

## Air Partner plc Freight Terms and Conditions (FR2020)

### 1. What we mean

#### 1.1 In this Contract:

**Additional Fees:** those additional fees and reimbursement of costs and expenses charged by the Nominated Carrier (or any replacement carrier arranged pursuant to clause 2.6) and payable by the Client under this Contract in accordance with clauses 5 and 6;

**Aircraft:** the aircraft described in the CoA or Movement Authorisation (if any) or any alternative aircraft used to perform the Flight;

**AP:** Air Partner plc;

**AP Group:** AP and any subsidiary of that company from time to time as such term is defined in Section 1159 of the Companies Act 2006;

**AP Privacy Policy:** the AP privacy policy from time to time in force and available on AP's website <https://www.airpartner.com> or otherwise notified to the Client;

**Authorised Representatives:** the individuals (all of whom must be over the age of 18) who are duly authorised to book Flights on the Client's behalf;

**BIFA Conditions:** the British International Freight Association (BIFA) Standard Trading Conditions 2017 edition (as may be updated from time to time), a copy of which is available upon request;

**Carriage:** the transport and delivery of Freight set out in this Contract (including the CoA or Movement Authorisation) and any OBC services;

**Check-in Time:** the time or times stated in the CoA or Movement Authorisation or otherwise notified to the Client by the Nominated Carrier or AP;

**Client:** the person, firm or body corporate entering into this Contract as identified in the CoA or Movement Authorisation;

**CMR:** the Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva, 19 May 1956), as amended from time to time;

**Commencement Date:** the date this Contract is signed by both parties (and, if signed by the parties on different dates, the later of these dates);

**Confirmation of Arrangements (CoA) or Movement Authorisation:** the document(s) setting out the aircraft charter requirements of the Client (including details of the Freight, Aircraft, Freight Forwarder, Haulier, Transport Price, Flight and Nominated Carrier) to which this Contract is appended, and which are hereby incorporated into this Contract;

**Contract:** this agreement between AP and the Client comprising these terms and conditions, together with all documents which are to be made a part of this agreement in accordance with clause 13.1 or are incorporated into this agreement by express reference in this agreement (such documents being part of this agreement to the extent so referenced);

**Data Protection Law:** applicable data protection law and regulations including, where relevant, the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018;

**Data Subjects:** as defined in the Data Protection Law;

**Flight:** the flight or, as the case may be, each of the flights, and any associated services, as set out in the CoA or Movement Authorisation;

**Force Majeure Event:** any event beyond AP's reasonable control including acts of God, explosions, revolutions, acts of terrorism, hijacking, insurrection, riot, civil commotion, war, national or local emergency, act of government, lock-out, strike, industrial dispute or action, crew, handling or air traffic control personnel issues, fire, lightning, flooding, fog, snow, embargoes, quarantine, requisition of an aircraft or cargo, acts or omissions of third parties, lack of serviceability of Aircraft or operation of Aircraft resulting from other unforeseeable events such as supply chain issues or a financial markets crisis, weather conditions, service bulletins, airworthiness directives, or accident to the Aircraft or any part of it, or the act of any authority;

**Freight:** the goods or any other cargo to be transported from time to time in accordance with the terms of the Contract as defined in the CoA or Movement Authorisation;

**Freight Forwarder:** the commercial freight forwarder or logistics provider selected to provide the carriage of Freight as set out in the CoA or Movement Authorisation (including any replacement provider or assignee);

**Haulier:** the commercial haulier selected to provide the carriage of Freight as set out in the CoA or Movement Authorisation (including any replacement provider or assignee);

**IATA Regulations:** the International Air Transport Association regulations from time to time in force;

**ICAO Instructions:** the International Civil Aviation Organisation Technical Instructions for the Safe Transport of Dangerous Goods by Air 2017-18 Edition (as updated from time to time);

**Insolvency Event:** where a person ceases or threatens to cease to carry on business, is found unable to pay its debts within the meaning of the Insolvency Act 1986 section 123, has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for solvent amalgamation or solvent reconstruction), being an individual is the subject of a bankruptcy petition or order, or undergoes any similar or equivalent process in any jurisdiction;

**Loss:** any damage, injury, loss, partial loss, cost, claim or expense (including cancellation charges, loss of profit, consequential and indirect loss or damage of any kind, and liability to the Nominated Carrier, Freight Forwarder and/or Haulier);

**Montreal Convention:** the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Montreal on 28 May 1999;

**Nominated Carrier:** any commercial air carrier or aircraft operator selected to provide the Aircraft as set out in the CoA or Movement Authorisation (including any replacement carrier or assignee) for the period of the charter;

**Personal Data:** as defined in Data Protection Law;

**Processing:** as defined in the Data Protection Law (and cognate expressions shall be construed accordingly);

**OBC:** the provision of transport and delivery of Freight by an onboard courier;

**Redtrack:** an international internet based real time track and trace system for all shipments of Freight made under the terms of this Contract;

**Regulations:** the CMR, IATA Regulations, the Montreal Convention, the Warsaw Convention or any other mandatory rules relating to the transport of goods, e.g. Hague or the Hague-Visby Rules, the U.S. COGSA or any other rules or applicable standard trading conditions and limits of liability as defined on the international transit document relating to the Services under this Contract;

