

DIAMONTE JETS – STANDARD TERMS & CONDITIONS FOR THE CHARTER OF AIRCRAFT

Diamonté Jets Limited is an aircraft charter broker and, as such, we do not operate aircraft. We contract with you, the Charterer, to provide brokerage and facilitate to enable you to charter an aircraft that meets the needs you have specified to us. The flight is undertaken by the Operator and therefore Diamonté Jets Limited acts as agent only in connection with the entering into of the Charter Contract on your behalf. Diamonté Jets Limited will only ever recommend fully licensed and insured Operators and Aircraft, copies of Air Operator Certificates and insurance documents will be provided on request.

GENERAL TERMS AND CONDITIONS OF AIRCRAFT CHARTER

- (A) This agreement (the “General Terms and Conditions of Aircraft Charter”) sets out the general terms and conditions for the supply of air charter brokerage services and related services by Diamonté Jets Limited (“Diamonté Jets”).
- (B) The provisions of these General Terms and Conditions of Aircraft Charter will be incorporated into each Charter Confirmation (as defined herein) in their entirety, unless specifically agreed between the Parties (as defined herein) in writing.
- (C) In the event of any conflict between the terms of any Charter Confirmation and the General Terms and Conditions of Aircraft Charter, the Charter Confirmation shall prevail

1. DEFINITIONS

1.1 In these conditions, the following expressions shall have the following meanings:

- 1.1.1 “**Agreement**” shall mean the Charter Confirmation and these General Terms and Conditions of Aircraft Charter;
- 1.1.2 “**Aircraft**” shall mean any aircraft which is the subject of a booking and charter agreement organised by Diamonté Jets for the Charterer;
- 1.1.3 “**Charterer**” shall mean the person, firm or body corporate entering into this Agreement as identified in the Charter Confirmation;
- 1.1.4 “**Charter Confirmation**” means the schedule of specific terms and conditions of Aircraft Charter provided by Diamonté Jets and signed or accepted in writing by the Charterer;
- 1.1.5 “**Charter Price**” shall mean the price shown in the Charter Confirmation and such additional services requested and facilitated by Diamonté Jets on behalf of the Charterer as set out in the Charter Confirmation or stipulated in writing after signature or acceptance in writing of the corresponding Charter Confirmation;
- 1.1.6 “**Charter Contract**” shall mean the contract between the Charterer and the Operator for operation of the Flight Schedule.
- 1.1.7 “**Flight Schedule**” shall mean the point of departure, point of destination and any points between, together with any indications of departure and arrival dates and times, set out in the Charter Confirmation;
- 1.1.8 “**General Terms**” shall mean the General Terms and Conditions of Aircraft Charter as set out below.
- 1.1.9 “**Operator**” shall mean the operator of the Aircraft or any of its employees, directors and officers;
- 1.1.10 “**Parties**” shall mean Diamonté Jets and the Charterer;
- 1.1.11 “**Party**” shall mean Diamonté Jets or the Charterer as the context requires;
- 1.1.12 “**STD**” shall mean the scheduled time of departure in the Flight Schedule.
- 1.1.13 “**Force Majeure**” shall mean any event or occurrence, without limitations, beyond the reasonable control of Diamonté Jets or the Operator which prevents or delays the performance of any of its obligations.
- 1.1.14 “**Travel Documents**” shall mean all passenger tickets, baggage checks, air waybills and other documents required under applicable international conventions or other applicable law.

