than 3 days before the date of departure, the Carrier will refund, or will arrange the release from the Escrow Account if appropriate, such amount as will result in the Carrier retaining the amounts due to it under Clause 3.1 above. However, the Carrier will not be obliged to refund or release to the Charterer any moneys if there are outstanding amounts due from the Charterer to the Carrier under this or any other agreement.
- 3.3. If a Flight has to be cancelled by the Carrier for a reason within the Carrier's direct control, then the Carrier will use reasonable endeavours to assist the Charterer by finding a substitute aircraft, and Clause 5 will then apply. If the Carrier cannot find a substitute, then the Carrier will refund to the Charterer all monies paid by the Charterer in respect of the

cancelled Flight. This refund will be in full and final settlement of all claims that the Charterer may have against the Carrier in respect of the cancelled Flight, and neither the Charterer nor any other person will be entitled to pursue any other claims against the Carrier arising from the cancellation.

4. AIRCRAFT AND CREW

- 4.1. The Carrier shall be responsible for providing the Aircraft at the commencement of each Flight properly manned and equipped, fuelled and airworthy, in accordance with the laws and regulations of the United Kingdom, and the Aircraft shall be operated in accordance with all applicable laws and regulations during the period of each Flight.
- 4.2. The captain of the Aircraft shall have complete discretion, as required by the United Kingdom Civil Aviation Authority, (i) to refuse any passengers or baggage, (ii) concerning the load to be carried and its distribution and (iii) to decide whether or not a Flight should be undertaken and when and where landings should be made. The Charterer will accept all such decisions as final and binding, although the Carrier will, if possible, discuss all such decisions with the Charterer prior to their being made and will use reasonable endeavours to assist the Charterer in these circumstances, subject to an agreement on costs being reached.
- 4.3. If for any reason beyond the Carrier's control the Aircraft is diverted from any destination shown in Clause (c) to another destination, the Flight shall be deemed to be complete when the Aircraft arrives at that other destination.

5. SUBSTITUTION OF AIRCRAFT

- 5.1. If for any reason the Carrier is unable to perform any Flight with the aircraft named in Clause (d), the Carrier may, but shall not be obliged to, offer a substitute equivalent aircraft or operator to perform the Flight, and, in such a case, will inform the Charterer of any Additional Costs involved. The Charterer may either accept or decline the offer.

6. TRAFFIC DOCUMENTS

- 6.1. The Carrier shall provide all passenger tickets and or an E-ticket, baggage checks, airwaybills and all other necessary documents relating to the carriage undertaken pursuant to this Charter Agreement. The Charterer shall give to the Carrier all necessary information and assistance to complete such documents as soon as possible after the date of this Charter Agreement and, in any event, in sufficient time to be completed for issue to passengers.
- 6.2. The Charterer shall be responsible for the delivery of all necessary passenger tickets, baggage checks and other necessary documents to all passengers.
- 6.3. Carriage of passengers and baggage is performed under the terms and conditions of this Charter Agreement which are also available for inspection at the head office of the Carrier or are downloadable from the Carrier's website at www.flycello.com. The Charterer and all passengers will be bound by this Charter Agreement.
- 6.4. Notice is hereby given that the passenger tickets will provide that travel by air under the Carrier's general conditions of carriage is subject to the rules relating to liability established by the Montreal Convention of 28th May 1999, which are set out in Schedule 1. This Convention, among other things, governs the liability of the Carrier in respect of the death or personal injury of, or delay to, a passenger or the loss, damage or delay to a passenger's

baggage. The Charterer will ensure that all passengers have received the information set out in Schedule 1 prior to boarding any Flight.

7. FLIGHT TIMES AND DELAYS

7.1. 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 Carrier shall be under no liability whatsoever to the Charterer nor to such passenger. The Carrier shall be under no obligation to make any alternative arrangements for any such passenger, although the Carrier will use reasonable endeavours to assist such passenger. If agreed by the parties, the Carrier may incur costs in assisting any such passenger, and the Charterer will pay those costs under Clause 9.

7.2. The Charterer shall be responsible for any delay in departure due to:

- i. the late arrival of any passenger at the specified check-in point at the departure airport for a Flight;
- ii. the absence of any necessary documentation in respect of a passenger; or
- iii. any act or omission of the Charterer or its agents.