**STD:** the scheduled time of departure of the Flight, as set out in the CoA or Movement Authorisation;

**Services:** the carriage and freight forwarding services to be provided by AP (including OBC) in providing and/or arranging transportation of the Freight as set out in the CoA or Movement Authorisation;

**Transshipment:** the unloading of Freight from the vehicle or Aircraft arranged by AP during the carriage of that Freight, even if such Freight is re-loaded onto the original vehicle or Aircraft;

**Transport Price:** the combined price for the provision of the Flight by the Nominated Carrier, or the Carriage by the Freight Forwarder or Haulier (including fuel, oil, maintenance, landing, hangarage, parking, ground handling and the remuneration and expenses of air crew) together with the provision of brokerage and facilitation services by AP (including the Services and Support Services), as set out in the CoA or Movement Authorisation and which is payable by the Client in accordance with clauses 5 and 6;

**Travel Documents:** all air waybills and other documents required under the Montreal Convention, by any other applicable laws and by the authorities of states of departure, transit and arrival of the Flight; and

**Warsaw Convention:** the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929 or that Convention as amended by the Hague Protocol of 1955 or the Montreal Protocols of 1975 whichever may be applicable and in each case the Guadalajara Convention of 1961.

- 1.2 If there is any conflict and/or inconsistency between these terms and conditions and the CoA or Movement Authorisation, the CoA or Movement Authorisation shall prevail but only to the extent of such conflict and/or inconsistency.
- 1.3 In this Contract, unless the context otherwise requires:
- 1.3.1 references to:
- (a) any gender includes the other genders;
  - (b) an enactment includes that enactment as amended, extended, consolidated, re-enacted or applied by or under any other enactment before or after the Commencement Date and any subordinate legislation made (before or after the Commencement Date) under that or any other applicable enactment;
  - (c) **writing or written** includes fax but not e-mail (save that written amendments to the CoA or Movement Authorisation may be agreed in accordance with clause 13.1 via email);
  - (d) the singular includes the plural and vice versa; and
  - (e) a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having a separate legal personality);
- 1.3.2 an obligation on the Client to do, or to refrain from doing, any act or thing shall include an obligation upon the Client to procure that any sub-charterer(s), cargo owners and the Client's officers, employees, subcontractors or agents also do, or refrain from doing, such act or thing;
- 1.3.3 headings are for convenience only and do not affect the interpretation of this Contract; and
- 1.3.4 the words **including, include(s)** and **in particular** and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions.

## 2. AP's role and appointment / Term

- 2.1 The Client appoints and authorises AP to make arrangements for the Flight on its behalf. The Client hereby expressly authorises AP to arrange:
- 2.1.1 the carriage of the Freight by any route or means or persons in accordance with this Contract;
  - 2.1.2 the storage, packing, Transshipment, loading, unloading or handling of the Freight by any third party and for the length of time acceptable to the Client; and
  - 2.1.3 to do such necessary acts as may, in the reasonable opinion of AP, be necessary to perform its obligations to the Client.
- 2.2 Subject to earlier termination in accordance with clause 9, the term of this Contract shall be for an initial period of 3 years from the Commencement Date and shall continue thereafter unless and until terminated by either party giving to the other not less than 6 months' written notice.
- 2.3 Where the Client provides AP with Personal Data under or in connection with this Contract (the **Client Data**), the Client acknowledges that AP shall Process such Client Data (including for operational, logistic and regulatory purposes and through transfers to third parties both within and outside the European Union) in accordance with the AP Privacy Policy and any other fair Processing notices that AP may issue from time to time. The Client shall ensure that the Client Data provided to AP has been Processed by the Client in accordance with the Data Protection Law including in respect of fair and lawful Processing and the provision of fair notice to the relevant Data Subjects of the transfer to, and Processing to be undertaken by, AP pursuant to this Contract. The Client shall also make the relevant Data Subjects aware of the AP Privacy Policy and any other fair Processing notices that AP may issue.
- 2.4 In entering into this Contract, AP neither acts nor holds itself out as:
- 2.4.1 a principal in respect of, or providing, the Flight (or any part thereof);
  - 2.4.2 a licensed commercial air carrier or aircraft operator; or
  - 2.4.3 an agent of the Nominated Carrier or any other third parties involved in the Flight.
- 2.5 The Client acknowledges and agrees that the Flight will be provided by the Nominated Carrier, Freight Forwarders, Hauliers, OBC and other third parties (including handling agents, caterers and ground transportation) and that the Nominated Carrier, Freight Forwarders, Hauliers, OBC and such other third parties will have the exclusive responsibility and liability for the provision of (or failure to provide) the Flight including maintenance and operation of the Aircraft and direction of the crew. The Nominated Carrier's responsibilities and obligations to the Client in respect of the Flight will be set out and subject to the conditions of carriage.
- 2.6 If at any time prior to the STD:

- 2.6.1 the Aircraft becomes unavailable or unserviceable, AP may, in its discretion, provide reasonable assistance to find a suitable substitute aircraft within a reasonable time after AP becomes aware of the Aircraft becoming unavailable or unserviceable; or
- 2.6.2 the Nominated Carrier becomes insolvent and ceases flight operations, AP may, in its discretion, use reasonable endeavours to find a suitable substitute carrier within a reasonable time after AP becomes aware of the Nominated Carrier becoming insolvent and ceasing flight operations.