2. THE CHARTER CONFIRMATION

- 2.1 Diamonté Jets shall arrange that the Operator provides the Aircraft manned, maintained, equipped and fuelled for the Flight Schedule. The Charterer agrees that the carriage will be provided by the Operator who will have sole responsibility for the operation of the Flight Schedule, maintenance, insurance and operation of the Aircraft. The Charterer accepts that Diamonté Jets acts only as agent for the Charterer and the Operator in arrangement of the Charter Confirmation. The Charterer also accepts that the crew of the Aircraft are the servants and agents of the Operator and shall be authorised to take instructions only from the Operator unless otherwise agreed by the Operator in writing prior to the commencement of the Flight Schedule.
- 2.2 If at any time prior to the STD, the Aircraft becomes unavailable or unserviceable for any reason whatsoever prior to commencement of the Flight Schedule, Diamonté Jets will endeavour to find another suitable operator at the same price. Should this prove to be impossible, Diamonté Jets will endeavour to find an alternative Aircraft at as close a price as possible to the Charter Price and put such alternative Aircraft to the Charterer for acceptance. If Diamonté Jets is not able to substitute another Aircraft or the Charterer does not accept any available alternative, Diamonté Jets shall return the Charter Price to the Charterer and shall not be under any further liability whatsoever to the Charterer. However, the Charterer shall remain liable to pay for any part of the Flight Schedule that has already been operated.
- 2.3 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 Aircraft de-icing, 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 paid by the Charterer. Any such additional costs shall be invoiced by Diamonté Jets to the Charterer and shall be paid promptly by the Charterer.
- 2.4 The Charter Price and all other charges provided for in this Agreement are exclusive of value added or sales tax which, if subject thereto, shall be paid in addition by the Charterer at the rate applicable at the tax point.
- 2.5 The Charterer shall pay Diamonté Jets the Charter Price in pounds sterling (GBP) and at the time specified in the Charter Confirmation and any other additional costs agreed between the Charterer and Diamonté Jets. Unless otherwise stated in the Charter Confirmation, Diamonté Jets require full cleared payment 48 hours in advance of the STD by wire transfer to the designated bank account without deduction.
- 2.6 If any payment is not received from the Charterer by the date specified in the Charter Confirmation, Diamonté Jets may, without prejudice to any other rights or remedies it may have in respect of such default, cancel this Agreement with no further liability to the Charterer and Diamonté Jets will be entitled to cancellation charges from the Charterer in accordance with Clause 3.
- 2.7 Without prejudice to Clause 2.3 above, the Charter Price is also subject to increase due to any variations whatsoever to the Charter Confirmation requested by the Charterer and agreed by the Operator at any time after the Charter Confirmation has been signed or accepted in writing. Any additional charges shall be invoiced by Diamonté Jets to the Charterer and shall be paid promptly by the Charterer.

3. CANCELLATION AND TERMINATION

- 3.1 The Charterer may cancel a Flight Schedule (or part of) pursuant to this Agreement at any time prior to the STD by notice in writing to Diamonté Jets, subject to the cancellation terms set out in the Charter Confirmation. Cancellation charges may vary dependent upon the Operator and Flight Schedule, however, if the Charterer cancels one or more of the flights in the Flight Schedule, the Charterer may be liable to pay cancellation charges based on such proportion of the Charter Price as reasonably determined by the Operator. Diamonté Jets shall use reasonable endeavours to minimise cancellation charges raised by the Operator however the Charterer acknowledges that such charges will be levied upon Diamonté Jets in the event of the Charterer’s cancellation and as such, the cancellation charges as between Diamonté Jets and the Charterer represent a genuine pre-estimate of the loss that Diamonté Jets will suffer and do not in any way represent a penalty.

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3.2 Diamonté Jets may apply any monies already received from the Charterer in satisfaction of such cancellation charges.

3.3 Diamonté Jets may terminate this Agreement immediately by notice in writing if:

3.3.1 The Charterer commits a breach of this Agreement which is incapable of remedy or which, if capable of remedy, is not remedied within such reasonable time as Diamonté Jets shall require; or

3.3.2 If, in the opinion of Diamonté Jets, the Charterer is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) as if the words “if it is provided to the satisfaction of the Court” were replaced by “if in the reasonable opinion of Diamonté Jets”, or a petition is presented or a resolution is passed to wind up the Charterer, or an administration order is made in relation to the Charterer, or a receiver, manager, administrative receiver, or like person is appointed over the whole or any material part of the property, undertaking or assets of the Charterer, or if the Charterer makes a voluntary arrangement within the meaning of Section 253 of the Insolvency Act 1986 or a bankruptcy order is made against the Charterer or the Charterer becomes insolvent or otherwise unable to pay debts; or any similar event to any of those in this Clause occurs in respect of the Charterer in any territory whose jurisdiction the Charterer is subject.

