

EUROPEAN BUSINESS AVIATION

# GUIDELINES AND RECOMMENDATIONS FOR CHARTER FLIGHT CONTRACTING

MAY 2020



## Disclaimer

This non-binding document is intended to provide general guidance on the matters covered and is not intended to provide legal advice. Readers should obtain their own legal counsel if they have questions about their individual situation. Readers are also cautioned that this document is not intended to be an exhaustive nor exclusive list of terms that may be employed by Operators and Brokers. Examples given are for illustration purposes only.

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# Introduction

This European Business Aviation Association (EBAA) and ACA – The Air Charter Association (ACA) document is intended to provide air charter operators and air charter brokers with guidelines and recommendations with the aim of enhancing the experience when chartering a private aircraft.

Throughout this document, the following terms shall have the following meaning:

**Customer** (or **Charterer**) means the customer who is seeking chartered air transportation.

**Operator** means the operating air carrier providing chartered air transportation services.

**Broker** means a specialist agent or platform that arranges air charter travel on behalf of Customers and/or Operators or an Operator acting on behalf of Customers and/or Operators. The Broker facilitates the most effective connection between Customer and Operator, so as to ensure a precise, clear and efficient inquiry, quoting, booking & flying experience.

**Charter contract** means (as the context requires):

- contract between Broker and Customer
- contract between Broker and Operator
- contract between Operator acting on its behalf or on behalf of another air carrier, and Customer.

## Consistency and communication flow

A Charter contract between Broker and Operator should be consistent with the Charter contract between Broker and the Customer, particularly when it comes to responsibility for costs associated with required services in addition to the basic air transportation.

The consistency must also be applied with respect of the communication flow between Broker, Operator and Customer.

## Charter contract terms

The charter price quote and the Charter contract must include precise description of the flight details such as (without limitation) the day/date, route,

schedule, aircraft, registration, flight number/call sign, capacity, catering.

## Operator's identification and compliance

Upon reservation or within short after reservation the Broker shall inform the Customer of the identity of the Operator.

# Charter price quotes

Upon request for a quote for a charter flight, the price quote should, as a minimum, clearly indicate:

- its period of validity;
- the conditions it is subject to;
- whether additional services may be charged; and,
- whether fuel stops might be needed

## **Example of contractual clause**

*Please note that this Charter Flight Quote is*

- *valid until DD/MM/YY and is subject to the following conditions :*
  - *aircraft availability*
  - *aircraft's owner approval*
- *exclusive of the following additional item such as but not limited to:*
  - *any taxes involved (such as but not limited to passenger taxes, VAT etc..)*
  - *de-icing costs*
  - *wi-fi costs on board*
  - *cleaning costs*
  - *special handling or loading fees*
  - *non-preferred FBO's costs*
  - *credit card payment (if a surcharge is applied by the Operataor)*

*If the ferry flights involved in the customer's operation are not included in the contract, and therefore, are not known by the customer, then it is understood that additional charges apply only to the sectors booked and advised to the customer. This is particularly the case with regard to de-icing costs incurred.*

*Any invoicing of additional services charges will be notified within a period of XX days.*

# Charges for additional services

The Customer should be notified by the Broker and/or the Operator within 7 (seven) days after the completion of the flight schedule that additional charges will be invoiced to the Customer.

The invoices related to charges for additional services or any other incidental charges should be issued by the Operator to the Broker and/or Customer (as applicable) by no later than 14 (fourteen) days from the date these charges were incurred.

The Charter contract should be as specific as possible, spelling out clearly terms such as who is authorised to request or to approve additional charges on behalf of the Customer and how additional charges should be notified, invoiced and paid by the Customer. This will help avoid or resolve situations where Customers assert that they did not request or approve additional services and are reluctant or refuse to pay later.

## ***Example of contractual clause***

*Unless otherwise specified in the charter confirmation, the charter price includes the cost of fuel, oil, maintenance, landing, hangarage, parking, ground handling, remuneration and expense of aircrew, in-flight catering, licence fees, clearance fees, royalties, baggage screening charges, airport security charges, airport and passenger taxes during the flight schedule.*

*All other costs, including, but not limited to, ground accommodation, ground transfers, additional cabin service, special catering requests, onboard satellite telephone costs and any other additional service costs whatsoever and howsoever arising shall be notified to the Charterer (or the Broker) within 14 (fourteen) days from the date these charges were incurred and shall be paid promptly by the Charterer (or the Broker) within xx days. The fact that such additional costs have been incurred shall be notified to the Charterer within 7 (seven) days after the completion of the flight schedule.*

# Fuel stops

Upon reservation of a charter flight the Operator must check whether a fuel stop is necessary and if it is the case (even if it is not confirmed at time of notice), the Operator should notify clearly to the Customer (or the Broker) of the possibility of a surcharge.