In both cases, the Client shall pay any Additional Fees.

- 2.7 AP will notify the Client in accordance with agreed timescales of any events of which it is aware in the execution of the Services including damaged Freight, delay in delivery, alterations in the Flight or shipping schedules, Transshipment issues, incorrect postal address and other material matters.
- 2.8 Subject to the provisions of clause 10 of this Contract, AP agrees to use reasonable endeavours to ensure that all Freight is delivered in accordance with the delivery instructions and agreed transit time set out in the CoA or Movement Authorisation.
- 2.9 AP reserves the right to open and inspect any Freight for security screening. Save as aforesaid, AP will not break open any Freight and will convey instructions to all relevant third parties that they must not break down or break open the Freight which has been packed unless expressly instructed to do so by the Client, save for safety considerations, customs examination or as otherwise required by law, and AP will use its reasonable endeavours to ensure that the Client is present at such customs examination.
- 2.10 Upon request, AP will provide the Client with Redtrack for out bound and in bound shipments of Freight. The system can also be made available to specific customers if required by the Client.
- 2.11 AP will make available to the Client an electronic data interface and software training (including Redtrack) (as determined by AP) at no cost to the Client.
- 2.12 AP will provide the Client with proof of deliveries within 24 hours of request from the Client (excluding the date of shipment) via Redtrack.
- 2.13 Carriages arranged on behalf of the Client are made subject to the terms and conditions and limitations of liability imposed by the Nominated Carrier, Freight Forwarder, OBC or Haulier.
- 2.14 At its sole discretion, AP shall determine whether the OBC service is appropriate for the transport of any Freight, having regard to the Freight itself, its value and any time sensitive aspects of the Carriage requested. AP reserves the right to refuse any Carriage by OBC and to offer an alternative mode of Carriage without any liability to the Client.
- 2.15 Carriages arranged on behalf of the Client are made subject to the terms and conditions and limitations of liability imposed by the Freight Forwarder, OBC or Haulier.
- 2.16 The provision of any Carriage by AP is subject to the BIFA Conditions, which are incorporated into and form part of this Contract. In the event of any inconsistency between the terms of this Contract and the BIFA Conditions, the terms of the BIFA Conditions shall prevail (but only to the extent of such inconsistency).
- 2.17 AP shall discharge its obligations under this Contract with reasonable care and skill. The provision of Services shall be subject to the Regulations.

### **3. General Client obligations and responsibilities**

- 3.1 The Client shall:
- 3.1.1 comply with its obligations and responsibilities set out in this Contract;
- 3.1.2 ensure that all information that it provides to AP and the Nominated Carrier (including the Travel Documents) is provided within the timescales required, and is complete and accurate;
- 3.1.3 provide AP with a list of the Authorised Representatives and shall notify AP promptly of any changes to that list;
- 3.1.4 ensure and procure that the Authorised Representatives comply with the terms and conditions set out in this Contract;
- 3.1.5 be fully responsible for and liable to AP and the Nominated Carrier, Freight Forwarder, OBC and Haulier for the acts, omissions and instructions of the Authorised Representatives;
- 3.1.6 comply with any requirements of the Nominated Carrier, Freight Forwarder, OBC and Haulier including the conditions of carriage, and all conditions of any licences and/or permits which relate to the Aircraft, the Freight and/or the Flight; and
- 3.1.7 comply with any and all decisions of the Nominated Carrier, Freight Forwarder, OBC and Haulier and the captain of the Aircraft. AP is not responsible for any decision of the Nominated Carrier, Freight Forwarder, OBC and Haulier or captain of the Aircraft and any consequences thereof, including any effect on the performance of AP's obligations under this Contract.
- 3.2 If the Client has provided AP with a list of Authorised Representatives in accordance with clause 3.1.3, the Client may instruct AP to accept bookings from those Authorised Representatives.

#### **Account**

- 3.3 When using the Services or AP's website, the Client shall ensure that it adheres to the terms of use of AP's website, as available on request and on the website and in particular for maintaining the confidentiality of its account, login details and passwords and to prevent any unauthorised access to its account. The Client agrees to accept responsibility for all activities that occur under its

account, and should notify AP immediately if it has any reason to believe that its account has been used by in an unauthorised manner.

- 3.4 The Client shall ensure that the details provided to AP are correct and complete. The Client shall notify AP immediately of any changes to the information provided when opening and operating its account.
- 3.5 The Client shall ensure that any persons given log-in details by the Client and access to the account or AP's website shall have the Client's full authority to do so and to order Services on behalf of the Client and the Client acknowledges that AP may treat any Confirmation of Arrangement received from the Client or any persons given log-in details as valid and binding.
- 3.6 AP reserves the right to refuse, terminate, remove, or cancel requests for Services on the Client's account at AP's discretion and without giving reason therefor.

***Declarations of Freight***

- 3.7 The Client is responsible for the accuracy of the declarations of Freight provided to the Nominated Carrier, Freight Forwarder, OBC Haulier or to AP.