3.4 If Diamonté Jets terminates this Agreement under this Clause, the Charterer shall be liable for cancellation charges in accordance with Clause 3.1.

4. LIABILITY AND INDEMNITY

4.1 This Agreement does not constitute a contract for carriage. Diamonté Jets does not act as a common carrier or any other type of carrier in respect of any of its obligations under this Agreement and Diamonté Jets acts solely as agent for the Charterer and Operator in connection with this Agreement. Acceptance or performance by Diamonté Jets of any of its obligations under this Agreement does not assign to it any liabilities of the Operator as carrier.

4.2 The operation of the Flight Schedule will be subject to the Operator’s terms and conditions of carriage, a copy of which the Charterer may obtain on request from Diamonté Jets. The Charterer should be aware that, depending on the domicile of the Operator, amongst other things, the liability of the Operator to the Charterer may be limited in certain ways, including with regard to death and personal injury.

4.3 Diamonté Jets makes no representation or warranty with regard to the Operator and will not be liable in any way whatsoever for any loss, damage, injury or expense suffered or incurred by the Charterer or any third party howsoever caused. However, nothing in this Clause shall exclude or restrict Diamonté Jets’s liability for death or personal injury arising out of its negligence.

4.4 The Charterer shall indemnify Diamonté Jets against all liabilities, claims and expenses (including legal costs and fees) in respect of any liability of Diamonté Jets to third parties (including but not limited to passengers) for any loss or damage whatsoever (including costs and expenses on a full indemnity basis) arising out of any act or omission of the Charterer its servants or agents or any passenger carried by authority of the Charterer.

4.5 In entering into this Agreement Diamonté Jets neither acts nor holds itself out as a principal in respect of the provision of air services nor as a licensed air carrier and neither does Diamonté Jets act as the agent of the Operator.

4.6 Diamonté Jets does not accept any liability of whatever nature, whether in contract, tort or otherwise, for the acts, omissions or default, whether negligent or otherwise, of third party providers over whom it has no direct control; this includes (without limitation) the Operator, handling agents, caterers and ground transportation.

4.7 The Charterer agrees to indemnify Diamonté Jets and its officers, employees and agents against all losses, costs, damages, claims and expenses arising from:

4.7.1 any breach of this Agreement by the Charterer;

4.7.2 any act or omission by the Charterer, a passenger, or the Charterer’s officers, employees or agents; or

4.7.3 any claim, action, demand or proceeding by a third party against Diamonté Jets Limited caused or contributed to by the Charterer, a passenger, or the Charterer’s officers, employees or agents.

4.8 Except in the case of fraud or except where such statement or representation appears in these General Terms or is otherwise confirmed in writing and signed by an authorised officer of Diamonté Jets, Diamonté Jets shall have no liability for any statement or representation made by any employee or agent on any matter connected with this Agreement.

5. OPERATION OF THE FLIGHTS

5.1 As stated in Clause 4.2 above the Operator’s terms and conditions of carriage apply to the operation of the Flight Schedule pursuant to the Charter Confirmation. These conditions shall include the following provisions without prejudice to the application of the Operator’s other terms and conditions of carriage. In the event of any discrepancy between the Operator’s terms and conditions of carriage and the following provisions, the following provisions shall prevail.

5.2 If the Aircraft, for any reason, whether before or after the commencement of the Flight Schedule, becomes incapable of undertaking or continuing all or part of the Flight Schedule, the Operator may at its absolute discretion substitute one or more aircraft of the same or another type and the provisions of the Agreement shall apply to the substituted aircraft.

5.3 If the performance of the Flight Schedule is prevented or delayed by the Charterer or anyone acting on its behalf including (but not limited to) any passenger or luggage arriving later than 30 minutes before the STD, the Operator may at its absolute discretion and without liability depart as scheduled or delay departure. Any additional expense attributable to such delayed departure shall be borne by the Charterer.