It is up to the Customer to decide whether to take the financial risk of a potential fuel stop or to make other arrangements.

# Fuel surcharges

If the charter price is not fixed but subject to fuel surcharges, then the Charter contract should include not only the fuel base rate assumed for the pricing but should also include how fuel surcharges are

calculated together with currency exchange rates at the time of costing. Variation on fuel price shall be indicated in the Charter contract. Variation can be a surcharge but also a reduction of price.

## Example(s) of contractual clause

*Charterer agrees and acknowledges that the charter price is calculated upon the Base Fuel Price as set forth in the Charter contract. If the Average Fuel Price Per Gallon, defined below, does not exceed the Base Fuel Price, then the charter price established in the Charter contract will remain unchanged.*

*A post-flight charge ("Fuel Surcharge"), in excess of the charter price, may be invoiced to the Charterer in accordance with the Fuel Surcharge Formula, defined below, in the event the Average Fuel Price Per Gallon exceeds the Base Fuel Price.*

## Example 1:

*The Charter Price was calculated based on fuel price of 575 EUR/Mt (Platts 650 USD/1,13 EUR/USD) and an agreed fixed fuel consumption of 3,40 Mt.*

*Fuel cost variations up to 5% (five percent) % will not entail a charter price revision. If fuel price varies by more than 5% (five percent)(up or down), a fuel surcharge or a reduction will apply. Price adjustment will be calculated 3 (three) weeks prior to the operation start date, using the average fuel cost and exchange rate of the previous month (i.e. if flight operation is due to start on 10th June, then adjustment will be calculated on 20th May, using for that the average price of fuel and the average EUR/USD rate of April).*

## Example 2

*The Charter price was based on a fuel price of 575 EUR/Mt (Platts 650 USD/1,13 EUR/USD)*

*The Charter price will be adjusted in case of fluctuations in the price of fuel according to Platts index.*

*The adjustment will be made within the first five days of the month before the operation and an increase or reduction of 1% (one percent) will apply for each 5% (five percent) increase or decrease in the fuel quoted rate.*



# Payment of charter price

Charter price quote should provide information regarding payment terms and the accepted method of payment, and clearly indicate if a certain method of payment is subject to surcharge.

Payment terms of the charter price should be clearly set out in the Charter contract.

## **Example of contractual clause**

*The Charterer shall pay the full charter price by cleared funds received in to the Operator/ Brokers's account by no later than three (3) working days prior to departure. Failure to do so may cause the flight to be cancelled and cancellation terms applied. Early bookings can be paid by bank transfer or credit card. However, bookings made less than two (2) working days prior to departure must be paid by bank card as cleared funds in to the Operator's/Broker's account.*

*Payments by debit cards or by Visa or MasterCard credit cards are free of charge.*

*Payments by American Express cards are subject to a x% surcharge.*

*Quotations in different currencies shall be converted into (EUR/USD/GBP...) based on the exchange rate of the date of issue of the invoice.*

*<http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html>*

*(\*) credit card surcharges are restricted by EU law*



# Cancellation fees

Cancellation terms contained in the Charter contract between Broker and Customer and Charter contract between Broker and Operator must be

consistent to ensure that any cancellation charges owed by the Customer are sufficient to cover the cancellation charges of the Operator.

## **Example of contractual clause**

*When the Charterer decides to cancel or partially cancel the execution of the Charter Agreement, depending on the timeframe of cancellation or in the event of a 'No Show, the following cancellation fees are due:*

*From signing to seven (7) days (a day being 24 (twenty-four) hours) before the commencement of the flight schedule: XX % of the agreed price of the cancelled flight schedule or part thereof;*

*From seven (7) days to 24 (twenty-four) hours before commencement of the flight schedule: XX% of the agreed price of the cancelled flight schedule or part thereof;*

*Within 24 (twenty-four) hours before commencement of the planned flight schedule or part thereof: 100% of the agreed price of the original flight schedule or part thereof;*

*Cancellation by the Charterer shall be notified by electronic mail and time of cancellation is considered to be the time the Operator or the Broker receives the relevant email.*

# Aircraft on ground (AOG) event

As a best practice, it is recommended in the Charter contract to insert provisions on the consequences of an AOG event and on the agreed standard description of a replacement aircraft.