***Delivery of Freight to the handling agents***

- 3.8 The Client is responsible for ensuring that the Freight and all required supporting paperwork are delivered to the nominated handling agent by the date specified by the Nominated Carrier, Freight Forwarder, OBC or Haulier. If Flight departure is delayed by reason of (i) the absence of any Freight supporting paperwork; (ii) the Freight not being delivered for loading by the stipulated time; or (iii) any act or omission of the Client and any sub-charter or cargo owner, demurrage fees may become payable by the Client.

***Freight matters***

- 3.9 With respect to each Carriage and Flight and unless agreed otherwise in writing with AP prior to any Carriage or Flight, the Client shall:
  - 3.9.1 promptly provide AP with any information reasonably required to enable AP to proceed with the performance of the Services;
  - 3.9.2 notify AP in a proper and timely manner of the locations for the collection and delivery of Freight;
  - 3.9.3 be either the owner or authorised agent of the owner of the Freight and that the Client is accepting these conditions not only for itself but also as agent for and on behalf of any such owner;
  - 3.9.4 ensure that the Freight excludes the following:
    - (a) weapons, ammunition, explosives or any damaging items (unless such items are part of the Freight that AP has expressly agreed to transport);
    - (b) items the possession, carriage, importation or exportation of which violates any law, rule or regulation
    - (c) money, cash, bullion, negotiable cash equivalents or securities;
    - (d) items requiring a license for their Carriage that has not been obtained; and
    - (e) items forbidden to be transported, imported or exported by the IATA Regulations, the ICAO Instructions or applicable laws (unless such items are part of the Freight that AP has expressly agreed to transport);
  - 3.9.5 provide AP in a timely manner with a full list of all weights and dimensions of the Freight, for the purpose of enabling AP, the Nominated Carrier, Freight Forwarder, OBC or Haulier to perform a loadability check and to allow the most appropriate equipment to be provided for the Carriage;
  - 3.9.6 deliver, or procure the delivery of the Freight together with a full set of accurate and complete shipping documentation to the handling agents in respect of the Flights, such delivery to take place within any time specified by AP or the Nominated Carrier, Freight Forwarder, OBC or Haulier;
  - 3.9.7 deliver, or procure the delivery of, the Freight, together with a full set of accurate and complete shipping documentation to the handling agents, in a format and packaged appropriately, having both regard to the nature of the Freight and the transportation arrangements put in place, such delivery to take place within any time specified by AP or the Nominated Carrier, Freight Forwarder, OBC or Haulier. The Client acknowledges that a failure to comply with this provision may result in demurrage fees being payable by the Client;
  - 3.9.8 ensure that the Freight is ready for Carriage (including packing in accordance with the Regulations and custom cleared;
  - 3.9.9 declare, deliver and pack all dangerous goods in the manner required by IATA Regulations for the Carriage of Dangerous Goods by Air;
  - 3.9.10 declare all dangerous goods in a timely manner in order to enable AP, the Nominated Carrier, Freight Forwarder, OBC or Haulier sufficient time to arrange special overflight and landing approvals where necessary;
  - 3.9.11 declare and fully document all perishable, fragile or special Freight in a manner so as to enable AP, the Nominated Carrier, Freight Forwarder, OBC or Haulier to ensure the Freight is suitably transported;
  - 3.9.12 ensure the Freight will be properly and sufficiently packed, labelled and marked; and
  - 3.9.13 in the case of Client packed containers, ensure any transport unit or container used for carriage of the Freight is in good condition, suitable for carriage to the intended destination and all Freight has been properly and sufficiently stowed.
- 3.10 The Client acknowledges that it is required to accept and authorise the CoA or Movement Authorisation and send it to AP before the expiry of the deadline indicated on Redtrack in respect of each CoA or Movement Authorisation in order for AP to begin the transportation of any shipment. If the CoA or Movement Authorisation is not accepted and sent to AP within such specified time, AP may refuse to provide the Flight and/or Carriage the subject of the CoA or Movement Authorisation.

***Dangerous Goods***

- 3.11 The Client must disclose any dangerous goods and AP only agrees to accept them for Carriage if they are classified, packed and labelled in accordance with the statutory regulations for the carriage of the substance declared and the Client shall be liable for

any damage resulting from improper packaging. The Client must provide information in writing in the manner required by the relevant statutory provisions in respect of each substance and must accompany the Freight.

- 3.12 AP reserves the right to accept or reject, in its sole discretion, any items tendered for Carriage that are dangerous goods under any applicable law, rule or regulation. AP does not accept for Carriage anything that is forbidden by the IATA Regulations, the ICAO Instructions or applicable laws or for any other legal or safety reasons.
- 3.13 In the event local regulations, airports, airlines, or other modes of transportation restrict the movement of dangerous goods or impose embargoes at certain departure or destination points, these locations cannot be selected as transportation destinations.
- 3.14 Each item of Freight shall be marked legibly and durably with the name and full address of the shipper and consignee. The outside of the container shall bear the proper shipping name(s), technical names, and UN IDs of the contents. In addition, a 24-hour emergency contact that can provide details of the contents during the period of transportation shall be clearly indicated. A shipper's document, which clearly identifies and describes the contents, shall be placed inside the packaging of each dangerous goods shipment.
- 3.15 AP and any Carrier, Freight Forwarder, OBC or Haulier reserves the right to return a dangerous goods consignment that leaks, releases odours, has damaged packaging, or is otherwise damaged, to the Client. The Client shall bear all costs related to the shipment, such as shipment back to the Client, destruction of the consignment and any reasonable measures taken to prevent accidents.
- 3.16 AP's acceptance of a consignment of dangerous goods shall not automatically imply acceptance by the Nominated Carrier, Freight Forwarder, OBC or Haulier.

