

Terms & Conditions Of Air Carriage



1 Charter

- 1.1 The Carrier shall charter and the Charterer shall take on charter the aircraft specified in paragraph 1 of this Agreement (the "Aircraft") on the terms and conditions herein contained in consideration for which the Charterer agrees to pay the Carrier the charter price as specified in paragraph 5 of this Agreement (the "Charter Price") and where applicable paragraphs 6 and 7.
- 1.2 The Carrier shall also arrange on behalf of the Charterer for the provision in relation to the charter of such specific requirements of charter as stated in paragraph 4 of this Agreement.
- 1.3 At the commencement of each flight, as specified in the Charter Agreement, the Carrier shall provide for the Charterer's use the Aircraft, properly prepared and equipped, maintained and fuelled, together with an appropriate crew to enable the flight to take place with a full complement of passengers and in accordance with the relevant regulations.
- 1.4 The Captain of the Aircraft (the "Captain"), for the purpose of the safe performance of the Flight Schedule, shall have absolute discretion to decide in all matters concerning the preparation and operation of the Aircraft for flight, the load and its distribution, including the number of passengers that may safely be carried in the Aircraft on any particular flight, whether and when a flight may safely be undertaken and when and where the Aircraft shall be landed and all such decisions of the Captain shall be final and binding on the Carrier and the Charterer. The Carrier shall not be liable to the Charterer for any loss, damage, costs or claims of whatsoever nature and howsoever arising as a result of any such decision.
- 1.5 The amount and weight of accompanied baggage shall be at the Carrier's discretion. The following or like articles, namely firearms, explosives, combustible materials and live animals, may be carried only with the Carrier's prior knowledge and consent in writing which may, in its absolute discretion, be withheld. The Carrier may inspect and examine any baggage or cargo belonging to any passenger whether accompanied or not. Furthermore and without prejudice to the foregoing, the Carrier may refuse to carry any baggage considered by the Captain or by any other responsible servant of the Carrier to be unsuitable for carriage by air whether by its nature or any applicable laws, orders or regulations of any country flown from, to or over.
- 1.6 The Carrier (not being a common carrier) does not accept the obligations of a common carrier.

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2 Price and Payment

- 2.1 The Charterer shall pay to the Carrier for the charter; flights and services to be provided hereunder the Charter Price in the currency therein provided and shall be responsible for any additional expense incurred by reason of any further request of the Charterer. All quoted prices shall be in GBP and are exclusive of VAT and any similar tax or withholding tax or duty and shall be paid in full prior to the departure of the first scheduled flight to the following bank account.
- 2.2 All monies payable to the Carrier under the Charter Agreement shall be paid in GBP without withholding, offset counterclaim or deduction of any kind whatsoever, and payment shall not be considered to have been made until actually received by the Carrier into the Carrier's account set out above or in such other manner as the Carrier may notify the Charterer in writing. If any payment is due on a day which, but for this proviso, falls on a day which is not a business day, such payment shall be due on the immediately preceding business day. Time for payment of all monies payable by the Charterer under the Agreement shall be of the essence.
- 2.3 The Charter Price is based on the Carrier's costs, charges and expenses (including but not limited to fuel price, currency, taxes, insurance and security) at the date hereof. Excluded from the Charter Price; any special customer and catering requests unless otherwise specified in the Charter Agreement.
- 2.4 In the event of any increase in such costs, charges or expenses, of whatsoever nature and howsoever arising, between the date hereof and the completion of the Flight Schedule specified above, the Carrier shall be entitled to increase the Charter Price by a sum equal to any additional amount incurred or to be incurred in completing the said Flight Schedule by reason of any such increase in any such costs, charges or expenses. Any amounts payable by the Charterer pursuant to conditions 2.1, 2.2, 3.1, 3.2 and 5.2 hereof shall be notified to the Charterer as soon as reasonably practicable and shall be paid by the Charterer within seven days of such notification.
- 2.5 The Charterer shall pay on demand interest at the rate of 2.5% above the base rate for the time being (or, a reasonable equivalent at the discretion of the Carrier), which shall accrue from day to day and be calculated on the basis of days elapsed and a 360 day year, on any money outstanding or due under the Agreement, before as well as after any judgment. The Carrier shall be entitled at any time to apply any monies paid to it by or on behalf of the Charterer first in or towards the discharge of any interest then due. Any certification or determination of the Carrier as to any rate of interest or any amount pursuant to or for the purposes of the Agreement shall, in the absence of manifest error be conclusive and binding upon the Charterer.