If there is such a delay, then the Carrier will use reasonable endeavours to perform the Flight once the delay has ended, but the Charterer acknowledges and agrees that a delay might lead to a Flight being cancelled by the Carrier (if, for example, flight time limitations mean that the crew require rest), and/or to Additional Costs (for example airport charges) being incurred by the Carrier. If the Carrier cancels a Flight as a result of a delay then the provisions of Clause 3 will apply as if the Charterer had cancelled the Flight. Any Additional Costs arising under this clause will be paid by the Charterer in accordance with Clause 9. The Charterer agrees that a decision as to whether or not a Flight can be performed following a delay is at the discretion of the Carrier, and that the Carrier shall have no liability for that decision. If the Flight departs or is cancelled pursuant to this Clause 7.2, the Carrier shall be deemed to have thereby completed its contractual obligation to the Charterer.

7.3. The Carrier will, at the Charterer's request, delay the departure of a Flight for up to 2 hours. The Carrier may, at its discretion, agree to depart more than 2 hours after the scheduled departure time, but may instead cancel the Flight, and the provisions of Clause 7.2 will then apply. Any Additional Costs incurred as a result of any delay under this Clause 7.3 will be paid by the Charterer in accordance with Clause 9.

7.4. 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, whether or not covered by Clause 7.2 above, the Charterer shall be 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 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 Carrier on demand.

7.5. The Carrier may, during the entire period covered by the Flights under this Charter Agreement, operate a number of sectors for other customers, and the Charterer acknowledges that it only has exclusive access to the Aircraft when Flights are scheduled. The Carrier will use reasonable endeavours to provide full scheduling details to the Charterer, and will allow a minimum of 2 hours between scheduling sectors for different customers.

- 7.6. If a Charterer elects to cancel a Flight following notification by the Carrier of the scheduling for the Aircraft then, provided the Carrier has followed the procedure in Clause 7.5, the normal cancellation terms set out in Clause 3.1 will apply.

8. OBLIGATIONS OF THE CHARTERER

- 8.1. 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.
- 8.2. The Charterer shall comply with and ensure that each passenger observes and complies with all traffic regulations of the Carrier and all customs, police, public health, immigration and other laws and regulations which are applicable in the countries in which Flights are originated, landing are made or over which Flights are made.
- 8.3. The Charterer warrants that all passengers will hold all necessary passports, visas, health and other certificates to secure transit through any intermediate points and/or entry into the place of destination.
- 8.4. If the Carrier has to pay any fine, penalty, fees or charges (such as detention costs) because the Charterer, its servants or agents or any passenger has failed to obey any laws or regulations or other travel requirements of any country to or from which the Aircraft has flown, or to produce the necessary documentation needed by that country, the Charterer will reimburse the Carrier that amount, and such amount shall be an Additional Cost.
- 8.5. The Charterer shall ensure that no passenger's baggage carried on the Aircraft shall contain anything of a dangerous, illegal substances, (unless prescribes under English law) hazardous or offensive nature or anything of which the carriage, importation or exportation is prohibited by any country or state over, to or from which the Aircraft will fly. Cello Aviation operate a very strict non smoking, drugs and alcohol policy.

9. ADDITIONAL COSTS

- 9.1. The Carrier will provide the catering for the Flights as agreed, and will use reasonable endeavours to accommodate passengers' requests for additional or alternative food, drink, and other items. All costs associated with such additional requests shall be Additional Costs and shall be payable by the Charterer as set out below.
- 9.2. The Carrier must obtain confirmation in writing or by telephone from the Charterer's representative named in Clause (h) before incurring any Additional Costs of the type set out in Clause 9.1 above of more than £500 or its equivalent in any other currency.
- 9.3. Following the completion of a Flight, the Carrier will issue an invoice to the Charterer for all Additional Costs relating to that Flight, and the Charterer will pay such invoices within 7 days of the date of the invoice. Late payments may incur interest as per clause 2.2.
- 9.4. Any costs incurred under Clauses 2.1, 2.3, 5.1, 7.2, 7.3 or 8.4 will also be Additional Costs and will be invoiced by the Carrier and paid by the Charterer in the same way.

10. CHARTER VARIATION AGREEMENT

- 10.1. If, before a Flight is performed, the Charterer requests a change to the date, times, route or number of passengers, then the Carrier will decide whether it can accommodate the

Charterer's request, but is not obliged to do so. The Carrier will, at the same time, inform the Charterer of any change to the Base Contract Price resulting from the requested change.