#### ***Travel Documents***

- 3.17 The Client shall complete or arrange for the completion of the Travel Documents in such form as the Nominated Carrier or AP may require as soon as practicable before the scheduled departure date of the Flight, or if applicable, the first Flight. It shall be the responsibility of the Client to ensure that properly completed Travel Documents are carried by the passenger and are in compliance with all applicable laws.

#### ***Compliance with laws and regulations***

- 3.18 The Client shall comply and shall ensure that all Freight complies with all relevant and applicable laws, customs and regulations.

#### ***Passengers accompanying Freight***

- 3.19 AP does not recommend that any passengers accompany the Freight. If the Client determines otherwise, the Client is solely responsible and liable for (and shall indemnify AP against) any Losses which arise as a result thereof, as well as any travel documentation that any passengers require.

#### ***Liability***

- 3.20 The Client accepts that a failure on its part to comply with any obligation set out in this Contract or the conditions of carriage may result in the Nominated Carrier, Freight Forwarder, OBC and/or Haulier refusing to operate a Flight or conduct a Carriage as the case may be, or short shipping some items of Freight which they are unable to accommodate by reason of the Clients' default.

### **4. Loading, unloading and delivery of the Freight**

- 4.1 The Client is responsible for ensuring that the Freight and all required supporting paperwork are delivered to the nominated handling agent by the date specified by the Nominated Carrier, Freight Forwarder, OBC or Haulier.
- 4.2 If the Flight is, or is to be, delayed by reason of (i) the absence of any Freight supporting paperwork; (ii) the Freight not being delivered for loading by the stipulated time; or (iii) any other act or omission on the part of the Client or any sub-charterer, then without liability to the Client, sub-charterer(s) or cargo owner(s) then, demurrage fees may become payable by the Client and/or AP may terminate this Contract and/or the Nominated Carrier may cancel the affected Flight, and cancellation charges shall be payable by the Client in accordance with clause 9.5.
- 4.3 If it is necessary in the captain's sole discretion for any Flight to be diverted in order to off-load any Freight, then the Client shall indemnify AP in full against any Loss incurred by AP as a result of such diversion and/or removal (including demurrage fees).
- 4.4 The Client acknowledges and agrees that the Nominated Carrier may, free of charge, utilise any part of the Aircraft not utilised by the Client or Freight in such manner as it thinks fit.
- 4.5 Unless AP has agreed in writing to the contrary with the Client:
  - 4.5.1 AP shall not be under any obligation to provide any plant, power or labour, other than that carried by vehicle required for loading or unloading the Freight;
  - 4.5.2 the Client confirms that any special appliances required for loading or unloading the Freight which are not carried by the vehicle will be provided by the Client or on the Client's behalf; and
  - 4.5.3 AP shall be under no liability whatever to the Client for any damage howsoever caused if AP is instructed to load or unload any Freight requiring special appliances which, in breach of clause 4.5.2, have not been provided by the Client or on the Client's behalf. Accordingly, the Client shall indemnify AP against all Losses it incurs as a result of loading or unloading any Freight using special appliances not provided by the Client or on the Client's behalf.

- 4.6 Receipt by the person entitled to delivery of the Freight without complaint shall be prima facie evidence that the Freight has been delivered in good condition and in accordance with this Contract. In the case of loss, damage or delay to the Freight, a written complaint must be made to AP by the person entitled to delivery. Such complaint must be made:
- 4.6.1 in the case of damage to the Freight, immediately after discovery of the damage and at the latest within 14 days from the date of receipt of the Freight;
  - 4.6.2 in the case of delay, within 21 days from the date on which the Freight was placed at the disposal of the person entitled to take delivery; and
  - 4.6.3 in the case of non-delivery of the Freight, within 120 days from the date of the Carriage as specified in the CoA or Movement Authorisation.
- 4.7 Unless a written complaint is made within the time limits specified in clause 4.7, no action may be brought against AP or any Nominated Carrier, Freight Forwarder, OBC or Haulier. Any rights to damages against AP shall be extinguished unless an action is brought within two years from the date of arrival at the destination, or from the date on which the Freight ought to have arrived, or from the date on which the Carriage stopped.
- 4.8 If delivery of the Freight or any part thereof is not accepted by the Client or consignee at the agreed time and place of delivery, AP shall be entitled to store the Freight at the Client's sole expense, risk and liability. The Client shall promptly reimburse AP for all storage costs. The Client shall also be liable for all demurrage charges as a result of the Client's or the consignee's non-acceptance of the Freight. Unless otherwise agreed by the parties, AP shall be entitled either to return the Freight to the Client's location or to dispose of the Freight after a minimum period of 21 days at the Client's expense.