5.4 In the event of non-performance of the Charter Contract or delay caused by actions of third parties, labour difficulties, Force Majeure, including but not limited to inclement weather or technical breakdown or accident to the Aircraft or any part thereof, or any machinery to be used in relation to the Aircraft, the Operator shall use all reasonable endeavours to perform or continue the Flight Schedule but otherwise shall have no liability to the Charterer whatsoever.

5.5 On request, Diamonté Jets shall negotiate on the Charterer’s behalf for any expenses incurred by the Charterer as a direct result of technical breakdown of the Aircraft. Diamonté Jets shall not be held liable for these costs but shall use its best endeavours, as agent, to recover these costs should the client wish for Diamonté Jets to perform these negotiations with the Operator on their behalf.

5.6 In the event of non-performance of the Charter Contract or delay under Clause 5.4 above, the Charterer shall be liable to pay to Diamonté Jets such proportion of the Charter Price as shall apply to that part of the Flight Schedule which has been performed together with any additional charges and expenses payable by the Charterer pursuant these General Terms.

5.7 The Operator shall be entitled to depart from the Flight Schedule where necessary in its reasonable opinion and any additional expenses applicable to such departure shall be borne by the Charterer.

5.8 If the Aircraft for any reason is diverted from any airport, aerodrome or destination shown in the initial Flight Schedule to another, the journey to the scheduled destination shall be deemed to be complete when the Aircraft arrives at such other destination. Charter Price may increase if the Charterer requests that (only once in the reasonable opinion of the Operator it is safe or practical to do so) the Aircraft is repositioned to the destination shown in the initial Flight Schedule. Any additional charges shall be invoiced by Diamonté Jets to the Charterer and shall be paid promptly by the Charterer.

5.9 The Flight Schedule may contain one or more segments where the Aircraft is positioning from one point to another with no passengers on board for the purpose of picking up the Charterer or the Charterer’s passengers at the next scheduled departure point. These ‘empty leg’ segments are the sole property of the Operator and are not to be sub-sold or offered for sale.

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- 5.10 In the event that a passenger's conduct, behaviour or health is deemed by the captain of the Aircraft to cause, or be likely to cause, discomfort or nuisance to other passengers, damage to the Aircraft or jeopardise the safety of the passengers and/or the Aircraft, then the captain of the Aircraft shall be entitled to take any action deemed necessary to procure the safety of the passengers and Aircraft including, but not limited to diverting or returning to the airport of departure and/or removing the passenger(s) in question. If such action is deemed necessary the Charterer shall be liable for all costs resulting from such diversion and removal. Any charges shall be invoiced by Diamonté Jets to the Charterer and shall be paid promptly by the Charterer.
- 5.11 In the event that any damage is caused by passengers to the Aircraft, its fixtures or fittings, charges deemed reasonable by the Operator for repair or replacement will be borne by the Charterer. Any charges shall be invoiced by Diamonté Jets to the Charterer and shall be paid promptly by the Charterer.
- 5.12 The captain of the Aircraft shall have absolute discretion:
- 1 to refuse any passenger(s), baggage, cargo or any part thereof;
 - 2 to decide what load may be carried on the Aircraft and how it shall be distributed;
 - 3 to decide whether and when a flight may be safely undertaken and where and when the Aircraft shall be landed.
- 5.13 The Charterer shall ensure that any goods to be transported are sufficiently and properly packed for carriage taking into account all reasonable demands of the Operator and the captain and where necessary complying with IATA Dangerous Goods Regulations, a copy of which is available at the office of Diamonté Jets or will be provided on request.
- 5.14 The Operator shall be entitled at its own discretion and without compensation to the Charterer to use any part of the carrying capacity of the Aircraft unused by the Charterer, except by means of the carriage of additional passengers, and to use any part of the Flight Schedule unused by the Charterer.