- 10.2. If the parties agree on the requested change and on any consequent change to the Base Contract Price, then a Variation Agreement, in the form attached as Schedule 2, will be signed by the parties and this Charter Agreement will be amended accordingly.
- 10.3. For the avoidance of doubt, the Carrier shall not be obliged to perform any changed Flight unless and until it has received a signed Variation Agreement.

11. CARRIER'S LIABILITY

- 11.1. The Carrier shall not be deemed to undertake any carriage to which this Charter Agreement relates as a common carrier.
- 11.2. All liabilities in relation to the carriage by air or passengers and their luggage shall be governed by the terms and conditions of this Charter Agreement. The Carrier, its officers, employees, sub-contractors, agents and servants shall not be subject to any liability in excess of that provided for in the Montreal Convention of 28th May 1999.
- 11.3. The Carrier shall be under no liability to the Charterer for any failure by it to perform its obligations under this Charter Agreement arising from force majeure, bad weather, labour disputes, strikes or lock-outs or any other cause beyond the control of 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. However, the Carrier will use reasonable endeavours to assist the Charterer and the passengers with alternative arrangements required as a result of any such event and may, in its discretion and without any obligation to do so, make a contribution towards the Additional Costs incurred as a result.
- 11.4. The Carrier will not be liable to the Charterer for any losses arising from a decision of the captain of the Aircraft.
- 11.5. The Carrier shall not be liable to the Charterer for any pure economic loss, or loss of profit, business or goodwill, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Charter Agreement.
- 11.6. The Charterer agrees that in no event shall the Carrier's total liability to the Charterer under this Charter Agreement (whether in contract, tort or otherwise) be more than the Base Charter Price, except as otherwise required by law.
- 11.7. There is not implied into this Charter Agreement any warranty or condition as to the Aircraft or its crew or as to its or their fitness for any purpose, and any warranties or conditions implied by statute or common law are to the fullest extent permitted by law excluded from this Charter Agreement.

12. CHARTERER'S INDEMNITIES

- 12.1. The Charterer shall indemnify the Carrier against any loss, damage, liability, costs or expenses of whatsoever nature caused to be suffered or incurred by the Carrier and its officers, employees, agents and subcontractors, arising out of any act or omission of the

Charterer or its officers, employees, agents or any passenger whether arising in contract, tort (including negligence) or otherwise relating to this Charter Agreement.

- 12.2. The Charterer shall indemnify the Carrier against all claims and expenses (including legal fees and costs) in respect of any liability of the Carrier to third persons (including but not limited to other passengers) for any loss or damage whatsoever (including costs and expenses on a full indemnity basis) arising out of any wrongful act or omission of the Charterer, its officers, employees, agents or any passenger.
- 12.3. If any passenger is refused entry at any destination airport, the Charterer shall indemnify and keep indemnified the Carrier, its officers, employees, agents and subcontractors against any and all cost or expenses incurred by the Carrier in respect thereof (including but not limited to charges, fee, penalties, imposts or other expenses levied upon the Carrier by any immigration authority) or of any arrangements made by the Carrier to return such passenger to the country from which such passenger was originally carried.
- 12.4. The Charterer shall indemnify the Carrier , its officers, employees, agents and subcontractors against any costs, claims or demands resulting from any of them being charged with any higher liability than that provided for in the Convention referred to in Clause 11.2.
- 12.5. The Charterer shall indemnify the Carrier against any claims by any passenger arising out of the termination of this Charter Agreement or the cancellation or delay of any Flight.

13. TERMINATION

- 13.1. Either party may terminate this Charter Agreement by notice in writing to the other, without prejudice to the rights and obligations of the parties then accrued, if the other party has committed a material breach of its obligations under this Charter Agreement (and, if such breach can be remedied, has failed to remedy it within 3 days of having been given notice to do so) or has become insolvent or has passed a resolution or suffered a petition to be presented for its winding-up or administration.
- 13.2. If this Charter Agreement is terminated by the Carrier under Clause 13.1 above, then any Flights not already performed shall be deemed to have been cancelled, and the provisions of Clause 3 shall apply.