## **5. Charges and price variations**

- 5.1 The Client will pay AP (or if directed by AP, the Nominated Carrier, Freight Forwarder, OBC or Haulier) the Transport Price and Additional Fees (as may be varied in accordance with this clause 5).
- 5.2 In addition to the Transport Price and Additional Fees, the Client shall pay AP any additional reasonable costs which are incurred as a result of the Client's instructions or lack of instructions, the inaccuracy of any information or material provided by or on behalf of the Client (or any sub-charterer or cargo owner) to AP (or the Nominated Carrier, Freight Forwarder, OBC or Haulier) or any other cause attributable to the Client, any sub-charterer, cargo owner or cargo owner(s).
- 5.3 All other costs arising out of or in connection with this Contract including all licence fees, clearance fees, non-objection fees and permission fees levied by national air carriers, airline or freight surcharges, screening charges, security charges, increased airline insurance rates, customs duties, import or customs levies, airport taxes, warehousing, security, storage charges, cargo preparation, customs duties/fees, documentation fees, de-icing for positioning/live/de-positioning sectors, airport extension fees, fuel surcharges and any additional loading equipment fees shall exclusively be for the account of the Client (and the Client shall pay AP or if directed by AP, the Nominated Carrier, Freight Forwarder, OBC or Haulier) unless otherwise specified in this Contract.
- 5.4 The Transport Price, Additional Fees and any other costs payable under or in connection with this Contract are:
- 5.4.1 subject to any applicable taxes and also to any surcharge for any fuel, road tolls, fixed costs, insurance, currency or other variations imposed by the Nominated Carrier, Freight Forwarder, OBC or Haulier from time to time; and
  - 5.4.2 exclusive of value added or sales taxes (if applicable) which shall be paid in addition by the Client at the rate ruling at the tax point.
- 5.5 AP is responsible for the safekeeping of the portion of the Transport Price which is payable to the Nominated Carrier, Freight Forwarder, OBC and/or Haulier and the Additional Fees whilst the same are in AP's bank account. As soon as such monies have been transferred to the Nominated Carrier, Freight Forwarder, OBC and Haulier AP bears no further responsibility or liability in respect thereof.

## **6. Payment**

- 6.1 The Client shall pay AP the Transport Price and Additional Fees in accordance with the CoA or Movement Authorisation. Payment of any other costs due under or in accordance with this Contract shall be made within 2 weeks of the date of invoice or at least 2 working days prior to departure of the first Flight if sooner, unless agreed otherwise in writing by an authorised signatory of AP. Time is of the essence as regards payment.
- 6.2 If any payment is not received by the date specified in clause 6.1, AP may, without prejudice to any other rights or remedies it may have in respect of such default (i) suspend provision of any services upon notice to the Client (ii) terminate this Contract in accordance with clause 9.2.1 and/or (iii) charge interest on the outstanding amount (both before and after any judgment) at the rate of 4% above the base rate from time to time of the Bank of England from the due date until the outstanding amount is paid in full. The Client acknowledges that late payment may result in the Flight and/or any Services being cancelled and cancellation charges being payable by the Client in accordance with clause 9.5.
- 6.3 All payments to be made by the Client under or in connection with this Contract shall be in cleared funds and without deduction, set-off or withholding.

## **7. Licences and international regulations**

- 7.1 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 Nominated Carrier by the relevant authority and (ii) any further licences or authorities which may

be required for the operation of the Flight, 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.

- 7.2 If licences and authorities required for the operation of the Flight are in AP's reasonable opinion not likely to be obtained in good time or where obtained are not likely to be retained, AP shall have the exclusive discretion to cancel this Contract without any further liability to the Client, sub-charterer(s) or cargo owner(s) except that AP shall be obliged to refund monies paid by the Client after deducting (i) a reasonable amount for the costs of administration and (ii) any non-refundable amount paid or payable to the Nominated Carrier, Freight Forwarder, OBC or Haulier.

## **8. Changes, delays, alterations and diversions**

- 8.1 Any changes, delays, alterations and diversions in departures or arrivals shall be subject to the terms of the conditions of carriage. Any Flight or Carriage times specified in the CoA or Movement Authorisation, this Contract or other written confirmation of the charter or carriage arrangements are indicative only.
- 8.2 If for any reason the Aircraft is diverted from any destination airport, the Flight or the affected Flight as the case may be shall be deemed complete when the Aircraft arrives at the airport to which it has been diverted. Any Flight diversions or the effect of Flight diversions on the Client (or any sub-charterer or cargo owner) shall be subject to the terms of the conditions of carriage.
- 8.3 Where, at the request of the Client, AP arranges for the Freight to be transferred to their original destination by alternative means of transport, AP shall be deemed to arrange such service as agent only for the Client and under no circumstances whatsoever shall be liable for any Loss incurred by the Client arising out of such arrangements or transport. The Client shall pay AP any reasonable costs and expenses it incurs as a result of such transfer.
- 8.4 Refunds (whole or partial) of the Transport Price owing due to the Nominated Carrier, Freight Forwarder, OBC or Haulier cancelling the Flight are subject to the terms of the conditions of carriage. AP will offer the Client reasonable assistance in liaising with the Nominated Carrier, Freight Forwarder, OBC or Haulier as regards the consequences of the Nominated Carrier, Freight Forwarder, OBC or Haulier cancelling a Flight.

