

Terms and Conditions

Background

- A Charterer wishes for Poolhurst to provide the Charter Services.
 B The parties have agreed that Poolhurst will provide the Charter Services to Charterer on the terms of this document.

Agreed terms

1 Supply of the Charter Services

Supply

- 1.1 Charterer may from time to time request Poolhurst to provide a quote to supply Charter Services.
 1.2 If Poolhurst provides a Quote, it constitutes an offer by Poolhurst to supply the Charter Services on the terms of this document.
 1.3 Charterer shall accept or reject a Quote within 30 calendar days of the date of the Quote (or such other time period as specified in a Quote) by written notice to Poolhurst.
 1.4 If Charterer does not unconditionally accept a Quote within the time period specified in the Quote or rejects the Quote, the Quote lapses in all respects.
 1.5 Subject to acceptance of a Quote under clause 1.3 and Charterer paying the Fees under clause 2, Poolhurst will provide the Charter Services to Charterer on the terms of this document.

Flight and Duty Times

- 1.6 Flight time for Charter Flights must not exceed 8 hours in any one day.
 1.7 Crew will be available for the times set out in the Charter Services Details.

Aircraft

- 1.8 Poolhurst will:
- (a) subject to clause 1.9, operate the Charter Flights for Charterer using the Aircraft;
 - (b) ensure the Aircraft is properly manned, equipped and fuelled;
 - (c) provide aircraft ground handling at airports of origin and destination (as set out in the Charter Services Details); and
 - (d) obtain and maintain all Regulatory Approvals necessary to operate the Charter Services.
- 1.9 In the event of the Aircraft becoming unserviceable or for any other reason, Poolhurst is entitled but not obliged to substitute another aircraft if such aircraft is available. If Poolhurst is unable to procure another aircraft, this document will come to an end and Poolhurst will refund Charterer any Deposit or Charter Fee paid by Charterer and shall not charge any Cancellation Fees.

Crew

- 1.10 Poolhurst will at all times maintain operational control of the Aircraft and crew.
 1.11 The crew of the Aircraft are the employees or agents of Poolhurst and will at all times be under the control of and only be authorised to take orders from Poolhurst.

Charterer requirements

- 1.12 Charterer must:
- (a) provide Poolhurst with the manifest of passenger names and

numbers, baggage and cargo lists and weights at least 24 hours prior to the departure of a Charter Flight;

- (b) give Poolhurst any information and assistance necessary to enable Poolhurst to provide the Charter Services;
- (c) cooperate with Poolhurst and act reasonably in connection with the receipt of the Charter Services;
- (d) effect and maintain public liability insurance covering its obligations under this document (including its indemnity obligations);
- (e) comply with all applicable laws, regulations, industry codes, and other instruments regulating air transport in the relevant jurisdiction or jurisdictions in which the Charter Services are supplied.

Passengers and Cargo

1.13 Charterer must ensure that:

- (a) all passengers and owners of cargo are provided with any document reasonably required by Poolhurst, including any document setting out conditions of service;
- (b) each passenger warrants they are carrying their own goods or goods they are authorised to carry;
- (c) all passenger cargo in connection with the Charter Flight Services complies with any customs, police, public health and other laws (both federal and state) with respect to the entry or clearance of passengers or cargo in any state or territory in which the Aircraft will land or depart;
- (d) without limiting clause 1.13(c), any dangerous goods are declared prior to departure and are not brought onto the Aircraft by any passenger;
- (e) all passengers report to the airport of departure no later than 30 minutes prior to the scheduled departure time specified in the Charter Services Details, or as otherwise advised by Poolhurst.

1.14 Charterer acknowledges that:

- (a) Charterer is responsible for the acts and omissions of any passengers of a Charter Flight, including costs of repair for any damage to the Aircraft by any passenger;
- (b) Poolhurst has absolute discretion:
 - (i) to refuse to carry any passengers, baggage or cargo, including any passengers who are offensive or intoxicated or any passengers, baggage or cargo not set out in the manifest provided by Charterer under clause 1.12(a);
 - (ii) concerning what load may be carried on the Aircraft and its distribution;
 - (iii) whether or not the Charter Flights will be undertaken and where landing may be made; and
 - (iv) on all other matters in connection with the operation of the Aircraft and the Supply of the Charter Services, including in respect of safety and instructions provided to any ground and operating personnel.

Delays and Cancellations

- 1.15 All times in respect of the Charter Services are local times and are subject to change including due to availability of slots and the requirements of the relevant regulatory authorities.
 1.16 If Charterer cancels a Charter Service at any time before the

scheduled departure of a Charter Flight, Charterer must pay to Poolhurst the Cancellation Fee.

