



## **Pel-Air Trading Conditions for the Supply of Air Charter Services**

The trading conditions set out herein apply to the supply of executive air charter services for passengers and/or goods. In the supply of the said services, Pel-Air may use aircraft from its fleet of 20 aircraft or may use aircraft from its pre-qualified list of air charter suppliers. Pel-Air is not a common carrier.

Any and all business undertaken, including any advice information or service provided whether gratuitously or not, by Pel-Air is transacted, subject to the terms set out herein and each term shall be deemed to be incorporated in and to be a term of any agreement between Pel-Air and its Customer.

No agent or employee of Pel-Air has the authority of Pel-Air to alter or vary these terms, except as provided herein.

### **1. Parties**

All quotations are supplied subject to the terms of this Trading Conditions. Whichever party accepts the quotation, be it a broker, a Company or an individual, the party is deemed to be the Customer and is deemed to have accepted these terms for themselves and for all other parties involved in the air charter service provided by Pel-Air, and does hereby warrant its authority to give such acknowledgement on their behalf by the signature of the quotation.

### **2. Time Frame**

The quotation shall, prior to its acceptance and the constitution thereby of a contract, remain open for 14 days. If the date of the charter services is within 14 days of the quotation, the quote shall remain open for 3 days.

### **3. Aircraft-specific**

If the booked aircraft is unavailable due to technical or operational reasons, Pel-Air reserves the right, in agreement with the Customer, to provide the Customer with a replacement aircraft of another design instead of the design of aircraft agreed upon. It shall inform the Customer of the change of design without delay. If Pel-Air and the Customer could not agree on the replacement aircraft, either party may terminate the individual contract. In such an event, the Customer shall be given a reimbursement of the full charter price paid and neither party shall have any more claims against the other.

### **4. Currency**

Unless otherwise specified, the quotation is stated in Australian dollars (AUD). For the purpose of the quotation the exchange rate used is that of the date of this quotation. Pel-Air reserves the right to revise the quoted price if the relevant rate of exchange has fluctuated adversely by more than 5% as at the date of acceptance of this quotation.

### **5. Fuel Price**

The quotation is subject to industry and related fuel price surcharges.

## **Pel-Air Aviation Pty Ltd**

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## **6. Items included in the quotation**

Unless expressly excluded the following are included in the quotation: aircraft costs including crew; fuel and maintenance; air navigation and airport charges; handling; crew allowances; crew meals, crew accommodation and crew surface transportation; standard in-flight refreshment; and passenger and cargo insurances.

## **7. Excluded Items**

Fuel and insurance surcharges when applicable; de-icing of aircraft if required; special catering requests, alcohol, including beers, wines or spirits; any other special requirements, such as limousine and satellite phone.

## **8. Route Changes or Delays**

Should there be any route or en-route changes or delays as a result of the Customer's or the Customer's passengers' changed requirements; late arrival of passengers; adverse weather conditions; compliance with the requirements of international law, national legislation or subordinate legislation; un-serviceability of the aircraft beyond the reasonable control of Pel-Air; safety of the aircraft or its crew and/or safety of the Customer or its passengers, any additional costs arising from such changes or delays, excluding the cost of repairing the aircraft but including the cost of arranging an alternative aircraft, will be invoiced separately at cost and shall become payable by the Customer. Pel-Air shall not be liable for any consequential damages to the Customer or its passengers arising from any such delay or changes.

## **9. Passenger and Cargo Entry Documents**

The Customer has to ensure that all passengers and cargo comply with all documentary requirements (e.g. immigration, customs, agriculture, etc.) at each destination. Pel-Air takes absolutely no responsibility in the case of non-compliance with any documentary requirement by the authorities and the Customer undertakes to indemnify Pel-Air against all losses, damages, expenses and fines whatsoever arising from any inaccuracy or omission even if such inaccuracy or omission is not due to any negligence.

## **10. Payment Terms**

(i) Upon your acceptance of the quotation and the terms and conditions herein, an initial nonrefundable payment of [10]% of the Total Charter Price is due and payable to reserve the aircraft for the charter period. Unless otherwise agreed between the Customer and Pel-Air, the balance of the Total Charter Price is due no later than ten (10) days prior to the scheduled departure date. For all additional ancillary charges incurred in the course of carrying out the charter, the payment term shall be 14 days from invoice date.