## **9. Cancellation and termination**

- 9.1 The Client may cancel this Contract (including any Flight or Carriage) at any time prior to departure (except in order to travel with another carrier) by notice in writing to AP. Upon such cancellation, the Client shall pay the cancellation charges set out in the CoA or Movement Authorisation. AP may apply any monies paid to it by the Client against such cancellation charges. To the extent further costs, expenses or damages are due from the Client under or in connection with this Contract, the Client agrees to pay such sums in accordance with clause 6.
- 9.2 Without prejudice to any other rights or remedies that AP has, AP may terminate this Contract by notice in writing if:
- 9.2.1 the Client commits a material breach of this Contract which is incapable of remedy or which, if capable of remedy, is not remedied within such reasonable time as AP requires;
- 9.2.2 the Client suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 9.2.3 the Client, in AP's reasonable opinion is, or is likely to, damage APs' reputation or trading position;
- 9.2.4 licences and authorities required for the operation of the Flight are in AP's reasonable opinion not likely to be obtained in good time or where obtained are not likely to be retained;
- 9.2.5 the Client (or any officer, employee, sub-charterer, cargo owner, agent or subcontractor) requires AP or any officer, employee, agent or sub-contractor of the AP Group to act improperly for the purposes of the Bribery Act 2010; or
- 9.2.6 the Client undergoes an Insolvency Event.
- 9.3 Without prejudice to any other rights or remedies that the Client has, the Client may terminate this Contract immediately by notice in writing if AP:
- 9.3.1 commits a material breach of this Contract which is incapable of remedy or which, if capable of remedy, is not remedied within a reasonable period time; or
- 9.3.2 undergoes an Insolvency Event.
- 9.4 Without prejudice to any other rights or remedies that AP has, AP shall be entitled to suspend the performance of any of the Services if the Client is in breach of any of its obligations under this Contract, provided that AP shall either reinstate the performance of the (as applicable) Services or serve written notice of termination of this Contract within 30 calendar days following such suspension.
- 9.5 If AP terminates this Contract in accordance with clause 4.2, 6.2, 9.2 or 9.4, the Client shall forthwith pay AP the cancellation charges set out in the CoA or Movement Authorisation together with any other costs, expenses or damages due under or in connection with this Contract. However, if AP terminates (i) one or more out of a number of Flights or (ii) this Contract part way through performance of this Contract, the Client shall pay AP cancellation charges which are based on such proportion of the Transport Price as AP reasonably determines.

## **10. Force majeure**

AP shall not be liable for any default under or in connection with this Contract where such default is caused by a Force Majeure Event.

## 11. Limitation of liability

- 11.1 This Contract does not constitute a contract of carriage (or conditions of carriage) and AP is not, and shall not be deemed to be, acting as a common carrier, other carrier, freight forwarder, on board courier or haulier in respect of any of its obligations under or in connection with this Contract, or any Carriage provided to the Client by or on behalf of the Nominated Carrier, Freight Forwarder, OBC or Haulier. If AP is deemed for any reason to be acting under or in connection with this Contract as a carrier, freight forwarder, on board courier or haulier, then to the extent to which such Carriage constitutes international carriage under the Montreal Convention or, in any jurisdiction in which the Montreal Convention does not apply, under the Warsaw Convention, any liability of AP to the Client, any sub-charterer, cargo owner or the Client's officers, employees, subcontractors or agents shall be subject to (and the Client agrees that AP shall have the benefit of) the provisions of the Montreal Convention or as the case may be, the Warsaw Convention.
- 11.2 AP does not limit or exclude its liability in respect of:
- 11.2.1 death or personal injury caused by its negligence;
- 11.2.2 fraud or fraudulent misrepresentation; or
- 11.2.3 any other liability (including statutory liability) to the extent it is not lawfully permitted to limit or exclude it.
- 11.3 Subject to clauses 11.2 and 11.4, AP's total liability for all claims arising under or in connection with this Contract whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, howsoever arising shall be limited to 75% of the Transport Price (excluding any amounts refunded to the Client) under or in connection with this Contract.
- 11.4 Subject to clause 11.2, AP shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract for:
- 11.4.1 loss of business, revenue, profits, contracts, goodwill or anticipated savings;
- 11.4.2 damage to reputation; or
- 11.4.3 indirect, special, exemplary, punitive or consequential loss or damage,
- whether or not such losses were within the contemplation of the parties at the Commencement Date.
- 11.5 Except as expressly stated in this Contract (including clause 2.17), all warranties and conditions, whether express or implied by statute, common law or otherwise, are hereby excluded to the maximum extent permitted by law.
- 11.6 To the maximum extent permitted by applicable law, AP does not give any warranty, guarantee or other term as to the quality, financial strength or solvency, fitness for purpose or otherwise of any Nominated Carrier, Freight Forwarder, OBC, Haulier or any third party providers. Whilst AP maintains records and information on many air carriers, freight forwarders, on board couriers and hauliers all over the world, it cannot guarantee that such information is up to date or that the Nominated Carrier, Freight Forwarder, OBC or Haulier will perform in the required manner. AP relies on the third party due diligence sources such as Dunn and Bradstreet as well as the EASA and other aviation safety agencies, which may not be up to date or free of errors. In particular, the financial position of air carriers, freight forwarders, on board couriers and hauliers change daily and such information is not always in the public domain or readily available to AP. The assessment and selection of the air carrier, freight forwarder, on board couriers and/or haulier who become the Nominated Carrier, Freight Forwarder, OBC or Haulier remains the Clients' ultimate responsibility. AP accepts no liability in this respect and undertakes only that in providing its services that it has acted in good faith and has not been wilfully misleading. AP encourages feedback from clients as to their experience with the Nominated Carrier, Freight Forwarder, OBC and/or Haulier. This information assists AP in providing operational feedback to the Nominated Carrier, Freight Forwarder, OBC and Haulier to assist them with their client care and internal quality assurance.
- 11.7 The Client shall indemnify the AP Group, and its officers, employees, subcontractors and agents against all Losses arising out of or in connection with:
- 11.7.1 any breach of this Contract by the Client, the Authorised Representatives, any sub-charterer, a cargo owner or the Client's officers, employees, subcontractors or agents;
- 11.7.2 any act or omission by the Client, the Authorised Representatives, any sub-charterer, a cargo owner or the Client's officers, employees, subcontractors or agents; or
- 11.7.3 any claim, action, demand or proceeding by a third party against AP caused or contributed to by the Client, the Authorised Representatives, any sub-charterer, cargo owner or the Client's officers, employees, subcontractors or agents.

## 12. Compliance

- 12.1 The Client agrees to comply, and agrees to procure that its directors, officers, employees, contractors, subcontractors, consultants and other representatives shall comply with all applicable:
- 12.1.1 anti-bribery and anti-corruption laws and regulations, including the U.K. Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act 1977;
- 12.1.2 trade compliance laws and regulations, including laws or regulations related to the import, export, re-export, transfer, release or shipment of goods, technology, software or services, including: (a) the EU Dual Use Regulation, Council Regulation (EC) No 428/2009; (b) the US International Traffic in Arms Regulations; and (c) the US Export Administration Regulations;
- 12.1.3 economic sanctions and trade embargo laws and regulations; and
- 12.1.4 money laundering, terrorist financing and transfer of funds laws and regulations.
- 12.2 The Client agrees:

- 12.2.1 not to engage in any activity, practice or conduct which would constitute an offence under those laws and regulations set out in clause 12.1;
- 12.2.2 to maintain in place throughout the term of this Contract adequate policies and procedures to ensure compliance with those laws and regulations set out in clause 12.1 and will enforce them where appropriate; and
- 12.2.3 promptly report to AP any request or demand which, if complied with, would amount to a breach of clause 12.1.

12.3 Breach of this Clause 12 shall entitle AP to terminate this Contract with immediate effect.

### **13. General**

- 13.1 No modification, amendment or variation of this Contract shall be effective or binding on the parties unless made in writing and signed by authorised signatories of the parties.
- 13.2 The Client shall not assign, transfer, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Contract without the prior written consent of AP (such consent shall not be unreasonably withheld). AP may at any time assign, transfer, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Contract.
- 13.3 Nothing in this Contract shall render AP (nor any of its officers, employees, agents or subcontractors) an employee, worker or partner of the Client and accordingly it shall not hold itself out as such. The Client shall have no authority to make representations, act in the name of, or on behalf of, or to otherwise bind the AP Group.
- 13.4 Any notice given under this Contract shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid first class recorded delivery to the relevant party at the address as set out in the CoA or Movement Authorisation. Notices shall be deemed to have been received if delivered and received personally, at the time of delivery and in the case of pre-paid first class recorded delivery, at the time recorded by the delivery service.
- 13.5 Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 13.6 If any term in this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant term shall be deemed deleted. Any modification to or deletion of a term shall not affect the validity and enforceability of the rest of this Contract. If any term in this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is valid, legal and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.7 The failure to exercise or delay in exercising a right or remedy provided to a party under this Contract shall not constitute a waiver of that right or remedy, and no waiver by a party of any breach of this Contract shall constitute a waiver of any subsequent breach of the same or any other provision.
- 13.8 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term of this Contract.
- 13.9 This Contract sets out the entire agreement between the parties in relation to its subject matter and overrides any prior correspondence, arrangements, understandings, agreements or representations relating to its subject matter. Each party acknowledges that, in entering into this Contract, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Contract (whether made innocently or negligently) shall be for breach of contract.
- 13.10 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning this Contract, the business, affairs, customers, clients or suppliers of the other except where permitted in this Contract. AP may disclose confidential information relating to the Client, any sub-charterer and cargo owner to the Nominated Carrier and any other third parties who need to know such information for the purposes of, or in connection with, the Flight. Furthermore, each party may disclose the other's confidential information (i) to its employees and advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract provided each party ensures that such employees and advisers to whom it discloses the other's confidential information comply with this clause 13.10; and (ii) as may be required by law, court order or any governmental or regulatory authority. Neither party shall use the other's confidential information for any purpose other than to perform its obligations under this Contract.
- 13.11 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 13.12 This Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. The parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).