6. LICENCES AND INTERNATIONAL REGULATIONS

- 6.1 Diamonté Jets shall procure that the Operator shall supply the Travel Documents and all other necessary documents relating to the carriage undertaken pursuant to this Agreement and the Charterer shall provide to Diamonté Jets all necessary information and assistance to complete such documents as soon as possible after the making of this Agreement.
- 6.2 All Flights are conditional on the grant and continued retention of, and are subject to, the terms and conditions of (i) the relevant air transport licence issued to the Operator by the relevant authority and (ii) any further licences or authorities which may be required for the operation of the Flight Schedule, whether required under the laws or regulations of the state in which the Aircraft is registered or any other state to, from or over which the Aircraft will be flown in the course of the Flight Schedule.
- 6.3 If licences and authorities required for the operation of the Flight Schedule are in Diamonté Jets's reasonable opinion, not likely to be obtained in good time or where obtained are not likely to be retained, Diamonté Jets shall have the exclusive discretion to cancel this Agreement without any or further liability to the Charterer except that Diamonté Jets shall be obliged to refund monies paid by the Charterer after deducting (i) a reasonable amount for the costs of administration and (ii) any non-refundable amount paid to the Operator under the Charter Contract.
- 6.4 The Charterer shall ensure that passengers and their luggage shall be at the specified check-in point at the departure airport not later than 30 minutes before STD and that all passengers possess all required Travel Documents, identity documents, passports, visas and other documents required by the Operator and authorities of states of departure, transit and arrival of the Flight Schedule for the transportation of them, their luggage and any cargo.
- 6.5 In the event that any passenger of the Charterer is refused entry at any destination airport, the Charterer shall indemnify and keep indemnified Diamonté Jets, its officers and employees and agents against any and all cost or expense whatsoever incurred by Diamonté Jets in respect thereof (including but not limited to charges, fee, penalties, imposts or other expenses levied upon the Operator and passed on to Diamonté Jets) or of any arrangements made by the Operator and/or Diamonté Jets to return such passenger to the country from which such passenger was originally carried. Any charges shall be invoiced by Diamonté Jets to the Charterer and shall be paid promptly by the Charterer.

7. EMPTY LEG DEALS

- 7.1 An empty leg is defined in Clause 5.9. An empty leg deal is any empty leg for which a lower price is given.
- 7.2 An empty leg relies on the surrounding Flight Schedule. Diamonté Jets reserves the right to cancel or alter the scheduling of any empty legs.
- 7.3 If a change in Flight Schedule affects an empty leg flight, the Charterer may:
- 1 Cancel their empty leg deal and receive a full refund.
 - 2 Reschedule their flight at another time as offered by Diamonté Jets. The price may change depending on the difference to the original schedule.
 - 3 Book the same flight schedule at full rates, subject to the availability of Aircraft.
- 7.4 If the Charterer decides to cancel their empty leg deal, cancellation terms will apply as per Clause 3.

8. GENERAL PROVISIONS

- 8.1 No failure by either Party to exercise, nor any delay in exercising, any right or remedy under this Agreement shall operate as a waiver thereof or of any right or remedy hereunder, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof, or the exercise of any other right or remedy.
- 8.2 Neither Party shall assign any of its rights or obligations under this Agreement in whole or in part without the prior written consent of the other Party, such consent not to be unreasonably withheld.
- 8.3 This Agreement shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the Courts of England and Wales to settle any claim or matter arising under this Agreement.
- 8.4 Nothing in this Agreement, expressed or implied, is intended to confer upon any third party, other than the legal successors of the Parties and third parties to which the Agreement or certain rights under or in relation to the Agreement have been assigned as provided under this Agreement, any rights to require fulfilment of any obligation under this Agreement or any other right whatsoever under or by reason of this Agreement.
- 8.5 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 8.6 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the parties' original commercial intention.
- 8.7 The headings of these General Terms shall be for convenience only and they shall not affect the interpretation of any part of this Agreement.

9. GOVERNING LAW

- 9.1 This Agreement shall be construed in accordance with the Laws of England and Wales.
- 9.2 Both Diamonté Jets and the Charterer hereby irrevocably agrees, for the sole benefit of Diamonté Jets that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with these Conditions or the contract for the charter of the Aircraft, its subject matter or formation (including non-contractual disputes or claims). Nothing in this Condition 8.2 shall limit the right of Diamonté Jets to take proceedings against the Charterer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.