- 1.17 Charterer must pay a deposit for any FBO Facilities and Poolhurst is not required to book FBO Facilities until such deposit is received.
- 1.18 Cancellation of any Charter Flight requiring FBO facilities shall result in the loss of the deposit under clause 1.17.
- 1.19 Poolhurst may delay or cancel a Charter Flight in its absolute discretion and, in the event of such a delay or cancellation, Poolhurst will:
 - (a) provide reasonable notice of such delay or cancellation to Charterer; and
 - (b) refund the agreed Charter Fee for such cancelled Charter Flight.
- 1.20 Subject to clause 1.19, Poolhurst has no liability to Charterer for any delay, change or cancellation including any costs, expenses, losses, damages or liabilities of any passenger including in respect of accommodation, food, drink and transportation.

Accuracy and reliance warranties

- 1.21 Charterer represents and warrants, and it is a condition of this document, that:
 - (a) all information provided by Charterer or on Charterer’s behalf to Poolhurst is accurate and is not, whether by omission of information or otherwise, misleading; and
 - (b) Charterer has not withheld from Poolhurst any document, information or other fact material to the decision of Poolhurst to provide the Charter Services.

Acknowledgment

- 1.22 Charterer acknowledges that Poolhurst is relying on the representations and warranties of Charterer under clause 1.21 in providing the Charter Services.

2 Fees

Fees

- 2.1 Charterer must pay the Fees to Poolhurst on the dates specified in the Charter Services Details.
- 2.2 Poolhurst may:
 - (a) defer performance of all Charter Services until any outstanding Fees are paid;
 - (b) charge a late payment fee for any late payments;
 - (c) charge Interest on any late payments; or
 - (d) terminate this document.
- 2.3 If there is a dispute about whether a Fee or other amount contemplated by this document is payable or available, Charterer must not withhold the amount in dispute.

Invoices

- 2.4 Poolhurst must invoice Charterer from time to time for the Fees.
- 2.5 Charterer must pay an invoice issued under clause 2.4 within 14 days after the date of issue of the invoice.

3 Term and termination

Term

- 3.1 This document commences on the Charter Commencement Date and continues until Poolhurst notifies Charterer that the Charter Services have been completed, unless terminated earlier under clause 3.

Termination for breach

- 3.2 Poolhurst may terminate this document by written notice to Charterer if:
 - (a) Charterer commits a breach of this document; or
 - (b) an Insolvency Event occurs in relation to Charterer (subject to any provision of the *Corporations Act 2001* (Cth) or any related subordinate legislation that may prevent or restrict the exercise of a right of termination or other right under this document),

in which case this document terminates on the date specified in that written notice or, if no date is specified, immediately on giving the notice of termination.

- 3.3 Charterer may terminate this document by written notice to Poolhurst if Poolhurst:
 - (a) commits a material breach of a fundamental term of this document that has a material and adverse affect on Charterer; and
 - (b) fails to remedy that breach within 60 days of receiving written notice from Charterer requiring Poolhurst to do so,

in which case this document terminates immediately on giving the notice of termination.

Changes to Terms

- 3.4 Poolhurst may amend the terms of this document by giving seven days’ written notice to Charterer of the amendments to this document which are to take effect at the end of the notice period.

4 Intellectual property

No assignment

- 4.1 Poolhurst Material remains the property of Poolhurst and nothing in this document grants Charterer any Intellectual Property Rights in Poolhurst Material or other Intellectual Property Rights of Poolhurst.

Licence of Charterer Material

- 4.2 Charterer grants to Poolhurst a non-exclusive, irrevocable, global licence to exercise the Intellectual Property Rights in any Charterer Material in connection with Poolhurst providing Charter Services to Charterer.

5 Confidential Information

Obligations of confidence

- 5.1 Charterer agrees to keep confidential, and not to use or disclose, other than as permitted by this document, any Confidential Information of Poolhurst provided to or obtained by Charterer before or after entry into this document.

Exclusions

- 5.2 The obligations of confidence in clause 5.1 do not apply to Confidential Information:
 - (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency; or
 - (b) that is in the public domain except as a result of a breach of this document or other obligation of confidence.

6 Limitation of liability

Limitation

- 6.1 Subject to clauses 6.4, any liability of Poolhurst for any loss or damage, however caused (including by the negligence of Poolhurst), suffered by Charterer in connection with this document is limited, at the election of Poolhurst to:
- the Fees paid by Charterer to Poolhurst under this document in the 12 months before Charterer first suffered loss or damage in connection with this document; or
 - re-performance of the Charter Services.
- 6.2 The limitation set out in clause 6.1 is an aggregate limit for all claims, whenever made.
- 6.3 Any claim by Charterer against Poolhurst for loss or damage however caused (including by the negligence of Poolhurst), suffered by Charterer in connection with this document must be made within one month of Charterer becoming entitled to make the claim and any claim not made within one month is absolutely barred.

Consequential loss

- 6.4 Poolhurst is not liable for any Consequential Loss however caused (including by the negligence of Poolhurst), suffered or incurred by Charterer in connection with this document.