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3 Conditions of Charter

- 3.1 The Flight Schedule has been prepared to take account of relevant statutory and other official flight time limitation requirements. The Carrier reserves the right to make additional charges if, for reasons beyond the Carrier's control, it is necessary to provide additional crew or position replacement crew to continue the Flight Schedule. The Carrier will have no liability or responsibility to the Charterer or any other party for any delay to passengers, baggage or freight so occasioned.
- 3.2 Loading and unloading of the Aircraft shall be at the Charterer's expense and the Charterer shall provide such equipment and material for the proper packing and securing of the goods to be carried in the Aircraft as the Carrier may reasonably require or as may be required to comply with any decision of the Captain under condition 1.4 hereof.
- 3.3 The Carrier shall supply and complete such passenger tickets, baggage checks, airway bills and other documents relating to the carriage undertaken pursuant to the Charter Agreement are necessary and the Charterer shall give to the Carrier in good time all information and assistance required to complete such documents, including without limitation, a consolidated passenger list. The Charterer warrants that all passengers will hold all necessary passports, visas, health and other certificates required for the flights to be operated hereunder and in the event of a levy due to the lack of required entry documents of passengers or cargo the Charterer will be billed for such costs.
- 3.4 The Aircraft shall be used only in compliance with the applicable laws and regulations. The Charterer shall comply and procure that all passengers and owners or other persons having an interest in goods carried in the Aircraft shall comply with all relevant customs, police, public health and other lawful regulations of England, and any other country to or from which the Aircraft is flown and any other relevant regulatory body.

4 Check-in

The Charterer shall be solely responsible for ensuring that all passengers and their baggage shall be available at the departure airport for each relevant flight not later than 30 minutes before the estimated time of departure specified in the Flight Schedule (as may be varied by the Carrier in the light of any circumstances affecting a particular flight) or, if no time is so specified, in sufficient time (in the opinion of the Carrier) prior to the scheduled departure time for check-in and security formalities to be completed. The Carrier shall have no liability in respect of the Carrier's refusal to carry any passenger and the Charterer shall indemnify the Carrier against any claim by any passenger arising out of such refusal.

5 Variation, delay and cancellations

- 5.1 If the Aircraft shall for any reason become incapable of undertaking such transport of passengers or goods as was contemplated at the time of this Agreement, the Carrier may at its discretion substitute therefor one or more aircraft as may be capable of undertaking such transport. If the Carrier does elect to substitute one or more aircraft as aforesaid then the provisions of this Agreement relating to the Aircraft shall apply (*mutatis mutandis*) to the substituted aircraft. If the Carrier does not elect to substitute another aircraft, it shall notify the Charterer as soon as possible and it shall be relieved of its obligations to provide the Aircraft for the flights which can no longer be undertaken by reason of the incapacity of the Aircraft and the Carrier shall be under no liability to the Charterer other than the liability to refund the Charterer such part of the Charter Price which relates to that part of the carriage or flight(s) cancelled and the Carrier's certification of such amount shall, save in the case of manifest error, be conclusive.
- 5.2 If any delay in the commencement or completion of any flight is caused by the Charterer, its servants or agents or by any passenger to be carried on any such flight, demurrage shall be charged to the Charterer for such delay at the rate specified in paragraph 6 of this Agreement in addition to the Charter Price, and in addition the Carrier shall be entitled at any time after demurrage shall have started to run to cancel such flight (without prejudice to any claim the Carrier shall have against the Charterer for demurrage up to the time of such cancellation and the rights of the Carrier hereunder). Without prejudice to the Carrier's absolute right to refuse any request of the Charterer that the Aircraft make any flight for the Charterer other than those specified above, if the Carrier shall agree to any such

flight being made, the Charterer shall pay to the Carrier in respect of such flight a sum calculated using the additional flying hours in addition to the Charter Price, and shall be responsible for any other additional expenses arising out of any such flight incurred by reason of any further request of the Charterer.

- 5.3 If, for reasons of safety or security or other operational reasons not being the fault of the Carrier, the Aircraft is diverted from any scheduled destination specified in the above Itinerary, the Carrier will, if requested to do so by the Charterer, use its commercially reasonable efforts to procure that, as soon as reasonably practicable after arrival at such alternate destination, the Aircraft is flown to its scheduled destination. The Carrier will have no liability or responsibility to the Charterer or any other party for any delay to passengers, baggage or freight so occasioned and the Charterer shall indemnify the Carrier against any claim by any passenger arising out of any such delay but the Carrier will pay the additional costs and expenses incurred by it arising as a result of the diversion and/or the flight to the scheduled destination.
- 5.4 The times shown in the Flight Schedule are approximate and not guaranteed. The Carrier shall not be responsible for any costs incurred by the Charterer or any passenger as a result of any delay, deviation or diversion of any flight, and the Charterer shall be responsible for any and all accommodation, refreshments, meals, transportation and additional expenses, losses, damages or liabilities of whatever nature arising out of such delay, deviation or diversion.

6 Excusable Delay

If by reason of any circumstances whatsoever beyond the control of the Carrier or the Charterer, as the case may be, including (without limitation) Act of God, terrorist activity, war, hijacking, riots and commotion, strikes, labour troubles, lock-outs, action or inaction of government authorities or their officials, order of a court, refusal of any licence, refusal of any certificate or permission, fire, explosions, requisitions, blockade, embargo, flood, fog, adverse weather conditions, natural disasters, breakdown, unserviceability, damage not amounting to a total loss of the Aircraft or accident to the Aircraft, the Carrier shall be unable to fly or continue to fly the Aircraft or the Charterer shall be unable to take up any flight to be operated hereunder, neither the Carrier nor the Charterer shall be liable for delay or non-performance of any such flight. Any time so lost shall not count in computing demurrage unless the Aircraft is already on demurrage.

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7 Limitation of Liability

7.1 The Charterer shall indemnify and hold the Carrier harmless in respect of all liabilities, costs, claims, demands, suits, judgments and actions, including costs and expenses of any defence, arising from:

7.1.1 Any right or claim asserted by any passenger under the provisions of EC Regulation 261/2004; and

7.1.2 The Charterer's failure to comply with any provisions of the Agreement.

7.2 The Charterer shall (subject always to condition 7.4 below) indemnify the Carrier against:

7.2.1 All claims, expenses, damages or legal costs in respect of any liability of whatsoever nature to third parties (including but without prejudice to the generality of the foregoing passengers, consignors and consignees); and

7.2.2 Any damage or loss of whatsoever nature caused to the Carrier, its servants or agents, or to any aircraft or any equipment belonging to the Carrier, its servants or agents arising out of any act or omission of the Charterer, its servants or agents and whether tortious or constituting a breach of this Agreement.

7.3 Save as stipulated by the provisions referred to in condition 7.4 below, the Carrier shall have no liability for death, personal injury or delay of passengers and loss of or damage to or delay of baggage or cargo howsoever caused.

7.4 The Carrier's liability will be determined by applicable law, including without limitation, in the case of international carriage, the provisions of the Warsaw Convention 1929 or the Warsaw Convention as amended by the Hague Protocol 1955 or such other versions of the Warsaw Convention as varied by any relevant statutory provisions or the Montreal Conventions or the laws which apply in individual countries. Nothing in these terms and conditions gives up or waives any exclusion or limitation of the Carrier's liability available under such laws unless otherwise expressly stated in writing by the Carrier or prevents the Carrier from excluding or limiting the Carrier's liability under such laws, or gives up any defence available to

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the Carrier thereunder. The Charterer as agent of each passenger shall inform each passenger prior to each flight, of the provisions of this condition 7.4.

- 7.5 In no event shall the Carrier be liable to the Charterer for any indirect, economic or consequential losses or damages arising out of any breach of the terms of the Agreement.
- 7.6 The indemnities contained in the Agreement will continue in full force and effect notwithstanding the expiration or other termination of the Agreement.

8 Termination

- 8.1 If it becomes clear at any time that the Carrier will be unable to commence any particular flight(s) provided for by this Agreement within the period of 24 hours from the departure time(s) specified in the Flight Schedule, where such failure is not due to the fault of the Carrier and is not caused by any circumstances specified in condition 8 hereof, the Carrier or the Charterer shall be entitled to cancel such flight(s) whereupon the liability of the Carrier to the Charterer shall be limited to the repayment to the Charterer of the charter price or of such part of the charter price set out in the Charter Agreement which relates to that part of the carriage or flight(s) cancelled and the Carrier's certification of such amount shall, save in the case of manifest error, be conclusive.

9 General

- 9.1 The Carrier shall at its own expense apply for and use its reasonable commercial efforts to procure the grant of all licences or permits required by the laws of England and Wales and of any other country to, from or over which the Aircraft is to be flown for the performance of the flight(s) specified above and the performance of the said flight(s) shall be dependent upon the timely grant and validity of any such licences and permits. The Charterer warrants that it will comply with all the conditions of the said licences or permits which shall have been notified to it by the Carrier and shall use its reasonable commercial efforts to procure such compliance on the part of all passengers and owners or other persons interested in goods to be carried in the Aircraft on such flight(s).
- 9.2 The Charterer shall not be entitled to assign the benefit of this Agreement to any other person nor amend the terms of this Agreement without the consent in writing of the Carrier.

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- 9.3 Any notices required to be given hereunder shall be served by sending the same by pre-paid first class post, facsimile, or by delivering the same by hand to the address or transmitted to the fax number set out below and above of the party to whom it is given or such other address as either party may notify to the other for this purpose. If sending by post it shall be deemed to have been served on the day on which it would have been received in due course of post, and any notice sent by facsimile shall be deemed to have been served at the time of despatch.

If to the Carrier:

Address: Alto Aerospace Ltd, Aerial Court, Bournemouth Airport, Christchurch, Dorset, BH23 6NE

Attn: Operations Department

Tel / Mob: +44 (0) 1202 570 087 | 24 Hour Ops Mobile + 44 (0) 7938 751 558

If to the Charterer, please use contact details found on the Charter Agreement.

- 9.4 The parties to this Agreement do not intend by this Agreement to confer any rights whatsoever on any other person other than those arising under condition 7.4. Save to that extent, the parties hereby expressly exclude the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 9.5 The Agreement may be signed in any number of counterparts, all of which, when taken together shall constitute one and the same instrument.
- 9.6 Should any terms of this Agreement be found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms shall not in any way be affected or impaired thereby.
- 9.7 No variation of this Agreement shall be effective unless made in writing and signed by both parties.
- 9.8 The Charter Price, payment terms and other commercial terms contained in this Agreement are confidential to the parties and may not be disclosed to third parties without prior approval of the other party.
- 9.9 No failure by the Carrier to exercise and no delay by the Carrier in exercising any right or power under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any such right or power preclude any such further exercise.
- 9.7 This Agreement and any non-contractual right arising in connection with it shall be construed in accordance with the Laws of England and Wales and the parties hereto submit to the non-exclusive jurisdiction of the courts and England and Wales.

10 Check-in

The Charterer shall be solely responsible for ensuring that all passengers and their baggage shall be available at the departure airport for each relevant flight not later than 30 minutes before the estimated time of departure specified in the Flight Schedule (as may be varied by the Carrier in the light of any circumstances affecting a particular flight) or, if no time is so specified, in sufficient time (in the opinion of the Carrier) prior to the scheduled departure time for check-in and security formalities to be completed. The Carrier shall have no liability in respect of the Carrier's refusal to carry any passenger and the Charterer shall indemnify the Carrier against any claim by any passenger arising out of such refusal.

11 Variation, delay and cancellations

- 11.1 If the Aircraft shall for any reason become incapable of undertaking such transport of passengers or goods as was contemplated at the time of this Agreement, the Carrier may at its discretion substitute therefor one or more aircraft as may be capable of undertaking such transport. If the Carrier does elect to substitute one or more aircraft as aforesaid then the provisions of this Agreement relating to the Aircraft shall apply (*mutatis mutandis*) to the substituted aircraft. If the Carrier does not elect to substitute another aircraft, it shall notify the Charterer as soon as possible and it shall be relieved of its obligations to provide the Aircraft for the flights which can no longer be undertaken by reason of the incapacity of the Aircraft and the Carrier shall be under no liability to the Charterer other than the liability to refund to the Charterer such part of the Charter Price which relates to that part of the carriage or flight(s) cancelled and the Carrier's certification of such amount shall, save in the case of manifest error, be conclusive.

If any delay in the commencement or completion of any flight is caused by the Charterer, its servants or agents or by any passenger to be carried on any such flight, demurrage shall be charged to the Charterer for such delay at the rate specified by the Carrier in addition to the Charter Price, and in addition the Carrier shall be entitled at any time after demurrage shall have started to run to cancel such flight (without prejudice to any claim the Carrier shall have against the Charterer for demurrage up to the time of such cancellation and the rights of the Carrier hereunder). Without prejudice to the Carrier's absolute right to refuse any request of the Charterer that the Aircraft make any flight for the Charterer other than those specified above, if the Carrier shall agree to any such flight being made, the Charterer shall pay to the Carrier in respect of such flight a sum calculated by the

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Carrier in addition to the Charter Price, and shall be responsible for any other additional expenses arising out of any such flight incurred by reason of any further request of the Charterer.