(ii) All payments to Pel-Air in respect of charges or fees invoiced by Pel-Air shall be free from any set-off or counterclaim. The Customer's obligations hereunder are independent of any other obligations or rights the Customer may have under any other contract or account with Pel-Air, and the Customer may not set off any payment or obligation due it under any such other contract or account with Pel-Air against any payment due to Pel-Air hereunder. The Customer accepts to pay an administrative fee of 1% per month on the overdue charges or fees from the due date on any overdue charges or fees until full payment has been made, subject to a minimum charge of AUD50 per month.





## 11. Payment

The Customer shall make payment by bank transfer to the following bank account:

BSB: 032-035

Account No.: 207-366

Account Name: Pel-Air Aviation Pty Ltd

Bank: Westpac Banking Corporation

## 12. Cancellation Fees

The following fees apply should a confirmed flight be cancelled by the Customer:

10% Cancellation fee will apply at any time after the date of this agreement. 20% Cancellation fee will apply if a cancellation is received within 72 hours prior to the commencement of the first flight. 50% Cancellation fee will apply if a cancellation is received within 48 hours prior to the commencement of the first flight. 100% Cancellation fee will apply if a cancellation is received within 24 hours prior to the commencement of the first flight

## 13. Brokerage

Should Pel-Air arrange a charter by order of a third party (brokerage), the broker and its customer are jointly and severally liable to Pel-Air for the fulfillment of all payments. Quotations provided by Pel-Air to brokers are net and do not include any commission.

## 14. Passenger Baggage

Passenger baggage weight is limited for flight safety reasons and varies between aircraft type. Specific advice will be provided at confirmation of the quote. Items determined by the crew to be of excessive weight or size will not be permitted on the aircraft.

## 15. Smoking

Smoking is not permitted on Pel-Air flights.

## 16. Other applicable conditions for the carriage of goods on board:

(i) **Ownership.** Customers carrying goods with Pel-Air expressly warrant that they are either the owner or the authorized agents of the owners of any goods to which transaction relates and further warrant that they are authorized to accept and are accepting these terms not only for themselves but also as agents for and on behalf of all other persons who are or may thereafter become interested in the goods.

(ii) **Packaging.** The Customer warrants that all goods have been properly and sufficiently packed and/or prepared for the services required from Pel-Air.

(iii) **Prohibited or Dangerous Goods.** Dangerous goods must be declared as per dangerous goods regulations. Goods must be packaged and marked correctly according to the appropriate authorities. The list of dangerous goods and the handling method can be found on [www.pelair.com.au](http://www.pelair.com.au). Prohibited goods must not be carried on board. Should the regulations not be followed, the Customer shall be liable for all loss or damages, costs and expenses whatsoever arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of Pel-Air or any other person in whose custody the goods may be in at the relevant time.





(iv) **Insurance coverage.** Subject to sub-term (v) & (vi) below, all goods accepted by Pel-Air are accepted at the entire risk of the Customer and it is the Customer's responsibility to obtain sufficient and appropriate insurance coverage for all damages and loss, whether caused by Pel-Air or otherwise.

(a) Where Pel-Air effects insurance coverage on instruction from the Customer, Pel-Air is deemed to be acting as an agent of the Customer for the purposes of insurance and the Customer is deemed to have accepted the terms and conditions of the insurers or underwriters appointed by Pel-Air.

(b) Should the insurers dispute their liability for any reason, the insured shall have recourse only against the insurers and not Pel-Air and Pel-Air shall not be under any responsibility or liability whatsoever in relation thereto.

(v) **Pel-Air liability.** Pel-Air shall only be responsible for any loss or damage to goods or for any non-delivery or misdelivery if it is proved that the loss damage non-delivery or misdelivery occurred whilst the goods were in the actual custody of Pel-Air and under its actual control and that such loss damage non-delivery or misdelivery was due to the willful neglect or default of Pel-Air or its own servants.

(vi) **Maximum Liability.** In any event Pel-Air maximum liability for any loss or damage to goods shall be \$5,000 per charter.

#### **17. Consequential Damages**

In no event shall Pel-Air be liable for any consequential, incidental, indirect, punitive, or special damages, including but not limited to any loss of use, lost revenues, lost profits, damage to associated equipment or facilities, costs of replacement, costs associated with downtime, and any similar damages, expenses, or losses, and regardless or however caused, whether based on contract, tort, or any other legal theory.

#### **18. Force Majeure**

Neither party shall be liable for any delay in delivery or other default in performance that is due to unforeseen circumstances, or to causes beyond its reasonable control and without the fault or negligence of such party. Such causes and circumstances include, without limitation, strikes, lockouts, and other labour disputes, riots, civil unrest, war, sabotage, vandalism, terrorism, explosions, embargoes, epidemics, fire, flood, storms, and other similar and dissimilar natural causes, acts of God, unforeseen delays in transportation or in obtaining any permits or licenses, or other delays caused by unforeseen action or inaction of civil or military authorities, or of contractors or subcontractors, or of other third parties (other than those contractors, subcontractors, or third parties under the control of the non-performing party), and any other cause or condition beyond the parties' reasonable control. Provided any such delay or default is neither material nor indefinite, the time for performance shall be extended for a commercially reasonable period of time and thereafter the other party shall accept performance hereunder.

#### **19. No assignment**

The Customer may not assign any of its rights or delegate any of its duties or obligations without the prior written consent of Pel-Air, such consent not to be unreasonably withheld.





## **20. No Waiver**

The failure of Pel-Air at any time to require the performance of any obligation of Customer shall not affect the right to require such performance at any time thereafter. The waiver of any remedy with respect to any default shall not be taken as a waiver of any remedy for any succeeding default.

## **21. No other agreement**

These terms together with the applicable quotation(s) or contract and any related documents expressly agreed to in writing by the parties contain the complete and exclusive statement of the terms and contract of the parties with respect to the subject matter thereof and supersede all prior understandings, representations, and warranties, written or oral.

## **22. Conflict of terms**

In the event of any ambiguity or conflict between or among the terms in this Trading Conditions, Pel-Air's quotation(s) for the supply of air charter and any other agreement or writing signed by Pel-Air, the express terms of the quotation and/or other agreement in writing shall prevail. Where there are no such terms in any written agreement with respect to the subject matter in question, these terms shall govern and control. In no event, however, shall any additional, differing, conflicting, supplemental or other terms and conditions stated in any purchase order, acknowledgment, contract or other document issued by the Customer have any effect or bind Pel-Air unless such terms are specifically accepted in writing by the General Manager of Pel-Air.

## **23. Limitations of Liability**

(i) The following limitations shall also apply to this contract. The Customer is responsible for all passengers being made aware of the limitations:

(a) International Flights Transportation of passengers, hand luggage, luggage and goods by Pel-Air shall be governed by the Warsaw Convention of 12 October 1929, as amended by the Hague Protocol of 28 September 1955 and later amendments.

(b) Domestic flights within Australia and flights not subject to any part of the Warsaw Convention - Transportation of passengers and luggage (including hand luggage) shall be limited as prescribed by the laws of Australia.

(ii) In the event of conflict between the limitations of term 23(i) and the limitations set out in other parts of these terms, the limitations of term 23(i) shall prevail.

## **24. Indemnity**

The Customer hereby indemnifies Pel-Air from any claim or damage which Pel-Air may suffer from the charter flight, other than claims or damage caused by Pel-Air own gross negligence or willful misconduct.

## **25. Severability**

Should any one or more clauses of these terms be found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining clauses shall not in any way be affected or impaired thereby.





## **26. Applicable Law**

(i) These terms are governed by and construed in accordance with the laws of the state of NSW, Commonwealth of Australia, and are subject to the jurisdiction of the Australian Courts.

(ii) If any legislation is compulsorily applicable to any of the business undertaken herein, these terms shall regard such business as subject to such legislation and nothing in these terms shall be construed as a surrender by Pel-Air of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these terms be repugnant to such legislation to any extent such part shall as regard such business be void to that extent but no further.

## **27. No third party rights**

A person who is not a party to the contract between Pel-Air and the Customer has no right to enforce or enjoy the benefit of any term of the contract or under these terms.

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