14. GENERAL

- 14.1. Any notice required to be given under this Charter Agreement shall be in writing and shall be deemed duly given if left at or sent by first class post or email 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 email upon the day such email is sent.
- 14.2. The Base Charter Price, payment terms and other commercial terms contained in this Charter Agreement are confidential to the parties and may not be disclosed to third parties without prior approval.
- 14.3. The Charterer shall not be entitled to assign the benefit of this Charter Agreement.
- 14.4. The Carrier may subcontract any or all of its obligations under this Charter Agreement to a third party.

- 14.5. This Charter Agreement sets out the entire agreement and understanding between the parties in connection with the charter of the Aircraft as described herein and any amendments must be in writing and signed by both parties to this Charter Agreement.
- 14.6. Neither party has relied on any warranty or representation of any other party except as expressly stated or referred to in this Charter Agreement.
- 14.7. The indemnities contained in this Charter Agreement shall survive its termination.
- 14.8. The parties hereby agree that a person who is not a party to this Charter Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (as amended, modified or supplemented from time to time) to enforce any term of this Charter Agreement.

15. GOVERNING LAW AND JURISDICTION

- 15.1. This Charter 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.

SCHEDULE 1 - EU NOTICE REQUIREMENT - ARTICLE 6(1) EU CARRIERS

Air carrier liability for passengers and their baggage

This information notice summarises the liability rules applied by Community air carriers as required by Community legislation and the Montreal Convention.

Compensation in the case of death or injury

There are no financial limits to the liability for passenger injury or death. For damages up to 100,000 SDRs (approximately £82,000) the air carrier cannot contest claims for compensation. Above that amount, the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault.

Advance payments

If a passenger is killed or injured, the air carrier must make an advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation. In the event of death, this advance payment shall not be less than 16,000 SDRs (approximately £13,000).

Passenger delays

In case of passenger delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for passenger delay is limited to 4,150 SDRs (approximately £3,500).

Baggage delays

In case of baggage delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for baggage delay is limited to 1,000 SDRs (approximately £820).

Destruction, loss or damage to baggage

The air carrier is liable for destruction, loss or damage to baggage up to 1,000 SDRs (approximately £820). In the case of checked baggage, it is liable even if not at fault, unless the baggage was defective. In the case of unchecked baggage, the carrier is liable only if at fault.

Higher limits for baggage

A passenger can benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee.

Complaints on baggage

If the baggage is damaged, delayed, lost or destroyed, the passenger must write and complain to the air carrier as soon as possible. In the case of damage to checked baggage, the passenger must write and complain within seven days, and in the case of delay within 21 days, in both cases from the date on which the baggage was placed at the passenger's disposal.

Liability of contracting and actual carriers

If the air carrier actually performing the flight is not the same as the contracting air carrier, the passenger has the right to address a complaint or to make a claim for damages against either. If the name or code of an air carrier is indicated on the ticket, that air carrier is the contracting air carrier.

Time limit for action

Any action in court to claim damages must be brought within two years from the date of arrival of the aircraft, or from the date on which the aircraft ought to have arrived.

Basis for the information

The basis for the rules described above is the Montreal Convention of 28 May 1999, which is implemented in the Community by Regulation (EC) No2027/97 (as amended by Regulation (EC) No889/2002) and national legislation of the Member States.

SCHEDULE 2 – VARIATION AGREEMENT FORM

This Variation Agreement is made the **XX** day of **XXXX** between

Cello Aviation Limited of Elmdon Building, Birmingham International Airport, Birmingham, B26 3QN (the “Carrier”) and

XXXX whose registered office is at **XXXX** (the “Charterer”)

1. This Variation Agreement amends the Charter Agreement dated **XXXX** between the Carrier and the Charterer.
2. The Carrier and the Charterer hereby agree that Clause (c) of the Charter Agreement shall be amended as follows:

Date	ETD UTC	Departure	Arrival	ETA UTC	Pax	Block Time	Flight Number	Handling Agent

3. All other terms and conditions of the Charter Agreement shall remain in full force and effect.
4. This Variation Agreement shall be governed by and construed in accordance with English law.
5. The new price payable due to the Variation of this agreement is **XXXX**
6. Other Variations agreed and payable are listed as follows:

Signed by:

Name:

Signature:

Title:

Duly authorised for and on behalf of Cello Aviation Limited

Date:

Signed by:

Name:

Signature:

Title:

Duly authorised for and on behalf of XXXX

Date: