

# INFLITE Charters Limited & INFLITE Ski Planes Ltd

## Terms and Conditions

### Domestic Aircraft Charter & Aviation Tourism

The following terms and conditions (the “**Conditions**”) shall apply to all chartering of aircraft organised by **INFLITE Charters Limited & INFLITE Ski Planes Limited**, together (“**INFLITE**”) for domestic flights within New Zealand to the exclusion of all other terms, conditions, warranties and representations except as specifically agreed by INFLITE and the Charterer in writing in a Charter Booking Confirmation.

#### 1. DEFINITIONS

In these terms and conditions, the following expressions shall have the following meanings:

"**Agreement**" shall mean the Charter Booking Confirmation and these Conditions;

"**Aircraft**" shall mean any aircraft which is the subject of a booking organised by INFLITE for the Charterer;

"**Charter Booking Confirmation**" means the schedule of specific terms signed by the Charterer and INFLITE;

"**Charter Price**" shall mean the price payable for the Charter Booking Confirmation and such services as are agreed in advance between INFLITE and the Charterer as set out in the Charter Booking Confirmation;

"**Charterer**" shall mean the person, firm or body corporate entering into this Agreement as customer, as identified in the Charter Booking Confirmation;

"**Flight Itinerary**" shall mean the place of departure, place of destination and any stopping points, together with any indications of departure and arrival dates and times, set out in the Charter Booking Confirmation;

"**Operator**" shall mean the actual operator of the Aircraft or any of its employees, directors and officers.

"**Party**" and "**Parties**" shall mean either or both of INFLITE and the Charterer as the context requires

"**SDT**" means the scheduled departure time in the Flight Itinerary.

#### 2. THE CHARTER BOOKING

2.1. INFLITE shall arrange that the Operator provides the Aircraft staffed, maintained, equipped and fuelled for the Flight Itinerary. The Charterer agrees that the carriage will be provided by the Operator who will have sole responsibility for the operation of the Flight Itinerary and maintenance and operation of the Aircraft. The Charterer accepts that INFLITE acts only as agent for the Charterer and the Operator in arrangement of the Flight Itinerary. The Charterer also accepts that the crew of the Aircraft are the employees 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 Itinerary.

2.2. If at any time prior to the applicable SDT, the Aircraft becomes unavailable or unserviceable for any reason whatsoever, INFLITE will endeavour to find an alternative operator and/or Aircraft as at a price, as close as possible to the Charter Price and put such possibility to the Charterer for acceptance. If INFLITE is not able to substitute another Aircraft or the Charterer does not accept any available alternative, INFLITE shall pay to the Charterer the portion of the Charter Price applicable to the unperformed flights of the Flight Itinerary and shall be under no further liability whatsoever to the Charterer. However, the Charterer shall remain liable to pay for any part of the Flight Itinerary that has already been operated.

2.3. The Charterer must (i) provide INFLITE with a passenger manifest prior to commencement of each flight, giving names and other information, (such as passenger weight) as INFLITE may require; (ii) procure that all passengers comply with all INFLITE rules and regulations regarding carriage of passengers and baggage including but not limited to security requirements.

#### 3. PAYMENT

3.1. Unless otherwise agreed between INFLITE and the Charterer and specified in the Charter Booking Confirmation, normal terms of payment will be:

3.1.1. An initial deposit of 20% of the Charter Price payable upon the Charterer's signature of the Charter Booking; and

3.1.2. The balance of the Charter Price, payable no later than seven (7) days prior to the first SDT of the Flight Itinerary.

3.2. A Charter is deemed to have been cancelled by the Charterer where monies payable hereunder have not been paid by the date specified in Clause 3.1 and there shall be no obligation on INFLITE to perform any part of the Flight Itinerary for which

payment has not been received. If any payment is not received from the Charterer by the date specified in the Charter Booking, INFLITE 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 the Charterer will pay cancellation charges in accordance with Clause 4.

- 3.3. All individual airport departure taxes or any other applicable taxes or levies against individual passengers or forwarders of baggage will be the responsibility of the Charterer who will indemnify INFLITE in respect thereof.
- 3.4. The Charter Price includes the cost of fuel, oil, maintenance, landing, hangerage, parking, ground handling and the remuneration and expense of aircrew during the Flight Itinerary. All other costs, including, but not limited to licence fees, clearance fees, royalties, baggage screening charges, security charges, customs duties, airport and passenger taxes, any connections to and from airports, ground accommodation, ground transfers, cabin service, onboard satellite telephone costs and any other additional service costs whatsoever and howsoever arising shall be paid by the Charterer unless otherwise specified in the Charter Booking. Any additional costs shall be invoiced by INFLITE to the Charterer and shall be paid promptly by the Charterer.
- 3.5. Unless specified otherwise in the Charter Booking, the Charter Price and all other charges provided for in this Agreement are exclusive of GST (if any) which shall be paid in addition by the Charterer. The Charterer shall pay to INFLITE, the Charter Price in the currency stated, and at the time specified, in the Charter Booking. Payment shall be made by cash, EFTPOS, Visa, Mastercard, or direct credit.
- 3.6. The Charter Price is subject to increase due to any variations whatsoever to the Charter Booking requested by the Charterer and agreed by the Operator at any time after the Charter Booking has been signed. Any additional charges shall be invoiced by INFLITE to the Charterer and shall be paid promptly by the Charterer and in any event prior to the applicable flight.

#### **4. CANCELLATION**

- 4.1. The Charterer may cancel the Charter Booking at any time prior to the first SDT of the Flight Itinerary by notice in writing to INFLITE. Upon such cancellation, the Charterer will be obliged to pay to INFLITE, the cancellation charges set out below:

More than 30 days prior to first departure	Nil
30 to 14 days prior to first departure	20% of the Charter Price
Between 14 and 2 days prior to first departure	50 % of the Charter Price
Less than 48 hours prior to first departure	100% of the Charter Price
- 4.2. INFLITE may apply any monies already received from the Charterer towards such cancellation charges.

#### **5. TERMINATION**

- 5.1. INFLITE may terminate the Charter Booking immediately by notice in writing if:
  - 5.1.1. 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 INFLITE shall require; or
  - 5.1.2. in the opinion of INFLITE, the Charterer is insolvent or may be deemed to be insolvent, is unable to pay its debts as they fall due, or takes any action or any steps are taken or legal proceedings are started for its winding-up, dissolution, liquidation, or re-organisation.
- 5.2. If INFLITE terminates the Charter Booking under this Clause, the Charterer shall be liable for cancellation charges in accordance with Clause 3.1. If the Charterer cancels one or more of the flights in the Flight Itinerary, the Charterer shall pay INFLITE cancellation charges based on such proportion of the Charter Price as INFLITE shall reasonably determine.

## **6. OPERATION OF FLIGHTS**

- 6.1. The operation of the Flight Itinerary will be subject to these Conditions and any additional terms and conditions of the Operator which shall be read in conjunction with and form part of these Conditions.
- 6.2. The Charterer will ensure that all passengers to be carried are made aware of the Conditions and any additional terms and conditions of the Operator before commencement of each flight of the Flight Itinerary.
- 6.3. If the Aircraft, for any reason, whether before or after the commencement of the Flight Itinerary, becomes incapable of undertaking or continuing all or part of the Flight Itinerary, 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.
- 6.4. If the performance of the Flight Itinerary is prevented or delayed by the Charterer or anyone acting on its behalf, the Operator may, at its absolute discretion, and without liability, depart as scheduled or delay or cancel departure. Any additional expense attributable to a change to the time of departure shall be borne by the Charterer.
- 6.5. In the event of non-performance of any part of the Flight Itinerary 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 Itinerary but neither INFLITE nor the Operator shall have any liability to the Charterer whatsoever as a result of such non-performance or delay.
- 6.6. The Operator shall be entitled to vary the Flight Itinerary where reasonably determined by the Operator to be necessary and any additional expenses applicable to such departure shall be borne by the Charterer. If the Aircraft for any reason is diverted from any airport, aerodrome or destination shown in the Flight Itinerary to another, the journey to the scheduled destination shall be deemed to be complete when the Aircraft arrives at such other destination.
- 6.7. The captain of the Aircraft shall have absolute discretion to: (i) refuse any passenger(s), baggage, cargo or any part thereof; (ii) to decide what load may be carried on the Aircraft and how it shall be distributed; and (iii) to decide whether and when a flight may be safely undertaken and where and when the Aircraft shall be landed.
- 6.8. The Charterer shall ensure that any goods to be transported are sufficiently and properly packed for carriage and shall supply adequate tie-down material and equipment 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 for inspection at the office of INFLITE.
- 6.9. 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 operate the Aircraft during any part of the Flight Itinerary unused by the Charterer.
- 6.10. In no circumstances shall INFLITE be required to refund to the Charterer, any part of the Charter Price, in the event of non-performance, change or delay in the circumstances of Clause 6.4, Clause 6.5, 6.6 or 6.7.

## **7. CHARTERER AND PASSENGER CONDUCT**

- 7.1. The Charterer must ensure that all passengers obey all lawful commands given by INFLITE, the Operator and the pilot for the duration of the flight as contemplated in the Flight Itinerary.
- 7.2. INFLITE and the Operator reserves the right to refuse boarding and carriage of or remove any passenger for behaviour that is disruptive or threatens the safety of any staff member or passenger, intoxication, or any failure by the passenger to obey such lawful commands in accordance with Clause 7.1. Neither INFLITE nor the Operator shall be required to refund to the Charterer or that passenger any part of the Charter Price where a passenger has been refused or removed in the circumstances contemplated by this clause 7.2.

## **8. In-Flight Video Recordings**

- 8.1. In-flight video recordings are available on certain Aircraft and Flight Itineraries and a copy of such recordings may be made available for purchase (electronically, on USB, CD or another storage device), at the sole discretion of INFLITE and the Operator, at the end of the Flight Itinerary. Any such sales are not included in the Charter Price and will be charged separately.

- 8.2. The Charterer and each passenger
- 8.2.1. agrees and consents to video recordings being made of the flight and the passengers onboard the Aircraft for the purposes of the in-flight video recordings;
- 8.2.2. holds INFLITE, the Operator and their respective employees, directors, officers and contractors harmless from any loss or liability connected with the recording of in-flight video recordings.
- 8.3. Where the Charterer or a passenger purchases the in-flight video recording from INFLITE, it is the responsibility of the purchaser to confirm that the quality and playback of the video recording purchased is acceptable in all respects. Neither INFLITE nor the Operator gives any warranty or makes any representations as to the quality or playback of the recording sold to the purchaser. No refunds will be provided for any sales of the recordings unless specifically required under law.
- 8.4. At the sole discretion of INFLITE, the Operator and/or the pilot, a copy of the in-flight video recording made during a flight may not be offered for sale to the Charterer and the passengers. Neither INFLITE nor the Operator will be required to provide any explanation for not offering a copy of the recording for sale.
- 8.5. It is the Charterer's responsibility to inform INFLITE and the Operator before commencement of the Flight Itinerary if the Charterer does not wish in-flight video recordings to be made.

## **9. LIABILITY AND INDEMNITY**

- 9.1. INFLITE does not act as a common carrier or any other type of carrier in respect of any of its obligations under this Agreement and INFLITE acts solely as agent for the Charterer and Operator. Acceptance or performance by INFLITE of any of its obligations under this Agreement does not impute to it any liabilities of the Operator as carrier.
- 9.2. The liability of INFLITE and the Operator to the Charterer for carriage wholly within the territory of New Zealand, for:
- 9.2.1. delay shall be as set out in Part 9B of the Civil Aviation Act 1990 (as amended, updated or replaced);
- 9.2.2. damages for personal injury or death of a passenger may be excluded in accordance with the Accident Compensation Act 2001 (as amended, updated or replaced); and
- 9.2.3. loss or damage to checked baggage, is limited to NZ\$2,000 for each unit of baggage lost or damaged, except where baggage is carried at declared value. The Operator is not responsible for normal wear and tear of baggage
- 9.3. The liability of each of INFLITE and the Operator to the Charterer is limited to proven direct compensatory damages (and excludes indirect losses, loss of profit, exemplary or consequential losses or damages, subject always to the Consumer Guarantees Act 1993 (as amended, updated or replaced).
- 9.4. The Charterer shall ensure that the following items and other items from time to time specified by the Operator are not carried in checked baggage and the Charterer acknowledges that neither INFLITE nor the Operator shall have no responsibility for any breach of this provision: by any passenger, fragile items, valuables such as jewellery and money, electronic equipment, commercial goods or business documents and passports and other travel documents.
- 9.5. The Charterer shall indemnify and keep indemnified and release each of INFLITE and the Operator and their respective directors, officers, employees, agents and subcontractors from and against any loss, damage, liability, claim, cost or expense of whatsoever nature (including legal costs and fees) suffered or incurred by any of them arising out of, caused or contributed to by any act or omission of the Charterer or its officers, employees, agents, subcontractors or person carried on the Aircraft whether arising in contract or tort (including negligence) or otherwise. Nothing in this Clause shall exclude or restrict any liability of INFLITE or the Operator for death or personal injury arising out of its negligence or any liability which may not lawfully be excluded. This indemnity shall survive completion or termination of the Charter Booking Confirmation and all or any part of the Flight Itinerary.

- 9.6. Where the Charterer requests that the Operator operate the Aircraft to, at or from private property, it shall be the responsibility of the Charterer to ensure that the property owner has provided permission to land and that the landing site is suitable and safe and the Charterer shall indemnify each of INFLITE and the Operator and their respective directors, officers, employees, agents and subcontractors from and against any loss, damage, liability, claim, cost or expense of whatsoever nature (including legal costs and fees) suffered or incurred by any of them arising out of, caused or contributed to by operating the Aircraft to, at or from such private property.

## **10. GENERAL PROVISIONS**

- 10.1. 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.
- 10.2. 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.
- 10.3. This Agreement shall be governed and construed in accordance with New Zealand law and the New Zealand Courts shall have non-exclusive jurisdiction to settle any claim or matter arising under this Agreement.
- 10.4. Except as otherwise expressly stated in this Agreement, nothing in this Agreement is intended to confer on any person other than the Parties hereto, any rights, benefits or remedies. The Charterer acknowledges that for the purposes of the Contract and Commercial Law Act 2017, this Agreement contains provisions which confer a benefit on, and are intended to be enforceable by, the Operator.