- 11.2 If, for reasons of safety or security or other operational reasons not being the fault of the Carrier, the Aircraft is diverted from any scheduled destination specified in the above Itinerary, the Carrier will, if requested to do so by the Charterer, use its commercially reasonable efforts to procure that, as soon as reasonably practicable after arrival at such alternate destination, the Aircraft is flown to its scheduled destination. The Carrier will have no liability or responsibility to the Charterer or any other party for any delay to passengers, baggage or freight so occasioned and the Charterer shall indemnify the Carrier against any claim by any passenger arising out of any such delay but the Carrier will pay the additional costs and expenses incurred by it arising as a result of the diversion and/or the flight to the scheduled destination.
- 11.3 The times shown in the Flight Schedule are approximate and not guaranteed. The Carrier shall not be responsible for any costs incurred by the Charterer or any passenger as a result of any delay, deviation or diversion of any flight, and the Charterer shall be responsible for any and all accommodation, refreshments, meals, transportation and additional expenses, losses, damages or liabilities of whatever nature arising out of such delay, deviation or diversion.

12 Excusable Delay

If by reason of any circumstances whatsoever beyond the control of the Carrier or the Charterer, as the case may be, including (without limitation) Act of God, terrorist activity, war, hijacking, riots and commotion, strikes, labour troubles, lock-outs, action or inaction of government authorities or their officials, order of a court, refusal of any licence, refusal of any certificate or permission, fire, explosions, requisitions, blockade, embargo, flood, fog, adverse weather conditions, natural disasters, breakdown, unserviceability, damage not amounting to a total loss of the Aircraft or accident to the Aircraft, the Carrier shall be unable to fly or continue to fly the Aircraft or the Charterer shall be unable to take up any flight to be operated hereunder, neither the Carrier nor the Charterer shall be liable for delay or non-performance of any such flight. Any time so lost shall not count in computing demurrage unless the Aircraft is already on demurrage.

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13 Limitation of Liability

13.1 The Charterer shall indemnify and hold the Carrier harmless in respect of all liabilities, costs, claims, demands, suits, judgments and actions, including costs and expenses of any defence, arising from:

13.1.1 any right or claim asserted by any passenger under the provisions of EC Regulation 261/2004; and

13.1.2 The Charterer's failure to comply with any provisions of the Agreement.

13.2 The Charterer shall (subject always to condition 7.4 below) indemnify the Carrier against:

13.2.1 all claims, expenses, damages or legal costs in respect of any liability of whatsoever nature to third parties (including but without prejudice to the generality of the foregoing passengers, consignors and consignees); and

13.2.2 any damage or loss of whatsoever nature caused to the Carrier, its servants or agents, or to any aircraft or any equipment belonging to the Carrier, its servants or agents arising out of any act or omission of the Charterer, its servants or agents and whether tortuous or constituting a breach of this Agreement.

13.3 Save as stipulated by the provisions referred to in condition 7.4 below, the Carrier shall have no liability for death, personal injury or delay of passengers and loss of or damage to or delay of baggage or cargo howsoever caused.

13.4 The Carrier's liability will be determined by applicable law, including without limitation, in the case of international carriage, the provisions of the Warsaw Convention 1929 or the Warsaw Convention as amended by the Hague Protocol 1955 or such other versions of the Warsaw Convention as varied by any relevant statutory provisions or the Montreal Conventions or the laws which apply in individual countries. Nothing in these terms and conditions gives up or waives any exclusion or limitation of the Carrier's liability available under such laws unless otherwise expressly stated in writing by the Carrier or prevents the Carrier from excluding or limiting the Carrier's liability under such laws, or gives up any defence available to

the Carrier thereunder. The Charterer as agent of each passenger shall inform each passenger prior to each flight, of the provisions of this condition 7.4.

- 13.5 In no event shall the Carrier be liable to the Charterer for any indirect, economic or consequential losses or damages arising out of any breach of the terms of the Agreement.
- 13.6 The indemnities contained in the Agreement will continue in full force and effect notwithstanding the expiration or other termination of the Agreement.

14 Termination

- 14.1 If it becomes clear at any time that the Carrier will be unable to commence any particular flight(s) provided for by this Agreement within the period of 24 hours from the departure time(s) specified in the Flight Schedule, where such failure is not due to the fault of the Carrier and is not caused by any circumstances specified in condition 8 hereof, the Carrier or the Charterer shall be entitled to cancel such flight(s) whereupon the liability of the Carrier to the Charterer shall be limited to the repayment to the Charterer of the charter price or of such part of the charter price set out in paragraph 5 of this Agreement which relates to that part of the carriage or flight(s) cancelled and the Carrier's certification of such amount shall, save in the case of manifest error, be conclusive.