Liability for consumer guarantees

- 6.5 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any good or service supplied by Poolhurst in connection with this document, and Poolhurst's liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 6.1 and 6.4 do not apply to that liability. Instead, Poolhurst's liability for that failure is limited to (at the election of Poolhurst), in the case of a supply of goods, Poolhurst replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, Poolhurst supplying the services again or paying the cost of having the services supplied again.

7 Indemnity

- 7.1 Charterer is liable for, and indemnifies Poolhurst from and against, all loss or damage (including legal costs) incurred or suffered by Charterer however caused in connection with any breach of this document by Charterer.

8 Force majeure

- 8.1 Poolhurst will not be:
- in breach of this document because of; or
 - liable for,
- any failure or delay in the performance of Poolhurst's obligations under this document to the extent that the failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of Charterer.

9 GST

- 9.1 Any words capitalised in clause 11.1 and not already defined in clause 11.1 have the meaning given to those words in the GST Act.
- 9.2 Except under clause 9, the consideration for a Supply made under or in connection with this document does not include GST.
- 9.3 If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
- the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply, in addition to, and in the same

manner as the consideration otherwise payable under this document for that Supply); and

- the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.

- 9.4 For clarity, the GST payable under clause 9.3 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.
- 9.5 If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 9.6 Where a Tax Invoice is given by the GST Act Supplier, the GST Act Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- 9.7 Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 9.3 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

10 General

- 10.1 The laws of Queensland govern this document.
- 10.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- 10.3 Where Poolhurst may exercise any right or discretion or make any decision under this document, Poolhurst may do so in its absolute discretion, conditionally or unconditionally, and without being required to give reasons or act reasonably. This clause applies unless this document expressly requires otherwise.
- 10.4 A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.
- 10.5 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in this document.
- 10.6 Poolhurst may subcontract the performance of all or any part of Poolhurst's obligations under this document.
- 10.7 A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- 10.8 Termination of this document will not affect clauses 1.21, 2, 4, 5, 6, 7, 10 or 11 or any provision of this document which is expressly or by implication intended to come into force or continue on or after the termination.

11 Definitions and interpretations

Definitions

- 11.1 In this document:
- Aircraft** means the Aircraft set out in the Charter Services Details.
- Bankruptcy Act** means the *Bankruptcy Act 1966* (Cth).
- Cancellation Fee** means 100% of Charter Fees.
- Charter Commencement Date** means the charter commencement date set out in the Charter Services Details.

Charter Fee means the charter fee set out in the Charter Services Details.

Charter Flight means the charter flight set out in the Charter Services Details.

Charter Services means the services specified in the Charter Services Details.

Charter Services Details means the charter services details set out on the front page of this document.

Charterer Material means any material provided by or to which access is given by Charterer to Poolhurst for the purposes of this document.

Confidential Information means the existence and terms of this document and any information about the business and affairs of a party, including its customers, clients, employees sub contractors or other persons doing business with that party;

which is by its nature confidential, designated as confidential or which the other party knows or ought to know, is confidential.

Consequential Loss means one or more of the following:

- (a) indirect loss;
- (b) loss of profits;
- (c) loss of actual or anticipated savings;
- (d) lost opportunities, including opportunities to enter into arrangements with third parties; and
- (e) loss or corruption of data.

Corporations Act means *Corporations Act 2001* (Cth).

Deposit means the deposit set out in the Charter Services Details.

FBO Facilities means the fixed-based operator facilities required to be provided as set out in the Charter Services Details.

Fees means the fees set out in the Charter Services Details.

Force Majeure Event means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under this document (other than a payment obligation), and includes:

- (a) adverse weather conditions and any physical natural disaster including fire, flood, lightning or earthquake;
- (b) law taking effect after the date of this document; and
- (c) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.

GST Act means *A New Tax System (Goods and Charter Services Tax) Act 1999* (Cth).

GST Act Supplier means the entity making the Supply.

Insolvency Event means any of the following events:

- (a) a controller (as defined in the Corporations Act) is appointed to the party, or over any of the property of the party;
- (b) the party becomes bankrupt;
- (c) a controlling trustee is appointed to the party, or over any of the property of the party;
- (d) the party or the party's property becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act;
- (e) the party is unable to pay its debts when they become due and payable; or

- (f) the party ceases to carry on business.

Intellectual Property Rights means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design or other proprietary right, or right of registration of those rights.

Interest means interest on any payment owing under this document calculated:

- (a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
- (b) daily from the date on which the payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.

Poolhurst Material means any material provided by or to which access is given by Poolhurst to Charterer for the purposes of this document including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means

Progressive or Periodic Supply means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.

Quote means a quote contemplated by clause 1.1.

Related Body Corporate has the meaning given to that term by section 9 Corporations Act.

Regulatory Approvals means all approvals required to operate the Charter Services including airport approvals (including slot and landing permits), overflight permits and any other approvals required by any other government or aviation authority.

Interpretation

11.2 In this document:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) a reference to this document includes the agreement recorded by this document; and
- (c) this document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.