The occurrence of an AOG situation shall be notified as soon as possible to the Customer by the Operator and/or Broker with clear mention of the following:

- the expected flight delay, and proposals on how the Customer can reach the final destination at the earliest opportunity. Operator must use best efforts to provide an alternative solution (replacement aircraft), if available, and notify the solution to the Broker and/or to the Customer within 3 (three) hours of the occurrence of the AOG event;
- the flight delay or the cancellation by the Operator must be notified within a certain period of time;
- if the flight delay is for 3 (three) hours or more, the option to cancel the part or parts of the journey not made due to the AOG and, in such event, the possibility for the Customer to be reimbursed a prorata of the charter price paid for that part or parts not made;
- in the case of a cancellation, or flight delay of more than 3 (three) hours, the obligation of Customer to pay the Operator that part of the charter price, and all costs owed pursuant to the charter contract, for the part or parts of the journey already made;
- in the event that a replacement aircraft different from the agreed replacement aircraft is contracted by the Operator, the costs related to the replacement aircraft shall be paid by the Operator unless otherwise agreed in writing;



- in the case of a flight delay of more than 3 (three) hours, any reparations that the Customer may be offered by the Operator such as meals and refreshments in a reasonable relation to the waiting time, up to an agreed limit set in the Charter contract, and subject to Operator's prior written approval.

### **Example of contractual clause**

*In case of the occurrence of an AOG event (AOG being a consequence of any technical defect preventing the aircraft from flying) and the aircraft specified in the Charter contract become unavailable, then the Broker and/or the Customer shall be made aware of such an event by the Operator within \_\_\_\_ hours from its occurrence.*

*The Operator shall use its best endeavours to provide to the customer within 3 (three) hours from the occurrence of the AOG event*

- *either the expected delay to solve the AOG situation*
- *or an alternative solution such as a replacement aircraft, at the cost of the Operator.*

*If the flight delay is for three (3) hours or more, the Customer shall have the option to cancel the part or parts of the flight trip not made due to the AOG event and to obtain reimbursement prorata of the charter price corresponding to part or parts of the flight trip cancelled, providing that the Customer shall remain liable to pay the part or parts of the flight trip already completed or that will be completed.*

*If the flight delay is for three (3) hours or more, the Customer may be entitled to the reimbursement or payment of meals and refreshments in a reasonable relation to the waiting time, up to USD/EUR\_\_\_\_\_ per affected passenger, and subject to Operator's prior written approval.*

## **Authorisations and flight changes**

The Charter contract should stipulate that once reservation is confirmed by the Customer then the Operator should apply for any slot permits and /or authorisation as soon as possible. Any information received in relation to the slot request shall be immediately notified by the Operator to the Broker and /or to the Customer. The Charter contract should clearly state dates and times of the flight departure and flight arrival. Any flight changes must be clearly communicated to the Broker and /or to the Customer.

The Charter contract may provide for a timeframe of variation by the Operator in dates and times of flight departure and flight arrival after the flight reservation. Beyond this indicated timeframe the Customer should be entitled to cancel the booked flight and terminate the Charter contract and to be reimbursed a pro-rata of the charter price paid for the part or parts of the journey not be made.

# Late arrival/no show

The Charter contract should clearly indicate that :

- the Customer must notify the Operator as soon as possible that the passengers might encounter a problem with being on time; in the event that the Customer arrives late for his/her booked flight or in the event of a “no show” of the Customer at the time and place of departure of the booked flight, then the Operator shall be entitled to cancel the relevant flight and terminate the Charter contract with no liability to the Operator.
- Cancellation fees payable by the Customer might apply as a consequence of cancellation of flight(s) by the Operator due to late arrival/no show of the Customer.

# Force majeure / extraordinary circumstances

Force majeure clauses are generally included in Charter contracts to absolve parties from extraordinary and unforeseen matters deemed beyond their control, such as war, strikes, matters considered “acts of God”, hurricanes and other weather events.

It is difficult to recommend one standard definition since this matter is subject to the national law governing the relevant Charter contract; one definition that is applicable in one jurisdiction may not be applicable in another.

Charter contracts should include a clear definition of force majeure or extraordinary circumstances that is consistent with applicable law.

As a best practice, it is strongly recommended to ensure that the definition of the terms “force majeure” or “extraordinary circumstances” are consistent in the Charter contract between Broker and Customer with the definition of such terms in the Charter contract between Broker and Operator.

# Luggage / dangerous goods

At the time of the flight reservation the Customer shall be clearly informed of the Operator’s conditions concerning:

- the number, size and weight of authorised luggage that can be carried on board the aircraft;
- the carriage of pets onboard the aircraft; and, any licensing requirement thereof; and,
- the list of dangerous goods which are not authorised on board the aircraft for safety and security reasons

# Passenger documents required

The Charter contract shall clearly stipulate that passengers shall be responsible for obtaining and presenting at check-in/immigration/customs the necessary travel documents (visas, certificates of

vaccination etc.) for themselves and for any children or animals travelling with them as requested by the national regulations of the relevant countries (departure, stopover, destination).

## **Example of contractual clause**

*Charterer shall comply with and ensure that all passengers accompanying observe and comply with all applicable laws, regulations, orders, decrees, directions, permits, licences, and authorities granted for the flights and/or issued by any relevant governmental or other authority, including but not limited to, Customs, Police, Public Health, and all other relevant regulations and authorities in jurisdictions where the aircraft originates and lands, and that such passengers comply with all relevant requirements, whether documentary or otherwise, in respect of themselves or their baggage and pay all taxes and dues which may be levied in connection with their baggage or otherwise upon such passengers.*

*The Operator and the Broker are not liable for any costs or expenses incurred by Charterer as a result of a breach by Charterer of any of the conditions contained herein. Charterer will indemnify the Operator or the Broker against any loss, damage, or inconvenience incurred by the Operator or the Broker as a result of a breach by Charterer or any such person of the aforesaid regulations or requirements.*



# Mediation

Benefits of mediation for the business aviation sector is to avoid the draw-backs of litigation (costs, duration, diversion of valuable resources), and it contributes to maintain commercial relationship as it is of a collaborative nature and not driven by legal but commercial consideration. Mediation attempts

to solve disputes via creative commercial solutions and in total confidentiality.

Therefore, it is highly recommended to Brokers and Operators to include a clause in their respective Charter contracts with their Customer providing mediation as a dispute resolution procedure.

## **Example of contractual clause**

*If any dispute arises in connection with this agreement, a director [or other senior representatives of the parties with authority to settle the dispute] will, within 14 (fourteen) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.*

*If the dispute is not wholly resolved at that meeting, the parties agree to enter into mediation to settle such a dispute and will do so in accordance with (name of mediation center) mediation procedure. Unless otherwise agreed between the parties within 14 (fourteen) days of notice of the dispute, the mediator will be nominated by (name of mediation center).*

*To initiate the mediation a party must give notice in writing ('ADR notice') to the other party[ies] to the dispute, referring the dispute to mediation. A copy of the referral should be sent to (name of mediation center). Unless otherwise agreed, the mediation will start not later than 28 [twenty-eight] days after the date of the ADR notice.*

*No party may commence any court proceedings/arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated, or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.*

# Privacy - GDPR

During the course of their relationship with the Customer, the Operator and the Broker may process personal data about Customers. In this regard, the Operator and Broker shall ensure that such personal data is collected, held and processed by them in

compliance with any and all applicable data privacy laws (including where applicable, the General Data Protection Regulation 2016/679 of the European Parliament and of the European Council).

# Insurance

It is the responsibility of the Broker and Operator to ensure that their insurance coverage is sufficient and in-force pursuant to applicable law and pursuant to any terms that may have been agreed upon in the Charter contract.

As a best practice, Operator and Broker must take reasonable steps to ensure that there has been no

misrepresentation of any information provided to their insurer(s) for the purpose of arranging insurance coverage and that such information is kept up to date.

## Entire agreement

The Charter contract shall always include a clause stating the contract constitutes the entire agreement between the parties to it, and supersedes all prior discussions, negotiations and agreement (whether oral or in writing) between them.

This avoids disputes over the terms of the Charter contract and is especially important for protracted and/or drawn out negotiations whereby the terms may have changed over time.

### ***Example of contractual clause***

*This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof.*

